

**ATTACHMENT 8 to CM/GC / ATTACHMENT G to A+E**

**ODOT CM/GC GENERAL PROVISIONS, as modified by Multnomah County**

**TABLE OF CONTENTS**

| <b>Section</b> | <b>Description</b>  | <b>Applicable to Pre-construction and Construction Phase Services</b> | <b>Applicable to Construction Phase Services Only</b> |
|----------------|---|---|---|
| 00110          | Organization, Conventions, Abbreviations and Definitions            | X   |   |
| 00120          | Bidding Requirements and Procedures for Construction Phase Services |   | X   |
| 00130          | Award and Execution of Contract for Construction Phase Services     |   | X   |
| 00140          | Scope of Work of Construction Phase Services                        |   | X   |
| 00141          | Pre-construction Phase Services – Scope of Work                     | X   |   |
| 00142          | Construction Phase Services – Scope of Work                         |   | X   |
| 00144          | Diversity Performance Specifications                                |   | X   |
| 00150          | Control of Work during Construction Phase Services                  |   | X   |
| 00160          | Source of Materials   |   | X   |
| 00165          | Quality of Materials  |   | X   |
| 00170          | Legal Relations and Responsibilities                                | X   |   |
| 00180          | Prosecution and Progress  | X   |   |
| 00190          | Measurement of Pay Quantities                                       |   | X   |
| 00195          | Payment for Construction Phase Services                             |   | X   |
| 00196          | Payment for Extra Work  | X   |   |
| 00197          | Payment for Force Account Work during Construction Phase Services   |   | X   |
| 00199          | Disagreements, Protests and Claims                                  | X   |   |
|                |   |   |   |

**Notes:**

1. Refer to Article 1.4 of the Contract regarding incorporation of Sections 00110 through 00199 into the Contract for Pre-construction and Construction phase services.
2. Those provisions incorporated into the Contract shall apply to the CM/GC's price in Article 3.1 and Exhibit "J" of the Contract for Pre-construction Phase services.
3. Where advantageous to the Agency, the Agency may negotiate revisions to provisions that apply to Construction Phase Services.
4. In preparing Task Deliverables listed in Exhibit "J", as ordered by the Agency during Pre-construction Phase services, the CM/GC shall consult the various CM/GC General Provisions sections that are identified in Section 141 and use the requirements of these sections in developing the Deliverables.

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## Section 00110 – Organization, Conventions, Abbreviations and Definitions

### Organization

#### 00110.00 Organization of Specifications – The Specifications are comprised of the following:

- Standard Specifications defined below in Subsection 00110.20. The “2008 Oregon Standard Specifications for Construction”, Volume 2, which contain Parts 00200 through 03000 of the detailed “Technical Specifications” involved in prosecution of the Work, organized by subject matter.
- These **CM/GC General Provisions** defined below in Subsection 00110.20.
- The **Special Provisions** defined below in Subsection 00110.20.
- Such other Specifications defined below in Subsection 00110.20.

In addition, throughout the Specifications:

- Each part is divided into Sections and Subsections.
- Reference to a Section includes all applicable requirements of the Section.
- When referring to a Subsection, only the number of the Subsection is used; the word “Subsection” is implied.
- Where Section and Subsection numbers are not consecutive, the interval has been reserved for use in the **Special Provisions**, or for future expansion of the **CM/GC General Provisions**.

### Conventions

#### 00110.05 Conventions Used Throughout the Specifications Include:

**(a) Grammar** – These **CM/GC General Provisions** are written in the indicative mood, in which the subject is expressed. The “2008 Oregon Standard Specifications for Construction”, Volume 2, which contains Parts 00200 through 03000 of the detailed “Technical Specifications” is generally written in the imperative mood, in which the subject is implied. Therefore, throughout Parts 00200 through 03000 and on the Plans:

- The subject, “the Contractor” (“CM/GC”), is implied.
- “Shall” refers to action required of the Contractor, and is implied.
- “Will” refers to decisions or actions of the Agency and/or the Engineer.
- The following words, or words of equivalent meaning, refer to the actions of the Agency and/or the Engineer, unless otherwise stated: “allowed”, “directed”, “established”, “permitted”, “ordered”, “designated”, “prescribed”, “required”, “determined”.
- The words “approved”, “acceptable”, “authorized”, “satisfactory”, “suitable”, “considered”, and “rejected”, “denied”, “disapproved”, or words of equivalent meaning mean by or to the Agency and/or the Engineer, subject in each case to Section 00150 of these **CM/GC General Provisions**.
- The words “as shown”, “shown”, “as indicated”, or “indicated” mean “as indicated on the Plans”.
- Certain Subsections labeled “Payment” contain statements to the effect that “payment will be made at the Contract amounts for the following items” (followed by a list of items). In such cases, the Agency shall pay for only those Pay Items listed in the Schedule of Items.

**(b) Capitalized Terms** – Capitalized terms, other than titles, abbreviations, and grammatical usage, indicate that they have been given a defined meaning in the Standard Specifications and these **CM/GC General Provisions**. Refer to Section 00110.20 “Definitions”. Defined terms will always be capitalized in these **General Provisions**; in Parts 00200 through 03000, defined terms will generally not be capitalized, with the notable exception of “the Contractor”, “the Agency” and “the Engineer”.

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**(c) Punctuation** – In this publication, the “outside method” of punctuation is employed for placement of the comma and the period with respect to quotation marks. Only punctuation that is part of the quoted matter is placed within quotation marks.

**(d) References to Laws, Acts, Regulations, Rules, Ordinances, Statutes, Orders, and Permits** – References are made in the text of the Specifications to "Laws," "acts," "rules," "statutes," "codes," "regulations," "ordinances", etc. (collectively referred to for purposes of this Subsection as "Law"), and to "orders," and "permits" (issued by a governmental authority, whether local, State, or federal, and collectively referred to for purposes of this Subsection as "Permits"). Reference is also made to "applicable Laws and regulations." The following conventions apply in interpreting these terms as used in the Specifications.

- **Statutes and Rules** – Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) referenced in the Specifications are accessible on line, including through the Oregon Legislative Council Committee web site and through the Oregon Secretary of State Archives Division web site.
- **Law** – In each case, unless otherwise expressly stated therein, the Law is to be understood to be the current version in effect. This also applies where a specific Law is referenced or cited, regardless of whether the text of the Law has been included in the Specifications or not, and regardless of whether the text of the Law has been summarized or paraphrased. In each case, the current version of the Law is applicable under any Contract. The reader is therefore cautioned to check the actual text of the Law to confirm that the text included in the Specifications has not been modified or superseded.
- **Permits** – Orders and permits issued by a government agency may be modified during the course of performing the Work under a Contract. Therefore, wherever the term "order," or "permit," is used in the Specifications, it is intended to refer to the then-current version. That version may be embodied in a modified, superseding order or permit, or it may consist of all terms and conditions of prior orders or permits that have not been superseded, as well as the additional terms added by amendment or supplement. In certain cases, the orders, and/or permits are identified by name in the Specifications; in other cases the terms are used in the generic sense. The reader is cautioned to check the text(s) of each order and permit identified either by name or by generic reference.
- **Applicable Laws and Regulations** – Where the phrase “applicable laws and regulations” appears, it is to be understood as including all applicable laws, acts, regulations, administrative rules, ordinances, statutes, and orders and permits issued by a governmental or regulatory authority.

### Abbreviations

**00110.10 Abbreviations** – Following are meanings of abbreviations used in the Standard Specifications, these **CM/GC General Provisions**, in the **Special Provisions**, on the Plans, and in other Contract Documents. Other abbreviations and meanings of abbreviations may be in the individual Sections of the Standard Specifications to which they apply, in these **General Provisions**, in the **Special Provisions**, and in OAR 731-005 and OAR 731-007.

|        |   |  |
|--------|---|--|
| AAR    | - | Association of American Railroads                                  |
| AASHTO | - | American Association of State Highway and Transportation Officials |
| ABC    | - | Associated Builders and Contractors, Inc.                          |
| AC     | - | Asphalt Concrete   |
| ACI    | - | Asphalt Concrete Institute   |
| ACWS   | - | Asphalt Concrete Wearing Surface                                   |
| AGC    | - | Associated General Contractors of America                          |
| AIA    | - | American Institute of Architects                                   |
| AISC   | - | American Institute of Steel Construction                           |
| AISI   | - | American Iron and Steel Institute                                  |
| AITC   | - | American Institute of Timber Construction                          |
| ANSI   | - | American National Standards Institute                              |

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|        |  |
|--------|--|
| APA    | - American Plywood Association   |
| APWA   | - American Public Works Association  |
| ARA    | - American Railway Association   |
| AREA   | - American Railway Engineering Association                                       |
| ASCE   | - American Society of Civil Engineers  |
| ASME   | - American Society of Mechanical Engineers                                       |
| ASTM   | - American Society for Testing and Materials                                     |
| ATPB   | - Asphalt-Treated Permeable Base   |
| AWG    | - American Wire Gauge  |
| AWPA   | - American Wood Preservers Association   |
| AWS    | - American Welding Society   |
| AWWA   | - American Water Works Association   |
| BOLI   | - Bureau of Labor and Industries, state of Oregon                                |
| CAGT   | - Certified Aggregate Technician   |
| CAT-I  | - Certified Asphalt Technician I   |
| CAT-II | - Certified Asphalt Technician II  |
| CBM    | - Certified Ballast Manufacturers  |
| CCO    | - Contract Change Order  |
| CCT    | - Concrete Control Technician  |
| CDT    | - Certified Density Technician   |
| CEBT   | - Certified Embankment and Base Technician                                       |
| CFR    | - Code of Federal Regulations  |
| CMDT   | - Certified Mixture Design Technician  |
| CM/GC  | - Construction Manager/General Contractor  |
| CPF    | - Composite Pay Factor   |
| CRSI   | - Concrete Reinforcing Steel Institute   |
| CS     | - Commercial Standard, Commodity Standards Division, U.S. Department of Commerce |
| D1.1   | - Structural Welding Code – Steel, American Welding Society, current edition     |
| D1.5   | - Bridge Welding Code, American Welding Society, current edition                 |
| DBE    | - Disadvantaged Business Enterprise  |
| DEQ    | - Department of Environmental Quality, State of Oregon                           |
| DOGAMI | - Department of Geology and Mineral Industries, State of Oregon                  |
| DSL    | - Division of State Lands, State of Oregon                                       |
| EAC    | - Emulsified Asphalt Concrete  |
| EPA    | - U.S. Environmental Protection Agency   |
| ESCP   | - Erosion and Sediment Control Plan  |
| EWA    | - Early Work Amendment   |
| FAA    | - Federal Aviation Administration, U.S. Department of Transportation             |
| FHWA   | - Federal Highway Administration, U.S. Department of Transportation              |
| FSS    | - Federal Specifications and Standards, General Services Administration          |
| GMP    | - Guaranteed Maximum Price   |
| GSA    | - General Services Administration  |
| HMAC   | - Hot Mix Asphalt Concrete   |
| ICEA   | - Insulated Cable Engineers Association (formerly IPCEA)                         |
| IES    | - Illuminating Engineering Society   |
| IMSA   | - International Municipal Signal Association                                     |

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|         |   |   |
|---------|---|---|
| ISO     | - | International Standards Organization  |
| ITE     | - | Institute of Transportation Engineers   |
| JMF     | - | Job Mix Formula   |
| JV      | - | Joint Venture   |
| MFTP    | - | Manual of Field Test Procedures (ODOT)  |
| MIL     | - | Military Specifications   |
| MSC     | - | Minor Structure Concrete  |
| MUTCD   | - | Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation |
| NEC     | - | National Electrical Code  |
| NEMA    | - | National Electrical Manufacturer's Association  |
| NESC    | - | National Electrical Safety Code   |
| NEPA    | - | National Environmental Policy Act   |
| NFTMAG  | - | Non-Field Tested Materials Acceptance Guide (ODOT)  |
| NIST    | - | National Institute of Standards and Technology  |
| NPDES   | - | National Pollutant Discharge Elimination System   |
| NPS     | - | Nominal Pipe Size (dimensionless)   |
| OAR     | - | Oregon Administrative Rules   |
| ODA     | - | Oregon Department of Agriculture  |
| ODOT    | - | Oregon Department of Transportation   |
| ORS     | - | Oregon Revised Statutes   |
| OR-OSHA | - | Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services          |
| OSHA    | - | Occupational Safety and Health Administration, U.S. Department of Labor                                     |
| PCA     | - | Portland Cement Association   |
| PCI     | - | Precast/Prestressed Concrete Institute  |
| PCP     | - | Pollution Control Plan  |
| PF      | - | Pay Factor of a Constituent   |
| PLS     | - | Professional Land Surveyor  |
| PMBB    | - | Plant Mixed Bituminous Base   |
| PTI     | - | Post-Tensioning Institute   |
| PUC     | - | Public Utility Commission, State of Oregon  |
| QA      | - | Quality Assurance   |
| QC      | - | Quality Control   |
| QCT     | - | Quality Control Technician  |
| QL      | - | Quality Level   |
| QPL     | - | Qualified Products List   |
| RAP     | - | Reclaimed Asphalt Concrete Pavement   |
| REA     | - | Rural Electrification Administration, U.S. Department of Agriculture  |
| RMA     | - | Radio Manufacturers' Association or Rubber Manufacturers' Association                                       |
| SAE     | - | Society of Automotive Engineers   |
| SHPO    | - | State Historic Preservation Office, OPRD  |
| SI      | - | International System of Units (Système Internationale)  |
| SRCM    | - | Soil and Rock Classification Manual (ODOT)  |
| SSPC    | - | Society for Protective Coatings   |
| T       | - | Tolerances, AASHTO Test Method  |
| TM      | - | Test Method (ODOT)  |

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|-------|---|---|
| TV    | - | Target Value  |
| UBC   | - | Uniform Building Code (as adopted by the State of Oregon) |
| UL    | - | Underwriters Laboratory, Inc.                             |
| UPC   | - | Uniform Plumbing Code (as adopted by the State of Oregon) |
| USC   | - | United States Code  |
| WAQTC | - | Western Alliance for Quality Transportation Construction  |
| WCLIB | - | West Coast Lumber Inspection Bureau                       |
| WWPA  | - | Western Wood Products Association                         |

### Definitions

**00110.20 Definitions** – Following are definitions of words and phrases used in the Request for Proposals, Instructions to Proposers, **Standard Specifications**, these **CM/GC General Provisions**, in the **Special Provisions**, on the Plans, and in other Contract Documents. Other definitions may be found in the individual Sections of the **Standard Specifications** to which they apply, in these **General Provisions**, in the **Special Provisions**, and in OAR 731-005 and OAR 731-007.

**Act of God or Nature** – A natural phenomenon of such catastrophic proportions or intensity as would reasonably prevent performance.

**Addendum or Addenda** – A written or graphic modification, which revises, adds to, or deletes information in the Request for Proposal (RFP) or previously issued Addenda. Addenda shall be labeled as such and made available to all interested Proposers.

**Additional Work** – Increased quantities of any Pay Item, within the scope of the Contract, for which a unit price has been established.

**Advertisement** – The public announcement (Notice to Contractors) inviting Bids for Work to be performed or Materials to be furnished.

**Advance Plans** – An intermediate step in the development of Plans, Specifications and the construction estimate. At this stage of development, the Plan sheets and construction Specifications, including the estimate, should be fully developed allowing review of all the components of the design by the Agency.

**Affiliate** - Any subsidiary of a Proposer or the Contractor, and any other Entity in which a Proposer or the Contractor has a financial interest or which has a financial interest in the Proposer or the Contractor (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls the Proposer or the Contractor).

**Agency** – The city, county, or State agency or special district or political subdivision, as applicable, which has entered into a Contract with the Contractor. For this Broadway Bridge Rail Wheel Replacement project, Agency as used throughout the documents shall mean Multnomah County.

**Agency-Controlled Lands** – Lands owned by the Agency, or controlled by the Agency under lease or agreement, or under the jurisdiction and control of the Agency for purposes of the Contract.

**Aggregate** – Rock of specified quality and gradation.

**Attorney in Fact** – An Entity appointed by another to act in its place, either for some particular purpose, or for the transaction of business in general.

**Amendment** – A written modification of the Contract (including without limitation any agreed change to the Guaranteed Maximum Price (GMP)), identified as an Amendment, and executed by the Contractor and the Agency

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**Architect / Engineer (A&E)** – A licensed business employing professionals for the purposes of developing construction documents in the support of transportation projects on participating Federal-Aid contracts, subcontracts, or other agreements which the Agency has Awarded, or to which the Agency has consented.

**Aspirational Target** – A target of intended utilization of Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Emerging Small Business (ESB), that the Contractor should strive to attain in support of Agency policies and objectives.

**Award** – Written notification to the Proposer that the Proposer has been awarded a Contract.

**Base** – A Course of specified Material of specified thickness placed below the Pavement.

**Best Value** – A selection method utilizing both price and quality evaluation factors.

**Bike Lane** – A lane in the Traveled Way, designated by striping and Pavement markings for the preferential or exclusive use of bicyclists.

**Borrow** – Material lying outside of planned or required Roadbed excavation used to complete Project earthwork.

**Boulders** – Particles of rock that will not pass a 12 inch square opening.

**Bridge** – A single or multiple span Structure, including supports, that carries motorized and non-motorized vehicles, pedestrians, or utilities on a Roadway, walk, or track over a watercourse, Highway, Railroad, or other feature.

**Business Day** – Any Calendar Day, beginning and ending at midnight, between Monday and Friday, inclusive excluding State-recognized holidays.

**Buttress** – A rock fill placed at the toe of a landslide or potential landslide in order to resist slide movement.

**Calendar Day** – Any day shown on the calendar, beginning and ending at midnight.

**Camber** – A slight arch in a surface or Structure to compensate for loading.

**Change Order** – A written order issued by the Engineer to the Contractor modifying Work required by the Contract, or adding Work within the scope of the Contract, and, if applicable, establishing the basis of payment for the modified Work.

**Changed Work** – Work included in a Pay Item and within the scope of the Contract that is different from that reflected in the Plans and Specifications. (see 00140.30)

**Class of Project** – A designation based on the Project's funding source, i.e., State or Federal-Aid.

**Class of Work** – A designation referring to the type of Work in which Bidders must be pre-qualified. Classes of Work are limited to those listed in ODOT's Contractor's Prequalification Application.

**Clay** – Soil passing a No. 200 sieve that can be made to exhibit plasticity (putty-like properties) within a range of water contents.

**Clear Zone** – Roadside border area, starting at the edge of the Traveled Way, that is available for safe use by errant vehicles. Establishing a minimum width Clear Zone implies that rigid objects and certain other hazards within the Clear Zone should be relocated outside the Clear Zone, or shielded, or remodeled to make them break away on impact or be safely traversable.

**Close Conformance** – Where working tolerances are given on the Plans or in the Specifications, Close Conformance means compliance with those tolerances. Where working tolerances are not given, Close Conformance means compliance, in the Engineer's judgment, with reasonable and customary manufacturing and construction tolerances.

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**Closing** – The date and time set in the RFP for Proposal submission, after which Proposals may not be submitted, modified or withdrawn by Proposers.

**CM/GC Fee** – Initially the percentage amount set forth on Exhibit K. This percentage amount will be converted to a fixed amount in accordance with the **CM/GC Contract**, Article 6.3, which fixed amount is subject to adjustment in accordance with **CM/GC Contract**, Article 12.2.

**CM/GC General Provisions** – This Contract Document identified as such in the **CM/GC Contract** consisting of Sections 00110 through 00199.

**Coarse Aggregate** – Crushed Rock or crushed Gravel retained on a ¼ inch sieve, with allowable undersize.

**Cobbles** – Particles of Rock, rounded or not, that will pass a 12 inch square opening and be retained on a 3 inch sieve.

**Commercial Grade Concrete** – Concrete furnished according to Contractor proportioning, placed in minor Structures and finished as specified.

**Competitive Range** – The number of highest-scoring Proposers that may be considered for an invitation to interview and for Award.

**Conflict of Interest (COI)** – A personal Conflict of Interest or Organizational Conflict of Interest, and includes actual, potential or apparent Conflicts of Interest.

**Construction Manager/General Contractor (CM/GC)** – The firm that enters into a CM/GC Contract with the Agency for the Project. The CM/GC is also referred to as the “Contractor” in these **CM/GC General Provisions** and other Contract Documents such as the Standard Specifications and **Special Provisions**.

**Construction Phase Services** – All Work, other than Pre-construction Phase Services, consisting of, without limitation, construction related activities of the Contractor including schedule refinement, advance Materials procurement, advance construction (if approved by an Agency-issued Early Work Amendment), Project budget management, and development of bid packages.

**Context Sensitive and Sustainable Solutions (CS<sup>3</sup>)** – Solutions that (a) reflect social values (community values; cultural, aesthetic, and historic resources; and diversity); (b) maintain safety and mobility; and (c) support economic prosperity. “Sustainable solutions” are those that achieve responsible stewardship of the natural environment and optimize long-term performance.

**Contract** – The written agreement between the Agency and the Contractor, including without limitation all Contract Documents, describing the Work to be completed and defining the rights and obligations of the Agency and the Contractor.

**Contract Amount** – The Contract Amount is identified as the sum of amounts paid for Pre-construction Phase Services, the CM/GC Fee, actual reimbursable bonds and insurance costs, and the actual Cost of the Work (including any Early Work), but not exceeding the GMP.

**Contract Completion Date** – The Contract Completion Date is defined as the date identified in the **CM/GC Contract**, Article 5.2, by which all Work under the Contract, with the exception of plant establishment and punch-list items, must be completed.

**Contract Documents** – **CM/GC Contract**, these **CM/GC General Provisions**, **Special Provisions**, **Standard Specifications**, Change Orders, those portions of the accepted Proposal that meet or exceed minimum Contract requirements, Working Drawings, Supplemental Drawings, Force Account Work orders, pay documents issued by the Agency, Materials certifications, Project Work schedules, final estimate, written orders and authorizations issued by the Agency, approved Plans, Material source development and reclamation plans, and permits, orders and authorizations obtained by the Contractor or Agency applicable to the Project, as well as all other plans or documents required to be submitted to Agency pursuant to the terms of the **CM/GC Contract**, **CM/GC General Provisions**, **Special Provisions**, **Standard Specifications** or other Contract Documents.

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**Contract Time** – The amount of time allowed under the **CM/GC Contract**, Early Work Amendment, or GMP Amendment to complete all Work, calculated from the date On-Site Work commences except for plant establishment and punch-list items, by the Contract Completion Date specified in the **CM/GC Contract**, Article 5.2, Early Work Amendment, or GMP Amendment. Multiple Interim Completion Dates within the Contract Time may be stipulated in the Contract or Amendment including Early Work Amendments and the GMP Amendment.

**Contractor** – The Entity awarded the Contract pursuant to the solicitation. Contractor is also referred to as “CM/GC” in the **CM/GC Contract**, in other Contract Documents, and in the Instructions to Proposers.

**Contractor Intellectual Property** – Any intellectual property owned by the Contractor and developed independently from this Project.

**Cost of the Work (COW)** – The Cost of the Work is the amount set forth in any Early Work Amendment(s) or the GMP Amendment that represents the Contractor’s estimated costs to be incurred in the construction of the Project, and may include lump sum, unit price, and cost reimbursable not-to-exceed Pay Items. The Cost of the Work shall exclude the Pre-construction Costs, estimated costs of bonds and insurance, the CM/GC Fee, and any other cost or charge stated in the **CM/GC Contract**. The Cost of the Work shall either include or exclude costs for Construction General Conditions (as identified in Exhibit H to the **CM/GC Contract**) as set forth in any Early Work Amendment(s) or the GMP Amendment.

**Course** – A specified Surfacing Material placed in one or more Lifts to a specified thickness.

**Coverage** – One Pass by a piece of Equipment over an entire designated area.

**Critical Path** – The sequence of activities, events, and dependencies that determine the longest overall duration and the shortest time possible, to complete the Project. Any delay of an activity on the Critical Path directly impacts the planned Project completion date (i.e. there is no float on the Critical Path).

**Cross Section** – The exact image formed by a plane cutting through an object, usually at right angles to a central axis, to determine area.

**Deficiency** - A material failure of a Proposal to meet Agency requirements, or a combination of Significant Weaknesses in a Proposal that increases the risk of unsuccessful Contract performance to a level unacceptable to the Agency.

**Design Development Documents** – Drawings and other documents that fix and describe the size and character of the entire Project, including architectural, structural, mechanical and electrical systems, Materials and such other elements as may be appropriate. These documents include the Draft DAP, Final DAP, Progress Plans, Advance Plans and Final PS&E.

**Design Team** – The A&E’s dedicated staff working on the design of the Project with responsibility for development of the Design Development Documents.

**Disadvantaged Business Enterprise (DBE)** – A Firm eligible to participate as a DBE as established by regulation and enforced by the certifying agency.

**Draft Design Acceptance Package (Draft DAP)** – The Draft Design Acceptance Package represents a design phase which starts following the Project kick-off meeting, and concludes with the acceptance of the Final Design Acceptance Package (Final DAP).

**Durable Rock** – Rock that has a slake durability index of at least 90%, based on a two-cycle slake durability test according to ASTM D 4644. In the absence of test results, the Engineer may evaluate the durability visually.

**Early Work** – Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to early procurement of Materials and supplies, early release of bid or proposal packages for site development and related activities, and any other

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advance Work related to critical components of the Project for which performance prior to establishment of the Guaranteed Maximum Price (GMP) will materially affect the Critical Path schedule of the Project.

**Early Work Amendment** - An Amendment to the **CM/GC Contract** executed to authorize Work under an Early Work Package.

**Early Work Price** - The sum of the Early Work, the applicable CM/GC Fee, and the cost of any applicable bonds and insurance.

**Early Work Package** – Work Packages authorized by the Agency by an Early Work Amendment consisting of Work to be performed in advance of establishment of the Guaranteed Maximum Price (GMP).

**Emulsified Asphalt** – Emulsified asphalt cement.

**Emulsified Asphalt Concrete** – A mixture of Emulsified Asphalt and graded Aggregate.

**Engineer** – The Chief Engineer of the Agency acting either directly or through authorized representatives. If the Agency has not designated a Chief Engineer, this term denotes the person responsible for administering its public works program.

**Engineering Data** – Project information provided by the Agency as a basis for the Project's design and construction which can be relied upon in the design process.

**Entity** – A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

**Equipment** – All machinery, tools, manufactured products, and fabricated items needed to complete the Contract or specified for incorporation into the Work.

**Establishment Period** – The time specified to assure satisfactory establishment and growth of planted Materials.

**Existing Surfacing** – Pavements, slabs, curbs, gutters, walks, driveways, and similar constructions of bricks, blocks, portland cement concrete, bituminous treated materials, and granular surfacing materials on existing Highways.

**Extra Work** – Work not included in the Contract, but deemed by the Engineer to be necessary to complete the Project.

**Federal-Aid Contract** – Any contract, or modifications of a contract, paid for in whole or in part with USDOT financial assistance from FHWA, FTA or FAA.

**Final Acceptance** – Written confirmation by the Agency that the Project has been completed according to the Contract, with the exception of latent defects and Warranty obligations, if any, and has been accepted.

**Final Design Acceptance Package (Final DAP)** - The Final DAP incorporates all comments to the Draft DAP, and is approved by the Agency. Also referred to by the Agency as 30% Design Documents.

**Final Inspection** – The inspection conducted by the Engineer to determine that the Project has been completed in accordance with Contract.

**Final PS&E** – Final, stamped and sealed Plans, Specifications and estimate used to construct the Project.

**Fine Aggregate** – Crushed Rock, crushed Gravel, or Sand that passes a ¼ inch sieve, with allowable oversize.

**First Notification** – Written acknowledgment by the Engineer of the date on which workers employed by the Contractor or a Subcontractor have begun performance of the Work under the Contract, Early Work Amendment or

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the GMP Amendment, including Aggregate source development or erection of a plant, but not including installation of covered temporary signs according to Section 00225.

**Force Account Work** – Items of Extra Work ordered by the Engineer that are to be paid according to Section 00197.

**Granular Material** – Graded and selected free-draining material composed of particles of Rock, Sand, and Gravel.

**Gravel** – Particles of Rock, rounded or not, that will pass a 3 inch sieve and be retained on a No. 4 sieve.

**Guaranteed Maximum Price (GMP)** – GMP shall mean the Guaranteed Maximum Price of the Contract, as stated in dollars within the GMP Amendment, as determined in accordance with Article 6 of the **CM/GC Contract**, and as it may be adjusted from time to time pursuant to the provisions of the Contract.

**GMP Amendment** – An amendment to the Contract, executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

**GMP Supporting Documents** – The documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, bid items, estimated quantities, unit prices, and alternates that form the basis for the GMP.

**Highway** – Every road, street, thoroughfare and place, including Bridges, viaducts and other structures within the boundaries of the State, open, used, or intended for use by vehicular traffic.

**Incidental** – A term identifying those acts, services, transactions, property, Equipment, labor, Materials, or other items for which the Agency will make no separate or additional payment.

**Inspector** – The representative of the Engineer authorized to inspect and report on Contract performance.

**Interim Completion Date(s)** - The date(s) established in the Early Work Amendment and GMP Amendment, if applicable, or other Contract Documents, as the deadline by which certain specified components of the Work must be completed, with the exception of plant establishment and punch-list items. There may be one or more Interim Completion Dates established for a Project.

**Key Personnel** – Persons and Entities specifically identified in Article 4.6 of the **CM/GC Contract**.

**Leveling** – Placing a variable-thickness Course of Materials to restore horizontal and vertical uniformity to existing Pavements, normally continuous throughout the Project.

**Lift** – The compacted thickness of Material placed by Equipment in a single Pass.

**Mandatory Source** – Any materials source provided by the Agency from which the Contractor is required to obtain Materials. (see 00160.00(b) and 00160.40)

**Materials** – Any natural or manmade substance specified for use in the construction of the Project or for incorporation into the Work.

**Median** – The portion of a divided Highway separating traffic traveling in opposite directions.

**Minority Business Enterprise, Women Business Enterprise and Emerging Small Business (MWESB)** – A firm eligible to participate as a MWESB by meeting the criteria as established by the Office of Minority Women and Emerging Small Business in the State of Oregon.

**Multiple-Course Construction** – Two or more Courses, exclusive of Patching or Leveling, placed over the entire Roadway width.

**Multi-Use Path** – That portion of the Highway Right-of-Way or a separate Right-of-Way, physically separated from motor vehicle traffic and designated for use by pedestrians, bicyclists and other non-motorized users.

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**Neat Line** – Theoretical lines specified or indicated on the Plans for measurement of quantities.

**Nondurable Rock** – Rock that has a slake durability index of less than 90% based on a two-cycle slake durability test, as tested by ASTM D 4644, or Rock that is observed to readily degrade by air, water, and mechanical influence.

**Notice of Competitive Range** – Written notification issued by the Agency identifying the Competitive Range which consists of the highest-scoring Proposers that may be considered for Award.

**Notice of Intent to Award** - Written notification issued by the Agency identifying the apparent Best Value Proposer selected for Award of the Contract.

**Notice to Proceed** – Written notice authorizing the Contractor to begin performance of the Work, including Pre-construction Phase Services under the **CM/GC Contract**, and Construction Phase Services performed under an Early Work Amendment or GMP Amendment.

**On-Site Work** – Any Work taking place on the Project Site, including designated staging areas adjacent to the Project Site, except for installation of covered temporary signs according to Section 00225.

**Organic Soil** – A Soil with sufficient organic content to influence the Soil properties.

**Panel** – The width of specified Material being placed by Equipment in a single Pass.

**Pass** – One movement of a piece of Equipment over a particular location.

**Patching** – Placing a variable-thickness Course of Materials to correct sags, dips, and/or bumps to the existing grade and Cross Section, normally intermittent throughout the Project.

**Pavement** – Asphalt concrete or portland cement concrete placed for the use of motor vehicles, bicycles, or pedestrians on Roadways, Shoulders, Multi-Use Paths and parking areas.

**Pay Item (Contract Item)** – A specific unit of Work for which a price is provided in the Contract.

**Payment Bond** – The approved security furnished by the Contractor's Surety as a guaranty of the Contractor's performance of its obligation to pay promptly in full all sums due for Materials, Equipment, and labor furnished to complete the Work.

**Peat** – A Soil composed primarily of vegetative matter in various stages of decomposition, usually with an organic odor, dark brown to black color, and a spongy consistency.

**Performance Bond** – The approved security furnished by the Contractor's Surety as a guaranty of the Contractor's performance of the Contract.

**Performance Specifications** – Specifications that define the required results in terms of performance attributes, as opposed to specifying the required Materials and means and methods to be used to achieve the required results.

**Plans** – Standard and Supplemental Drawings, and approved unstamped and reviewed stamped Working Drawings. (see 00150.10 and 00150.35)

**Pre-construction Costs** – The not-to-exceed amount for Pre-Construction Phase Services established in accordance with the **CM/GC Contract**, Article 6.2.

**Pre-construction Phase** – The period commencing on the date of execution of the **CM/GC Contract** and ending upon commencement of the Construction Phase; provided that if the Agency and the Contractor agree, the Construction Phase may commence before the Pre-construction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.

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**Pre-construction Phase Services** – All services described in the **CM/GC General Provisions**, Section 00141, and the **CM/GC Contract**, Article 3.1, including any similar services as are described in the CM/GC's Proposal to the extent they are accepted by the Agency, but excluding any Early Work. Early Work shall be considered part of the Construction Phase Services.

**Principal Participant** – The following Entities: (a) each partner or joint venture member of the Proposer; and (b) each Entity holding (directly or indirectly) a 15% or greater interest in the Proposer.

**Project** – The sum of all Work to be performed under the Contract.

**Project Manager** – The Engineer's representative who directly supervises the engineering and administration of a Contract.

**Project Principal** - The Key Personnel position that is designated by the Proposer as having the lead responsibility for managing Contractor's organization.

**Project Records** - All information in any way relating to the Project or performance of the Contract, including but not limited to all:

- Financial and accounting records and information;
- Correspondence - including internal communications, emails, field notes, file notes, diary entries, communications among the Agency, the CM/GC, Subcontractors and Authorities;
- Notices, orders, permits, opinions
- Survey data - including survey drawings, reports, maps, original computations and other data;
- Materials testing records and Materials certifications;
- Work Products;
- All other documents and information whether generated by or for, or received by, the Contractor in performance of the Contract; whether any of such records are:
  - Paper-based;
  - In the form of electronic data;
  - In electronic/digital format capable of being reduced to paper-based or electronic/digital format;
  - In audio format; or
  - Constitute visual reproductions such as photos or videotape, in any way relating to the Project.

**Project Site** – The geographical dimensions of the real property on which the Work is to be performed, including designated contiguous staging areas.

**Project Team** – Refers to the Project's three (3) key members: the Agency inclusive of its Owner's representative consultant, the A&E consultant, and the CM/GC Contractor, all of whom will collaborate to execute the Project in accordance with the Agency's objectives.

**Proposal** – The written offer submitted by a Proposer in response to an RFP, consisting of the Project Proposal and Price Proposal, to do stated Work in the manner indicated and at the price quoted.

**Proposal Due Date** – The date and time after which Proposals, Proposal modifications, and Proposal withdrawals will no longer be accepted.

**Proposal Security (if applicable)** – A Proposal Bond, cashier's check, irrevocable letter of credit issued by an insured institution, or certified check submitted with a Proposal to assure that the Proposer will enter into the Contract if the Proposal is accepted.

**Proposer** – The Entity submitting a Proposal in response to a Request for Proposals.

**Prospective Source** – A Materials source provided by the Agency, from which the Contractor has the option of obtaining Materials. (see 00160.00(a) and 00160.40)

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**Public Works Bond** – The statutory bond required under ORS 279C.836 that must be filed with the Construction Contractors Board before Contract execution or prior to starting work on a subcontract for a public works Project.

**Publicly-Owned Equipment** – Equipment acquired by a state, county, municipality or political subdivision primarily for use in its own operations.

**Public Traffic** – Vehicular or pedestrian movement, not associated with the Contract Work, on a public way.

**Railroad** – Publicly or privately owned rail carriers, including passenger, freight, and commuter rail carriers, their tenants, and licensees. Also, Utilities that jointly own or use such facilities.

**Reference Data** – Data provided by the Agency for the Project that should not be relied on by Proposers without additional determination of its validity or applicability to the current Project.

**Request for Proposals (RFP)** – The document, including all documents incorporated by reference therein, through which the Agency requests the submittal of Proposals. "Request for Proposals" is equivalent to the term "Solicitation Document" defined in OAR 731-005-0430(35).

**Right-of-Way** – Land, property, or a property interest, usually in a strip, acquired for or devoted to transportation or other public works purposes.

**Roadbed** – Completed excavations and embankments for the Subgrade, including ditches, side slopes, and slope rounding, if any.

**Roadside** – The area between the outside edges of the Shoulders and the Right-of-Way boundaries. Unpaved median areas between inside Shoulders of divided Highways and infield areas of interchanges are included.

**Roadway** – That portion of a Highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or Shoulder. If a Highway includes two or more separate Roadways, the term "Roadway" refers to any such Roadway separately, but not to all such Roadways collectively. (see, "Traveled Way")

**Rock** – Natural deposit of solid material composed of one or more minerals occurring in large masses or fragments.

**Sand** – Particles of Rock that will pass a No. 4 sieve and be retained on a No. 200 sieve.

**Schedule of Items** – the list of Pay Items, their units of measurement, estimated quantities, and prices.

**Schedule of Values** – The breakdown of the values of the component elements comprising a lump sum Pay Item.

**Second Notification** – Written acknowledgement by the Engineer of the end of Contract Time according to 00180.50(g).

**Shoulder** – The part of a Roadbed contiguous to the Traveled Way or Roadway, whether paved or unpaved, for accommodating stopped vehicles, for emergency use, and for lateral support of Base and surface Courses.

**Significant Weakness** - A flaw in the Proposal that appreciably increases the risk of unsuccessful Contract performance. (see, "Weakness")

**Silt** – Soil passing a No. 200 sieve that is non-plastic or exhibits very low plasticity.

**Single-Course Construction** – A wearing Course only, not including patching or leveling Courses or partial width Base Course.

**Slope** – Vertical distance to horizontal distance, unless otherwise specified.

**Soil** – Accumulations of particles produced by the disintegration of Rock, which sometimes contains organic matter. Particles may vary in size from Clay to Boulders.

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**Solicitation Document** – See Request for Proposals.

**Special Provisions** – The special directions, provisions, and requirements specific to a Project that supplement or modify the **Standard Specifications** and the **CM/GC General Provisions**. Permits and orders governing the Project that are issued directly to the Agency by a governmental or regulatory authority are considered to be part of the **Special Provisions**, to the extent and under the conditions stipulated in the **Special Provisions**. This includes any amended or supplemental permits or orders issued during the course of performing the Work under a Contract.

**Special Services** – Force Account Work services that the Contractor and Engineer agree cannot be satisfactorily performed by the Contractor's and Subcontractors' forces, e.g., fabrication and machining work that is most effectively performed away from the Project Site, or rental of operated Equipment as defined in 00180.20(c).

**Specifications** – The **Standard Specifications**, the **CM/GC General Provisions**, and **Special Provisions**, together with all provisions of other documents incorporated therein by reference.

**Standard Drawings** – The Agency-prepared detailed drawings for Work or methods of construction that normally do not change from project to project.

**Standard Specifications** – "Oregon Standard Specifications for Construction", Volume 2, Parts 00200 through 03000, "Technical Specifications", current edition, published by the Oregon Department of Transportation.

**State** – The state of Oregon.

**Structures** – Bridges, retaining walls, endwalls, cribbing, buildings, culverts, manholes, catch basins, drop inlets, sewers, service pipes, underdrains, foundation drains, pedestrian bridges, high mast luminaries, overhead sign support structures, and other similar features which may be encountered in the Work.

**Subbase** – A Course of specified Material of specified thickness between the Subgrade and a Base.

**Subcontractor** – Any Entity having a direct contract with the Contractor or another Subcontractor, to perform a portion of the Work.

**Subgrade** – The top surface of completed earthwork on which Subbase, Base, Surfacing, Pavement or a Course of other Materials is to be placed.

**Substructure** – Those parts of a Structure which support the Superstructure, including bents, piers, abutments, and integrally built wingwalls, up to the surfaces on which bearing devices rest. Substructure also includes portions above bearing surfaces when those portions are built integrally with a Substructure unit (e.g., backwalls of abutments). When Substructure and Superstructure elements are built integrally, the division between Substructure and Superstructure is considered to be at the bottom soffit of the longitudinal or transverse beam, whichever is lower. Culverts and rigid frames are considered to be entirely Substructure.

**Superstructure** – Those parts of a Structure above the Substructure, including bearing devices.

**Supplemental Drawings** – The Agency-prepared detailed drawings for Work or methods of construction that are Project-specific, and are denoted by title in the Project title block.

**Supplier** – The Entity that furnishes goods to be incorporated into the Work.

**Surety** – The Entity that issues the bond.

**Surfacing** – The Course or Courses of material on the Traveled Way, auxiliary lanes, Shoulders, or parking areas for vehicle use.

**Target GMP Range** – The estimated range of the GMP as published by Agency with its RFP.

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**Third Notification** – Written acknowledgment by the Engineer, subject to Final Acceptance, that as of the date of the notification the Contractor has completed the Project according to the Contract, including without limitation completion of all minor corrective work, Equipment and plant removal, site clean-up, and submittal of all certifications, bills, forms, and documents required under the Contract.

**Third Party Intellectual Property** – Any intellectual property owned by parties other than the Agency or the Contractor.

**Ton** – One short ton of 2,000 pounds (Ton, ton, Tn, or T).

**Topsoil** - Soil ready for use in a planting bed.

**Traffic Lane** – That part of the Traveled Way marked for moving a single line of vehicles.

**Traveled Way** – That part of the Highway for moving vehicles, exclusive of auxiliary lanes, berms and Shoulders.

**Typical Section** – That Cross Section established by the Plans which represents in general the lines to which the Contractor shall work in the performance of the Contract.

**Unsuitable Material** – Frozen material, or material that contains organic matter, muck, humus, peat, sticks, debris, chemicals, toxic matter, or other deleterious materials not normally suitable for use in earthwork.

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

**Warranty Bond (if applicable)** – The approved security furnished by the Contractor's, Subcontractor's, or Supplier's Surety as a guaranty of the Contractor's performance of its warranty obligations.

**Weakness** - A flaw in the Proposal that increases the risk of unsuccessful Contract performance. (see, "Significant Weakness")

**Wetlands** – Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, vegetation typically adapted for life in saturated Soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**Work** – The furnishing of all Materials, Equipment, tools, labor, and Incidentals necessary to successfully complete any individual Pay Item or the entire Contract, including both Pre-construction and Construction Phase Services, and the discharge of all duties and obligations imposed by the Contract.

**Work Package** – A logical grouping of Work for which the Work is developed and designed to the point where it can be bid, including Plans, Specifications and unit price or lump sum bid items. Work Packages become the basis for Early Work Amendments and/or the final GMP.

**Work Product** – Contract Plans and Specifications, drawings, and all other documents, analysis, computations, models, computer programs, and information obtained or developed for the Project or in performance of the Contract, in or capable of being reduced to tangible paper-based, electronic, audio, or video format, whether or not designated as a deliverable under the Contract.

**Working Drawings** – Supplemental Plans, not furnished by the Agency, that the Contractor is required to submit to the Engineer. (see 00150.35)

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## Section 00120 – Bidding Requirements and Procedures for Construction Phase Services

**00120.17 Use of Agency-Owned Land for Staging or Storage Areas** – The Contractor may use Agency-owned property for staging or storage areas, subject to the following limitations:

**(a) Within Normal Right-of-Way Limits** – If approved by the Engineer, the Contractor may use available property within the normal Right-of-Way limits for the purpose of constructing improvements under the Contract. Where the Agency owns, or has rights to, other adjacent properties in the Project area, “normal Right-of-Way” is limited to a line drawn across that property connecting the normal Right-of-Way limits on either side of the property.

**(b) Outside Normal Right-of-Way Limits** – The Contractor may not use Agency-owned property outside of normal Right-of-Way limits for the Project without the approval of the Engineer.

**(c) Restrictions on Use** – Contractors shall comply with all applicable laws, ordinances, and regulations pertaining to use of Agency-owned property, and shall:

- Not cause unreasonable impacts on traffic and other facility users.
- Clean up all hazardous materials deposited by, or resulting from, Contractor’s operations.
- Be responsible for all costs associated with use of the property.

**00120.20 Interpretation of Quantities in Bid Schedule** – Quantities appearing in the Bid Schedule are approximate and are provided only for comparison of Bids. The Agency does not warrant that the actual individual items, amount of Work, or quantities will correspond to those shown in the Bid Schedule. Payment to the Contractor will be made only for actual quantities of Work performed and accepted or Materials furnished and accepted, as required by the Contract. Quantities of Work to be performed and Materials to be furnished may each be increased, decreased, or omitted as provided in 00140.30.

**00120.25 Subsurface Investigations** - If the Agency or its consultant has conducted subsurface or geologic investigations of the proposed Project Site, the results of the investigations may be included in written reports. If the reports have been prepared, copies will be available at the Engineer’s office. If the Agency has retained subsurface samples, they will also be available for inspection. Proposers and the Contractor may make arrangements for viewing the samples through the Engineer’s office.

The availability of subsurface information from the Agency is solely for the convenience of the Proposer and shall not relieve the Proposer or the Contractor of any risk, duty to make examinations and investigations, or other responsibility under the Contract Documents. It is mutually agreed to by all parties that:

- The written report(s) are reference documents and not part of the Contract Documents.
- The subsurface investigations made by the Agency are for the purpose of obtaining data for planning and design of the Project.
- The data concerning borings is intended to represent with reasonable accuracy conditions and materials found in specific borings at the time the borings were made.

**00120.95 Requirement for Cooperative Arrangement** – The Contractor and its Subcontractors may be required to enter into a cooperative arrangement with the Agency and the A&E, structured to take advantage of the strengths of each organization. The objective of the cooperative arrangement is the effective and efficient completion of the Work, on time and to a standard of quality that will be a source of pride to the Agency, the A&E, and the Contractor. Participation in the program is mandatory and orientation workshops will be held as mutually agreed between the Agency, A&E, and Contractor.

The Contractor shall work with the Agency to make all arrangements for the orientation workshops. The Agency will bear the costs of the workshop including meals, facilitator, and workshop materials. The Agency, the A&E, and the Contractor will each bear the salary, transportation, lodging, and other costs of their own personnel. The orientation

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workshop may include key Agency personnel, other stakeholders, Contractor's Key Personnel and key Subcontractor personnel. Generally workshops are limited to about 20 participants. Participants will not be available for other duties during this period.

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## Section 00130 – Award and Execution of Contract for Construction Phase Services

**00130.40 Contract Bonds, Certificates, and Registrations** – Before the Agency will execute the Contract, any Early Work Amendment(s), and the GMP Amendment the successful Proposer shall furnish the following bonds, certificates, and registrations:

**(a) Performance and Payment Bonds** - When a coating system warranty is required by 00594.75, the Contractor shall furnish a supplemental warranty Performance Bond, in addition to the regular Performance Bond for the Contract to the Agency, executed by a surety authorized to do business in the State of Oregon. The supplemental warranty Performance Bond shall be in the sum of 80% of the full GMP. The bond is to secure the performance by the Contractor of correction work on any coating system defects that the Contractor may be directed by the Agency to perform. The Contractor shall use the Agency-provided form for the bond except that if the Surety is a multiple Surety, a copy of the form for a bond with multiple sureties shall be obtained from the Agency. The supplemental warranty Performance Bond shall be signed by the Surety's authorized Attorney-in-Fact, and the Surety's seal shall be affixed to the bond. A power of attorney for the Attorney-in-Fact shall be attached to the bond, which shall include bond numbers, and the Surety's original seal shall be affixed to the power of attorney.

Upon Third Notification, the supplemental warranty Performance Bond shall become effective and shall continue in full force and effect until the agency has advised the Contractor that:

- There are no coating system defects
- Or, if the Contractor has been notified that there are coating system defects, the defects have been repaired by the Contractor to the satisfaction of the Agency as specified under the coating system warranty and the full warranty period has expired.

Supplemental warranty Performance Bonds cannot be cancelled nor can they be released due to possible claims.

**(b) Certificates of Insurance** – The successful Proposer shall furnish the Agency certificates of insurance applicable to the Project, according to 00170.70. The insurance coverages shall remain in force throughout the performance of the Contract and shall not be allowed to lapse without prior written approval of the Agency. Proposers may refer to Exhibit G to the **CM/GC Contract** for minimum coverage limits and other requirements.

**(c) Registration Requirements:**

**(1)** ORS 701.055 and ORS 671.530 require that Proposers be registered with the Oregon Construction Contractors Board or licensed by the State Landscape Contractors Board prior to submission of a Proposal on a Project not involving federal funds. Registration with the Construction Contractors Board or licensing by the State Landscape Contractors Board is not a prerequisite to proposing on a Federal-Aid Project; however, the Agency will not execute a Contract until the Contractor is so registered or licensed.

**(2)** Proposers must be registered with the Corporation Division, Oregon Secretary of State, if proposing as a corporation, limited liability company, joint venture, or limited liability partnership, or if operating under an assumed business name and the legal name of each person carrying on the business is not included in the business name.

**(3)** A Contractor registered under ORS 701 may propose on a landscaping Project or perform a construction project that includes landscape contracting as a portion of the Project if the landscape contracting is subcontracted to a licensed landscaping business as defined in ORS 671.520.

**(4)** A landscaping business may propose on a Project or perform a Contract that includes the phase of landscape contracting for which it is not licensed if it employs a landscape contractor, or subcontracts with another landscaping business, licensed for that phase.

**00130.50 Execution of Contract Documents; Bonds:**

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**(a) By the Contractor** – The Contractor shall provide the Agency with the properly executed Contract Documents, Performance Bond, Payment Bond, including the State of Oregon Transportation Commission and the Oregon Department of Transportation as dual obligee’s on the Payment Bonds and the Performance Bonds, and any additional certificates of insurance applicable to the Early Work Amendment and GMP Amendment within 15 Calendar Days after the date on which the Early Work Amendment or GMP Amendment, as applicable, are sent or otherwise conveyed to the Contractor. The Contractor shall return the originals of the applicable Contract Documents received from the Agency and named in this Subsection, with original signatures. Certificates of insurance shall also be originals. Certificates of insurance for coverages that are permitted by the Agency under Exhibit G to the **CM/GC Contract** to be obtained by appropriate Subcontractors shall be delivered by the Contractor to the Agency together with the Contractor’s request under 00180.21 for approval of the subcontract with that Subcontractor. No copies of these documents will be accepted by the Agency.

Proper execution requires that:

- If the Contractor is a partnership, limited liability partnership, joint venture, or limited liability company, an authorized representative of each Entity comprising it shall sign the Contract, Performance Bond, and Payment Bond, and an authorization to sign shall be attached.
- If the Contractor is a corporation, the President and the Secretary of that corporation shall sign the Contract, Performance Bond, and Payment Bond. However if other corporate officers are authorized to execute contracts and bonds, the Contractor shall furnish with those documents a certified, true and correct copy of the corporate bylaws or minutes stating that authority. If only one officer is signing, then the bylaws or minutes must include the authority to sign without the signature of others. The Contractor shall also include the title(s) or corporate office(s) held by the signer(s).

**(b) By the Agency** – Within seven (7) Calendar Days after the Agency has received and verified the properly executed documents specified in 00130.50(a) above, and received legal sufficiency approval from the Attorney General (if required), the Agency will send a set of fully-executed original Contract Document to the Contractor, and will issue Notice to Proceed.

**00130.80 Project Site Restriction** - Until the Agency sends the Contractor written Notice to Proceed with the Work, and the Contractor has filed the Public Works Bonds required in 00170.20, the Contractor shall not go onto the Project Site on which the Work is to be done, nor move Materials, Equipment, or workers onto that Project Site.

**00130.90 Notice to Proceed** – Notice to Proceed will be issued within five (5) Calendar Days after the Early Work Amendment or GMP Amendment is executed by the Agency, unless otherwise agreed by the parties.

The Engineer will issue a First Notification recording the date the Work commenced on the Project subsequent to issuance of the Notice to Proceed for each Early Work Amendment, and the GMP Amendment.

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## Section 00140 – Scope of Work for Construction Phase Services

**00140.00 Purpose of Contract** - The purpose of the Contract is to set forth the rights and obligations of the parties and the terms and conditions governing completion of the Work. The Contractor's obligations shall include without limitation the following:

- The Contractor shall furnish all Materials, Equipment, labor, transportation, and Incidentals required to complete the Work according to Plans, Specifications, **Special Provisions**, **CM/GC General Provisions** and terms of the Contract.
- The Contractor shall perform the Work according to the lines, grades, Typical Sections, dimensions, and other details shown on the Plans, as modified by written order or as directed by the Engineer.
- The Contractor shall perform all Work determined by the Engineer to be necessary to complete the Project.
- The Contractor shall contact the Engineer for any necessary clarification or interpretation of the Contract.

**00140.10 Typical Sections** – The Typical Sections are intended to apply in general. At other locations where the Typical Section is not appropriate, the Contractor shall perform construction to the identified alignment as directed by the Engineer.

**00140.20 Thickness** - The thickness of Courses of Material shown on the Plans, given in the Specifications, or established by the Engineer, is considered to be the compacted thickness. Minor variations are acceptable when within tolerances defined in the Specifications or Plans, or when approved by the Engineer.

**00140.30 Agency-Required Changes in the Work** - Changes to the Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of the performance of Pre-construction Phase Services and Project construction.

Without impairing the Contract, the Agency reserves the right to require changes it deems necessary or desirable within the scope, which in the Specifications means general scope, of the Project. These changes may modify, without limitation:

- Specifications and design
- Grade and alignment
- Cross Sections and thicknesses of Courses of Materials
- Method or manner of performance of Work
- Project Limits

or may result in:

- Increases and decreases in quantities
- Additional Work
- Elimination of any Contract item of Work
- Acceleration or delay in performance of Work

Upon receipt of a Change Order, the Contractor shall perform the Work as modified by the Change Order. If the Change Order increases the GMP, the Contractor shall notify its Surety of the increase and shall provide the Agency with a copy of any resulting modification to bond documents. The Contractor's performance of Work pursuant to Change Orders shall neither invalidate the Contract nor release the Surety. Payment for changes in the Work shall be made in accordance with 00195.20. Contract Time adjustments shall be made in accordance with 00180.80.

**00140.40 Differing Site Conditions** - The following constitute differing Project Site conditions, provided such conditions are discovered at the Project Site after commencement of the Work:

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- **Type 1** - Subsurface or latent physical conditions that differ materially from those indicated in the Contract Documents, or
  - **Type 2** - Unknown physical conditions of unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

The party discovering such a condition shall promptly notify the other party, in writing, of the specific differing conditions before they are disturbed and before the affected Work is performed. The Contractor shall not continue Work in the affected area until the Engineer has inspected such condition according to 00195.30 to determine whether an adjustment to GMP or Contract Time is required.

Payment adjustments due to differing Project Site conditions, if any, will be made according to 00195.30. Contract Time adjustments, if any, will be made according to 00180.80.

**00140.50 Environmental Pollution Changes** - ORS 279C.525 will apply to any increases in the scope of the Work required as a result of environmental or natural resource Laws enacted or amended after the submission of Proposals for the Contract. The Contractor shall comply with the applicable notice and other requirements of ORS 279C.525. The applicable rights and remedies of that statute will also apply.

In addition to ORS 279C.525, the Agency has compiled a list under 00170.01 of those federal, State, and local agencies, of which the Agency has knowledge, that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of Agency contracts.

**00140.60 Extra Work** - If directed by the Engineer's written order, the Contractor shall perform work not included in the Contract. The Contractor shall perform this work according to:

- Standard Specifications
- **CM/GC General Provisions**
- Other Plans and Specifications issued by the Engineer

Payment for Extra Work will be made according to Section 00196. Contract Time adjustments, if any, will be made according to 00180.80.

**00140.65 Disputed Work** – The Contractor may dispute any part of a Change Order, written order, or an oral order from the Engineer by the procedures specified in Section 00199.

**00140.70 Cost-Reduction Proposals** – The Contractor may submit written proposals to the Engineer that modify Plans, Specifications, or other Contract Documents for the sole purpose of reducing the total cost of construction.

**(a) Proposal Requirements** - The Agency will not adopt a cost reduction proposal that impairs essential functions or characteristics of the Project including, but not limited to, service life, economy of operation, ease of maintenance, designed appearance, or design and safety standards.

To conserve time and funds, the Contractor may first submit a written request for a feasibility review by the Engineer. The request should contain a description of the proposal together with a rough estimate of anticipated dollar and time savings. The Engineer will, within a reasonable time, advise the Contractor in writing whether or not the proposal would be considered by the Agency, should the Contractor elect to submit a detailed cost reduction proposal.

A detailed cost reduction proposal shall include, without limitation, the following information:

- A description of existing Contract requirements for performing the Work and the proposed change;
- The Contract items of Work affected by the proposed change, including any quantity variations caused by the proposed change;

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- Pay Items affected by the proposed change including quantity variations;
  - A detailed cost estimate for performing the Work under the existing Contract and under the proposed change. Cost estimates shall be based on a force account payment basis. Costs of re-design which are incurred after the Agency has accepted the proposal will be included in the cost of proposed work; and
  - The date by which the Engineer must accept the proposal in order to accept the proposed change without impacting Contract Time or the cost reduction amount.

**(b) Continuing to Perform Work** – The Contractor shall continue to perform the Work according to Contract requirements until the Engineer issues a Change Order incorporating the cost reduction proposal. If the Engineer fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.

**(c) Consideration of Proposal** - The Engineer is not obligated to consider any cost reduction proposal. The Agency will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted.

The Engineer will determine in its sole discretion whether to accept a cost reduction proposal as well as the estimated net savings in construction costs from the adoption of all or any part of the proposal. In determining the estimated net savings, the Engineer may disregard the Schedule of Items. The Engineer will establish prices that represent a fair measure of the value of Work to be performed or to be deleted as a result of the cost reduction proposal.

**(d) Sharing Investigation Costs** - As a condition for considering a Contractor's cost reduction proposal, the Agency reserves the right to require the Contractor to share in the Agency's costs of investigating the proposal. If the Agency exercises this right, the Contractor shall provide written acceptance of the condition to the Agency. Such acceptance will authorize the Agency to deduct its share of investigation costs from payments due or that may become due to the Contractor under the Contract.

**(e) Acceptance of Proposal Requirements** - If the Contractor's cost reduction proposal is accepted in whole or in part, acceptance will be made by a Change Order that will include without limitation the following:

- Statement that the Change Order is made in accordance with 00140.70;
- Revised Plans and Specifications that reflect all modifications necessary to implement the approved cost reduction measures;
- Any conditions upon which the Agency's approval is subject;
- Estimated net savings in construction costs attributable to the approved cost reduction measures; and
- A payment provision pursuant to which the Contractor will be paid 50% of the estimated net savings amount as full and adequate consideration for performance of the Work of the Change Order.

The Contractor's cost of preparing the cost reduction proposal and the Agency's cost of investigating the proposal, including any portion paid by the Contractor, will be excluded from determination of the estimated net savings in construction costs. Costs of re-design, which are incurred after the Agency has accepted the proposal, will be included in the cost of the Work attributable to cost reduction measures.

If the Agency accepts the cost reduction proposal, the Change Order that authorizes the cost reduction measures will also address any Contract Time adjustment.

**(f) Right to General Use** - Once submitted, the cost reduction proposal becomes the property of the Agency. The Agency reserves the right to adopt the cost reduction proposal for general use without additional compensation to the Contractor when it determines that a proposal is suitable for application to other contracts.

**00140.80 Use of Publicly-Owned Equipment** – The Contractor is prohibited from using publicly-owned Equipment except in the case of emergency. In an emergency, the Contractor may rent publicly-owned Equipment, provided that:

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- The Engineer provides written approval stating that such rental is in the public interest; and
  - Rental does not increase the Project cost.

**00140.90 Final Trimming and Cleanup** - Before Final Inspection as described in 00150.90, the Contractor shall neatly trim and finish the Project and remove all remaining unincorporated Materials and debris. Final trimming and cleanup shall include without limitation the following:

- The Contractor shall re-trim and reshape earthwork, and shall repair deteriorated portions of the Project Site.
- Where the Work has impacted existing facilities or devices, the Contractor shall restore or replace those facilities to their pre-existing condition.
- The Contractor shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.
- The Contractor shall clean up and leave in a neat, orderly condition, Rights-of-Way, Materials sites, and other property occupied in connection with performance of the Work.
- The Contractor shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials, and rubbish.
- The Contractor shall dispose of Materials and debris, including without limitation forms, falsework, scaffolding, and rubbish resulting from clearing, grubbing, trimming, clean-up, removal, and other Work. These Materials and debris become the property of the Contractor. The Contractor shall dispose of these Materials and debris immediately.

Unless the Contract specifically provides for payment for this item, the Agency will make no separate or additional payment for final trimming and cleanup.

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## Section 00141 – Pre-construction Phase Services – Scope of Work

**00141.00 General** - The Contractor shall provide Pre-construction Phase Services as described in this Section 00141 and in conformance with the terms and conditions of the CM/GC Contract.

The Contractor will function as one of the three (3) key team members on the Project Team, including the Agency, the A&E and the Contractor. The Agency will provide the primary lead role on the Project Team. The Contractor shall provide services under the CM/GC Contract as directed by the Agency.

The Work performed by the Contractor shall comply with Federal, State, and local laws, rules and codes. The commencement of the Construction Phase shall not excuse the Contractor from completion of the Pre-construction Phase Services, if such services have not been completed at commencement of the Construction Phase.

**00141.10 Project Team Collaboration** - The Contractor's involvement as a team player under this Contract is critical to the success of the Project. The Agency seeks to develop and implement a collaborative Project team environment. Contractor collaboration will be particularly important with respect to the following services:

- Providing construction means and methods, and constructability input to the Project Team during design development.
- Open book pricing and negotiations to achieve a fair, reasonable and competitive price to perform all construction for the Project
- Agreeing to a GMP prior to start of any construction
- Submittal of deliverables to the Agency on or before due dates
- Open, constructive communications with all Project Team members in order to determine the optimal solutions to issues and project challenges
- Maximizing diversity participation in the Project
- Implementing sustainable practices
- Working with the Project Team and community to develop means and methods to mitigate construction impacts to community, environment and traffic

**00141.20 Administration of Pre-construction Phase Services** – The Agency will administer the Pre-construction Phase Services on an authorized task order basis.

**00141.20(a) Task Orders J.1 through J.8** - Each **Task J.1 through J.8** with a deliverable will include a due date for the deliverable. These milestone dates are generally identified in the table in Section 00141.500. The unit price for Tasks with deliverables shall be inclusive of all costs and profit, including all hours of and costs for Contractor Key Personnel and staff in order to prepare, submit for review, and incorporate Agency review comments into the deliverable.

**00141.20(b) Optional Tasks J.9 and J.10** – The Agency may authorize additional Tasks. The unit price for these optional Tasks shall be inclusive of all costs and profit, including all hours of and costs for Contractor Key Personnel and staff in order to provide the Task service identified.

**00141.21 Permit Matrix** - The Agency will require the A&E to develop a permit matrix that identifies all necessary permits to construct the project. The matrix will identify who is responsible for obtaining each permit. The Contractor will be requested to support the A&E in the preparation of the Permit Matrix with respect to permits for which the Contractor is responsibility for securing

**00141.22 Project Records** - The Contractor shall maintain all of its Project Records developed during Pre-construction Phase Services so that they are accessible and reviewable by the Agency at any time. If not previously received by the Agency and later requested by the Agency, Project Records not included in Task Order Deliverables shall be submitted to the Agency within 30 Calendar Days of request, or 30 Calendar Days following completion and acceptance of the Work by the Agency.

**00141.30 Co-location** - The Agency does not anticipate a need for co-location on this Project.

**00141.35 Pre-Construction Phase Services – Key Personnel and Other Personnel**

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The Contractor shall provide the services of its proposed Key Personnel and other personnel as is necessary to prepare, submit, meet and reply to Agency comments relative to each of the Task Order Deliverables identified in Exhibit "J".

**00141.35(a) Project Principal** – The cost for the Project Principal shall not be a separate reimbursable, but shall be included in, and allocated among, the Task Orders in Exhibit "J". The Project Principal shall have lead responsibility for the CM/GC's performance under this Contract. As part of the CM/GC's Pre-Construction Phase Services Fee, the Project Principal also shall be available to the Agency as is necessary to assist in the resolution of any issues that arise. The Contractor's Project Principal shall attend, at a minimum, each of the meetings under **Tasks J.1, J.2, J.5, J.7 and J.8.**

**00141.35(b) Project Manager** - The cost for the Project Manager shall not be a separate reimbursable, but shall be included in, and allocated among, the Task Orders in Exhibit "J". The Project Manager shall lead and manage Contractor's staff, and shall work with Agency and A&E staff as is necessary in the preparation and submittal of each of the Task Order Deliverables. The Contractor's Project Manager shall attend each of the meetings under **Tasks J.1 through J.9.**

As part of the CM/GC's Pre-Construction Phase Services Fee, the Project Manager also shall prepare and submit the CM/GC's monthly progress payment invoices and supporting documentation. Payment shall be based upon Exhibit "J" as a Schedule of Values and any Agency authorized Change Orders to Exhibit "J".

**00141.35(c) Construction Manager/Field Superintendent** - The cost for the Construction Manager/Field Superintendent shall not be a separate reimbursable, but shall be included in, and allocated among, the Task Orders in Exhibit "J". The Contractor's Construction Manager/Field Superintendent shall assist as is necessary in the preparation and submittal of each of the Task Order Deliverables, and shall attend each of the meetings under **Tasks J.1 through J.9.**

**00141.35(d) Diversity Administrator** - The cost for the Diversity Administrator shall not be a separate reimbursable, but shall be included in, and allocated among, the Task Orders in Exhibit "J". The Contractor's Diversity Administrator shall assist as is necessary in the preparation and submittal of each of the Task Order Deliverables. The Diversity Administrator is required to attend each of the meetings under **Tasks J.1 and J.2,** and not required to attend in the meetings under **Tasks J.3 through J.9.**

**00141.35(e) Cost Estimating Personnel** – The cost for CM/GC and subcontractor cost estimating personnel shall not be a separate reimbursable, but shall be included in, and allocated among, **Tasks J.1 through J.8** in Exhibit "J". The Contractor's staff that performs cost estimating shall assist as is necessary in the preparation and submittal of each of the Task Order Deliverables. The Contractor's cost estimating personnel who prepared, developed the detailed back-up and take-offs, and other support for the Preliminary GMP and Final GMP are required to attend the meetings under **Tasks J.5, J.7 and J.8.**

The Agency may authorize additional cost estimating services under **Task J.10.** These services would be compensated on an hourly basis and specifically authorized by the Agency.

**00141.35(f) Other Personnel** - The cost for other CM/GC and CM/GC team member personnel shall not be a separate reimbursable, but shall be included in, and allocated among, **Tasks J.1 through J.10** in Exhibit "J". Other personnel may include administrative and technical personnel who supplement or advise the CM/GC's Key Personnel in the preparation and submittal of each of the Task Order Deliverables. For example, if none of the CM/GC's Key Personnel have expertise in rolling bascule bridge structures and machinery construction similar to what this Project will entail, the Contractor may rely upon other staff, consultants or subcontractors in fulfilling the CM/GC's obligations under each **Task J.3 through J.10.** Other personnel, at the Contractor's expense as part of the Exhibit "J" pricing, may attend meetings under **Tasks J.3, J.4, J.6 and J.9** in particular.

#### **00141.40 Pre-Construction Phase Services - Tasks**

Listed below are **Tasks J.1 through J.10.** The purpose of the meeting, required CM/GC attendees, deliverables, meeting duration and agenda are summarized.

In general, the PMT will include Agency and A&E representatives. Additionally, other jurisdictional representatives and stakeholders may attend the meetings..

#### **00141.40(a) Task J.1: Partnering, Kick-Off Project Team Meeting**

Required Attendees: All CM/GC Key Personnel

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Required Deliverables to be brought into the Meeting: None

Estimated Meeting Duration: 8 hours

Agenda for Meeting: As developed by the Partnering Workshop facilitator

**00141.40(b) Task J.2: Scope and Understanding Project Team Meeting**

This meeting is intended to continue discussions from the partnering kick-off meeting and provide a common understanding among key project team members of the existing bridge conditions, Bridge needs, and the scope of Work including its challenges and stakeholder expectations. All project team members will share views and discuss initial thoughts regarding concepts and options to advance the Project.

Required Attendees: All CM/GC Key Personnel

Required Deliverables to be brought into the Meeting: See Table in section 00141.500. Prepare to present CM/GC Proposal information related to proposed schedule, construction approach, contracting and diversity plans, sustainable practices, and risk mitigation.

Estimated Meeting Duration: 8 hours (2<sup>nd</sup> day of a 2-day workshop)

Agenda for Meeting: See Table in section 00141.500.

**00141.40(c) Task J.3: Design and Construction Concepts PMT Workshop**

This meeting is an in-depth follow-up from the previous meeting, intended to set the stage for design development, discuss and settle preferred options for design development and construction approach, means and methods, and establish the details of an effective collaborative team process to advance the Project.

Required Attendees: Project Manager, Construction Manager/Field Superintendent, Other Personnel

Required Deliverables to be brought into the Meeting: See Table in section 00141.500.

Estimated Meeting Duration: 8 hours

Agenda for Meeting: See Table in section 00141.500.

**00141.40(d) Task J.4: 30% Design PMT Meeting; Risk Workshop**

This meeting is intended to be a review of the A&E's 30% design and provide comments necessary for the A&E to develop 60% design documents. In addition, this meeting will include a risk workshop with project team members identifying major risks, opportunities to avoid or mitigate the risks, and initial allocation of such risks. Required Attendees: Project Manager, Construction Manager/Field Superintendent, Other Personnel

Required Deliverables to be brought into the Meeting: See Table in section 00141.500.

Estimated Meeting Duration: 8 hours

Agenda for Meeting: See Table in section 00141.500.

**00141.40(e) Task J.5: 60% Design PMT Meeting; Prelim GMP; VE Items**

This meeting is intended to be a review of the A&E's 60% design and provide comments necessary for the A&E to develop 90% design documents. In addition, this meeting will include discussion regarding the CM/GC's Preliminary GMP including Supporting Documents, value engineering opportunities, assumptions in pricing, and areas requiring clarification.

Required Attendees: Project Principal, Project Manager, Construction Manager/Field Superintendent, Cost Estimating Personnel

Required Deliverables to be brought into the Meeting: See Table in section 00141.500.

Estimated Meeting Duration: 8 hours

Agenda for Meeting: See Table in section 00141.500.

**00141.40(f) Task J.6: 90% Design Review PMT Meeting**

This meeting is intended to be a review of the A&E's 90% design and provide comments necessary for the A&E to develop 100%, Issued-for-Construction design documents.

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Required Attendees: Project Manager, Construction Manager/Field Superintendent, Other Personnel

Required Deliverables to be brought into the Meeting: See Table in section 00141.500.

Estimated Meeting Duration: 8 hours

Agenda for Meeting: See Table in section 00141.500.

**00141.40(g) Task J.7: 100% Design Review PMT Meeting**

This meeting is intended as a final design check and to hand-off to the CM/GC the 100%, Issued-for-Construction, design documents for bidding and final pricing by the CM/GC, and to affirm that GMP Supporting Documents and proposed Bid Items are acceptable to the Agency.

Required Attendees: Project Principal, Project Manager, Construction Manager/Field Superintendent, Cost Estimating Personnel

Required Deliverables to be brought into the Meeting: See Table in section 00141.500.

Estimated Meeting Duration: 8 hours

Agenda for Meeting: See Table in section 00141.500.

**00141.40(h) Task J.8: Negotiations and Final GMP Pricing**

This task includes all CM/GC and subcontractor effort to price a Final GMP, discuss and review it with the Agency, negotiate an acceptable GMP with the Agency, and execute a GMP Amendment..

Required Attendees: Project Principal, Project Manager, Construction Manager/Field Superintendent, Cost Estimating Personnel

Required Deliverables to be brought into the Meeting: See Table in section 00141.500.

Estimated Duration: As required by CM/GC in order to develop Final GMP, negotiate a Final GMP that is acceptable to the Agency, and execute a GMP Amendment.

Agenda for Meetings: See Table in section 00141.500.

**00141.40(i) Task J.9: Optional – CM/GC Participation in Weekly PMT Meetings**

This task is optional. CM/GC participation in weekly PMT meetings, as authorized by the Agency, is intended to further facilitate timely input of constructability, schedule, risk mitigation, and construction cost considerations into the design development process.

Required Attendees: Project Manager, Construction Manager/Field Superintendent, Other Personnel (as appropriate for the weekly meeting)

Required Deliverables to be brought into the Meeting: Follow-up on assigned items from previous weekly PMT meeting

Estimated Meeting Duration: 1-2 hours each meeting

Agenda for Meeting: To be determined

**00141.40(j) Task J.10: Optional - Additional Cost Estimating (Authorized by Agency on hourly basis)**

This task is optional. The Agency may choose to authorize cost estimating services, in addition to those services required as part of **Tasks J.3 through J.8**, relative to various options or considerations that arise during the design development process.

**00141.50 Pre-Construction Phase Services - Deliverables**

Deliverables shall comply with applicable portions of the Contract Documents. Refer to **Article 2.1 of the CM/GC Contract** for a list of the Contract Documents.

Due dates for deliverables are indicated generally in the Table for Pre-Construction Phase Services in Section 00141.500. The Contractor shall complete deliverables listed in the table in advance of the PMT meeting and bring the deliverables to the PMT meetings for **Tasks J.3 through J.8**. At each meeting, the Contractor shall be prepared to explain and lead the PMT through the content of the Contractor's deliverable.

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Number of copies required for each meeting shall be as required by the Agency. Deliverables that are determined by the Agency to be unacceptable shall be revised and resubmitted by the CM/GC at no additional cost to the Agency.

**00141.50(a) Comments** – In accordance with the Table in Section 00141.500, the Contractor shall review the deliverable received in advance of PMT meetings for **Tasks J.3 through J.7**, compile written review comments, and bring those comments to the Task meeting for discussion and resolution.

**00141.50(b) Permits** – see Section 00141.21. In addition, for **Task J.8**, the Contractor shall affirmatively confirm that its Final GMP complies with all required permit conditions.

**00141.50(c) Baseline Construction Schedule** - The Contractor shall develop the Project's Baseline CPM Schedule for construction. The schedule shall clearly identify the Project's Critical Path. It shall include permitting and design deliverables that restrain start of construction activities, constraints to the Work, in-water work windows, all major construction activities to show the flow of and schedule for the Work, activity durations and logic, required bridge closures, construction stages and sequencing. The Contractor shall consult with the A&E and Agency for design and permitting activities. The Contractor's Task Order Deliverable price shall allow for review and input of Agency comments relative to each submittal.

The Contractor shall include its proposed Baseline Schedule as a Supporting Document with its Preliminary GMP and Final GMP submittals under **Tasks J.5 and J.7**.

**00141.50(d) Construction Approach, Means and Methods** - The Contractor shall discuss and submit to the Agency its proposed Construction Approach, Means and Methods plan that describes the Contractor's general approach and specific site work plan to accomplish the Work. The Plan is intended to assist the Agency in communicating with the community and other stakeholders how construction will be conducted, disruptions that should be anticipated, and how impacts to the community will be mitigated and managed. The Contractor's Task Order Deliverable price shall allow for review and input of Agency comments relative to each Plan submittal.

The Contractor shall address and propose how the Contractor intends to approach the following items:

- Traffic control and staging to execute the Work
- In-water work activities and durations
- Bridge closures and durations
- Access, means and methods to perform the Work
- Needed parking, office and lay down space
- Worker and public safety
- Quality control
- Emergency vehicle provisions
- Maintenance of access to all properties
- Construction restrictions during special events
- Security and maintenance of construction work zones

The Contractor shall discuss its concepts and proposed approach with the PMT under **Tasks J.2 through J.8**. The Contractor shall include its Construction Approach, Means and Methods Plan, Quality Control Plan, and Worker and Public Safety Plan as Supporting Documents with its Preliminary GMP and Final GMP submittals (i.e., **Tasks J.5 and J.7**).

For each submittal, the Construction Approach, Means and Methods Plan shall incorporate Agency comments provided from previous reviews. Each succeeding submittal shall be updated consistent with the development of design documents and other Contract Documents.

**00141.50(e) Contracting and Diversity Plan** - The Contractor shall prepare a Contracting and Diversity Plan for Agency review and consideration. It shall be prepared in accordance with the provisions of the **CMGC Contract**. The Plan shall include a matrix that identifies Work packages to be sub-contracted, method of procurement, work proposed to be self-performed, and diversity opportunities. The Plan must describe how and why the proposed approach is recommended. The Contractor's Task Order Deliverable price shall allow for review and input of Agency comments relative to each Plan submittal.

As part of this Task, the Contractor shall consult with the Agency to finalize and submit a Contracting and Diversity Plan that meets the subcontractor selection requirements established in the **CM/GC Contract**. The **Contractor**

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**shall propose for Agency acceptance the division of Work to facilitate competitive pricing, award of trade contracts, and diverse participation.**

The Contractor shall include its Contracting and Diversity Plan as Supporting Documents with its Preliminary GMP and Final GMP submittals (i.e., **Tasks J.5 and J.7**). For each submittal, the Contractor shall incorporate Agency comments provided from previous reviews. Each succeeding plan shall be updated consistent with the development of design documents and other Contract Documents. The GMP pricing shall incorporate the Contractor's proposed Contracting and Diversity Plan, as approved by the Agency.

**00141.50(f) Sustainable Practices Plan** - The Contractor shall provide a Sustainable Practices Plan to assist the Agency in achieving its objective to promote cost-effective, cutting edge sustainable practices. The Contractor's Task Order Deliverable price shall allow for review and input of Agency comments relative to each Plan submittal.

The Contractor's plan shall include its proposed approach to integrating sustainable practices into the Project relative to, but not limited to, the following: 1) deconstruction, 2) re-use of materials, 3) origin of materials, 4) the types and costs of materials, (5) the location of material manufacture, (6) use of high performance materials, (7) construction waste management, (8) site work solutions, (9) rapid construction and prefabrication, (10) low VOC paints and sealers, (11) material and resource management, (12) low life-cycle costs, (13) reduction or management of fossil fuel usage for transportation, and 14) reduction of air pollution through the use of clean diesel.

The Contractor shall include its Sustainable Practices Plan as a Supporting Documents with its Preliminary GMP and Final GMP submittals (i.e., **Tasks J.5 and J.7**). For each submittal, the Contractor shall incorporate Agency comments provided from previous reviews. Each succeeding plan shall be updated consistent with the development of design documents and other Contract Documents. The GMP pricing shall incorporate the Contractor's proposed Contracting and Diversity Plan, as approved by the Agency.

**00141.50(g) Risk Mitigation** - The Contractor shall prepare a list of major risks, potential mitigations, and recommended allocation of each risk for Agency review and consideration under **Tasks J.5 and J.7**. The list shall build-off of the risk table or register that is developed by the PMT during the risk workshop under **Task J.4**. The Contractor will describe why these are major risks to cost, schedule, quality or environmental compliance, and how the Contractor incorporated them into its Preliminary and Final GMPs. The Contractor's Task Order Deliverable price shall allow for review and input of Agency comments relative to each Plan submittal.

For each submittal, the Contractor shall incorporate Agency comments provided from previous reviews. The succeeding submittal shall be updated consistent with the development of design documents and other Contract Documents.

**00141.50(h) Cost, Value Engineering, Bid Items and GMP**

In accordance with the Table in Section 00141.500, the Contractor shall review the deliverables received in advance of PMT meetings for **Tasks J.3 through J.7** and provide construction cost comments. The Contractor shall assist in identifying design provisions that significantly increase construction cost and suggest cost-effective alternatives as the design is developed. For each meeting, the Contractor shall compile written review comments, and bring those comments to the Task meeting for discussion and resolution.

**Value Engineering** - For **Task J.5**, the Contractor shall provide a list of value engineering opportunities based on the A&E 60% design review documents. The Contractor shall identify the potential cost savings of each opportunity identified as compared to the concepts in the A&E design documents. The Contractor may red-lined drawings as necessary to communicate the ideas.

**Bid Item List/Cost Estimate Format** – For **Tasks J.5 through J.8**, the Contractor shall work with the Agency to develop a list of Bid Items to be included in the Final GMP and to base its GMP upon an agreed-upon cost estimating format.

**Project Bid Item List** - The Contractor shall prepare and submit along with its Preliminary GMP and Final GMP a complete Bid Item List. The Agency and Contractor shall agree whether to price each Bid Item as fixed cost lump sum, fixed unit cost with quantity, or actual cost reimbursable basis. The Contractor shall develop these Bid Item Lists in conformance with Agency procedures for cost estimating, as identified at the following website:

<http://www.oregon.gov/ODOT/HWY/ESTIMATING/index.shtml>

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**Cost Estimate Format** - The Contractor shall submit an MS Excel spreadsheet, with all construction cost bid items broken out in a format agreed to by the Project Team. The Contractor's estimates shall be in the agreed format to facilitate quantity and unit price reconciliation.

**GMP** – The Contractor shall submit a Preliminary GMP and Final GMP in accordance with **Tasks J.5 and J.7**. Timely receipt by the Agency of the Contractor's proposed GMP for all of the Work is critical to the Agency's cost and schedule objectives for the Project.

The GMP shall be prepared and established in accordance with the **CM/GC Contract, Article 6**. Each GMP submittal shall build upon Agency comments and direction from previous reviews and A&E final design document development. Each GMP submittal shall include Supporting Documents listed in the **CM/GC Contract, Article 6.5.3**.

**Detailed Back-up in support of the GMP Cost Estimate** - The Contractor's GMP cost estimate shall be supported by quantity and material take-off calculations, and detailed cost build-up for each proposed Bid Item as either a fixed lump sum, fixed unit cost, or actual cost reimbursable pay item. The detailed cost build-up, in addition to being in the format agreed-upon between the parties, shall include labor, materials, equipment type and rates, overheads and indirect costs not in the CM/GC Fee, and Construction General Conditions.

**Construction General Conditions** - The Contractor shall provide a detailed itemization of all anticipated Construction General Conditions with back-up to verify actual cost of each of these items, or estimated cost where actual cost is not available.

**Risk and Contingency** – The Contractor shall separately identify risk and contingency cost items, if any, and amounts that the Contractor would recommend including in the GMP.

**Materials Escalation/De-escalation** – The Contractor shall address in its estimate and contingency recommendations which materials or commodities, if any, should be priced in a manner that fluctuate as a result of the risk of escalation and de-escalation in their cost up to the time of firm pricing under a construction Amendment, and if early procurement of such items are advantageous to the Agency. Section 00195.10 should be consulted by the Contractor in addressing these costs.

**CM/GC Fee** - The CM/GC Fee percentage shall be included as a separate, identifiable line item.

**Open Book Process** – The Contractor shall make available to designated Agency personnel including its Owner's representative consultants, if applicable, its complete GMP cost estimate and supporting documents including books, calculations, take-offs, productivity assumptions, internal equipment rates, risk and contingency assumptions, exclusions, cost data in support of Construction General Conditions, quotations, allowances and provisions sums. The Agency will provide confidentiality assurances to the Contractor as is necessary to allow the Agency to perform its cost/price analysis and review. This "Open Book Process" will be repeated and required when the Contractor submits its Preliminary GMP and Final GMP.

**00141.50(i) Worker and Public Safety Plan** - The Contractor shall prepare a Project-specific Worker and Public Safety Plan, based on the specifications and scope of Work depicted in the A&E's design documents, and in accordance with its Construction Approach, Means and Methods. The Contractor will be requested to submit its Plan for Agency review as part of the GMP Supporting Documents for **Tasks J.5 and J.7**.

**00141.50(j) Quality Control Plan** - The Contractor shall prepare a Project-specific Quality Control Plan, addressing quality requirements for all elements of Work. The Contractor will be requested to submit its Plan for Agency review as part of the GMP Supporting Documents for **Tasks J.5 and J.7**.

**00141.80 Specialty Subcontractor Services during Pre-construction** - The Agency may negotiate Task Orders with the CM/GC to involve specialty subcontractors to assist in review, assessment and cost estimating of various alternatives that may arise during design development. Any such Task Orders would be authorized by Agency-issued Change Order to the Contract.

**00141.90 Pre-construction Phase Service Pricing** – Pricing for Pre-construction Phase Services is included in Exhibit "J", and incorporated into this CM/GC Contract. Unless otherwise agreed by the parties, Exhibit "J" shall be considered as the Schedule of Values upon which monthly progress payments shall be based.

**00141.95 Changes In Pre-Construction Phase Services** – Changes to the Pre-Construction Phase Services shall be addressed in the same manner as other changes in the Work.



00141.500

Table of Pre-Construction Services

| Task No. | Milestone Date for PMT Meeting                          | Purpose                                  | Deliverables for the PMT Meeting | Agenda Items and Deliverables          |                            |                         |                           |  |   |                                |                           |                            |                                 |                               |                      |                                    |                      |
|----------|---|--|----------------------------------|--|----------------------------|-------------------------|---------------------------|--|---|--------------------------------|---------------------------|----------------------------|---------------------------------|-------------------------------|----------------------|------------------------------------|----------------------|
|          |   |  |                                  | Design Status and Review Comments      | Site Investigations        | Permits Status Schedule | Overall Schedule Status   | Impacts Mitigation                                 | Construction Approach Means and Methods | Contracting Plan               | Diversity Plan            | Sustainable Practices Plan | Risk Mitigation                 | Cost                          | Stakeholder Concerns | Issues Tracking and Resolution Log | Goals and Objectives |
|          |   |  |                                  | PMT Lead                               | AE                         | AE                      | AE                        | CMGC   | CMGC                                    | CMGC                           | CMGC                      | CMGC                       | CMGC                            | CMGC                          | CMGC                 | CMGC                               | Agency               |
| 1        | 1 week after NTP: Day 1                                 | Partnering; Kick-off meeting             |                                  |  |                            |                         |                           |  |   |                                |                           |                            |                                 |                               |                      |                                    | Establish Draft      |
| 2        | 1 week after NTP: Day 2                                 | Scope and Project Understanding Workshop |                                  | Agency Process; Available info/studies | Needed Site Investigations | List of req'd permits   | CMGC Proposal Schedule    | Potential Impacts (traffic, streetcar, navigation) | CMGC Proposal Concepts; Options         | CMGC Proposal Contracting Plan | Objectives                | Objectives; Outreach       | CMGC Proposal Risks Mitigations | Project Budget; CMGC Pricing  | Known Concerns       | Process                            | Refine; Final        |
| 3        | 6 weeks after NTP                                       | Design Construction Concepts Workshop    | AE                               | Design Concepts                        | Findings-to-date           | Permit matrix           |                           |  |   |                                |                           |                            |                                 |                               |                      |                                    |                      |
|          |   |  | CMGC                             |  |                            |                         |                           | Construction Concepts                              |   |                                |                           |                            |                                 |                               |                      |                                    |                      |
|          |   |  | Agency                           | Agency Concepts                        | As-builts                  |                         |                           | Agency Concepts                                    |   |                                |                           |                            |                                 |                               | Review               | Review                             |                      |
| 4        | 1 week after Receipt of 30% Design Submittal            | 30% Design Review                        | AE                               | 30% Design                             | Final Reports              | Status                  |                           |  | Comments                                |                                |                           |                            | Risk Workshop                   |                               |                      |                                    |                      |
|          |   |  | CMGC                             | Comments                               |                            |                         |                           | Comments   |   |                                |                           |                            |                                 |                               |                      |                                    |                      |
|          |   |  | Agency                           | Comments                               |                            |                         |                           | Comments   | Comments                                | Comments                       |                           |                            |                                 |                               | Review               | Review                             |                      |
| 5        | 1 week after Receipt of 60% Design Submittal            | 60% Design Review                        | AE                               | 60% Design                             |                            | Status                  |                           |  |   |                                |                           |                            |                                 | 60% ICE                       |                      |                                    |                      |
|          |   |  | CMGC                             | Comments                               |                            |                         | Prelim Schedule           | Prelim   | Update Planned Approach                 | Prelim                         | Prelim                    | Prelim                     | Prelim                          | 60% GMP; VE List; Assumptions |                      |                                    |                      |
|          |   |  | Agency                           | Comments                               |                            |                         |                           |  |   |                                |                           |                            |                                 |                               | Confirm Addressed    | Review                             | Check-in             |
| 6        | 1 week after Receipt of 90% Design Submittal            | 90% Design Review                        | AE                               | 90% Design                             |                            | Status                  |                           | Comments   | Comments                                |                                |                           |                            |                                 | Comments                      | Comments             |                                    |                      |
|          |   |  | CMGC                             | Comments                               |                            |                         |                           |  | Revisions                               |                                |                           |                            |                                 | Bid Items                     | Comments             |                                    |                      |
|          |   |  | Agency                           | Comments                               |                            |                         | Comments                  | Comments   | Comments                                | Comments                       | Comments                  | Comments                   | Comments                        | Comments                      | Review               | Review                             |                      |
| 7        | 1 week after Receipt of 100% IFC Design Submittal       | 100% Design Review                       | AE                               | 100% IFC; Design Permitted             |                            | All in-hand             |                           |  |   |                                |                           |                            |                                 | 100% ICE                      |                      |                                    |                      |
|          |   |  | CMGC                             | Check Comments                         |                            |                         | Final Baseline Schedule   | Final  | Final                                   | Final                          | Final                     | Final                      | Final                           | Final Bid Items               |                      |                                    |                      |
|          |   |  | Agency                           | Check Comments                         |                            |                         | Comments                  |  |   |                                |                           |                            |                                 | Comments                      | Confirm Addressed    | Review                             | Confirm Addressed    |
| 8        | 4 weeks after CMGC Receipt of 100% IFC Design Submittal | Negotiations and Final GMP Pricing       | AE                               | Design Addenda                         |                            |                         |                           |  |   |                                |                           |                            |                                 | Addenda ICE                   |                      |                                    |                      |
|          |   |  | CMGC                             |  |                            | Confirm Compliance      | Final; Comments addressed | Final; Comments addressed                          | Final; Comments addressed               | Final; Comments addressed      | Final; Comments addressed | Final; Comments addressed  | Final; Comments addressed       | 100% GMP                      |                      |                                    |                      |
|          |   |  | Agency                           | Approval                               |                            |                         | Accepted                  |  |   |                                |                           |                            |                                 | Accepted; Execute Amendment   |                      |                                    |                      |
| 9        | Option - weekly   | CMGC call-in to PMT mtgs                 | CMGC                             |  |                            |                         |                           |  |   |                                |                           |                            |                                 |                               |                      |                                    |                      |
| 10       | Option - as needed                                      | CMGC Cost Estimates                      | CMGC                             |  |                            |                         |                           |  |   |                                |                           |                            |                                 |                               |                      |                                    |                      |

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## Section 00142 – Construction Phase Services – Scope of Work

**00142.00 General** – Upon execution of an Early Work Amendment or GMP Amendment, the Contractor shall provide Construction Phase Services as provided in the Contract Documents, including without limitation:

- Collaboration with the Agency and the A&E to execute the Project
- Perform all required construction work utilizing Subcontractors, DMWESB firms, and the Contractor's own forces
- Develop and update Project schedules throughout the Construction Phase
- Provide reporting and Project management of Contractor's forces
- Provide and paying for all Materials, tools, Equipment, labor and professional and non-professional services
- Perform all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract Documents, to furnish to the Agency a complete, fully functional Project, capable of being fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment).

The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of the establishment of the GMP. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work towards development of a GMP acceptable to the Agency, which shall incorporate the Early Work Amendments.

Commencement of the Construction Phase shall not excuse the Contractor from completion of the Pre-Construction Phase Services, if such services have not been fully performed by commencement of the Construction Phase.

**00142.10 Notice to Proceed; First Notification** – The Agency will issue a Notice to Proceed (“NTP”) within five (5) Calendar Days after the Early Work Amendment or GMP Amendment authorizing Construction Phase Services is executed by the Agency per Subsection 00130.90. NTP shall not be issued until the NEPA process relating to the Work identified in the Early Work Amendment or GMP Amendment has been completed by the Agency.

The Engineer will issue a First Notification recording the date the Work commenced on the Project per Subsection 00130.90.

### Measurement

**00142.30 Measurement** – Measurement of completed Construction Phase Services Work shall be performed by the Engineer per Section 00190.

### Payment

**00142.40 Payment** - Payment for completed Construction Phase Services Work shall be made as defined in **CM/GC Contract**, Article 11, and Subsection 00195.50.

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## Section 00144 – Diversity Performance Specification

**00144.00 Scope** - It is the policy of Agency that its projects will be planned and constructed with the highest regard for diversity. The Agency will set DBE and MWESB diversity goals. These goals will be incorporated into the **CM/GC Contract**, Article 15.7.

The Contractor is directed to respond to the federal contract requirements defined in Sample Exhibits C-1 through C-8 to the **CM/GC Contract**, and also to respond with the required forms.

**00144.10 Crediting DBE and MWESB Participation** - A firm certified with multiple Oregon certifications, i.e., with more than one of the following certifications, DBE, MBE, WBE or ESB, shall be credited only once for Contract participation towards a target or goal. The order of credit is established in the following manner: DBE, MBE, WBE, ESB.

### **00144.20 Requirements:**

**(a) Diversity Best Practices Baseline Program – DBE** - Below are suggested best practices, which assist in meeting Agency policy and objectives of creating a level playing field, and maximizing opportunities towards utilization of DBE firms at all levels. The Contractor may perform the following actions in order to maximize the likelihood of being able to meet the DBE aspirational targets for this Project specified in the **CM/GC Contract**, Article 15.8.

**1. List of Certified DBE's** - Develop a list of certified DBE firms from Agency's DBE Directory or the State certification list by categories consistent with anticipated subcontracting opportunities.

Proposers may contact OMWESB at (503) 947-7976 or at the following website:  
<http://www.cbs.state.or.us/external/omwesb/index.html>

**2. DBE Representative (“Diversity Administrator”)** – The Contractor shall designate a qualified Diversity Administrator who shall have detailed knowledge of construction scopes of Work and of the availability of DBE firms to perform those functions. The Diversity Administrator's responsibilities include:

- (a)** Developing and maintaining bidder lists of DBE firms from all possible sources, with emphasis on locally based certified firms.
- (b)** Ensuring that procurement packages are structured to permit DBE firms to participate to the maximum extent possible;
- (c)** Assuring inclusion of DBE in solicitations for products or services that they are capable of providing;
- (d)** Reviewing solicitations to remove statements, clauses, etc., which may tend to restrict or prohibit DBE participation;
- (e)** Reviewing the bid documents' reasons for not selecting bids submitted by DBE firms;
- (f)** Ensuring the establishment and maintenance of records of solicitations and subcontract award activity;
- (g)** Attending or arranging for attendance of Contractor's Project Manager at Business Opportunity Workshops, Minority Organizations/ Chambers, Trade Fairs, etc.;
- (h)** Monitoring attainment of proposed aspirational targets;
- (i)** Preparing and submitting periodic subcontracting utilization reports as required, including the gathering and assembling of all reports from large business Subcontractors (regardless of tier) disaggregation of utilization by certificate type and submission of those reports to the Agency;

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(j) Coordinating the conduct of Contractor's activities involving its DBE subcontracting plan development and implementation.

**(3) Advertisement** - Advertise at least 30 Calendar Days in advance of the bid/proposal due date in local and minority-owned newspapers with regard to all subcontracting and potential DBE opportunities.

**(4) Solicit Interest** - Solicit the interest of certified DBE firms for two (2) consecutive weeks to allow DBE firms to respond to the solicitation. The Contractor should solicit through all reasonable and available means, including mailing and faxing information on subcontracting opportunities to all or some firms on the State-certified list and to all other interested DBE firms, advertising in local minority-owned newspapers and attendance at pre-proposal meetings. The Contractor should use CS<sup>3</sup> concepts to solicit DBE firms.

**(5) Provide Project Information** - Provide interested DBE firms with adequate information about the Plans, Specifications, and other Contract requirements in a timely manner to assist them in responding to a solicitation.

**(6) Document Solicitations** - Document in writing DBE solicitations. List all DBE firms solicited.

**(7) Establish Contract Packages** - Break out Contract items into economically-feasible units and, where possible, identify rotation opportunities so that DBE participation is maximized. The Contractor is encouraged to utilize small contract packages as necessary to maximize DBE participation, especially locally based certified firms as described in (8) below.

**(8) Subcontracting Allocations** - Make efforts to allocate these and other subcontracting opportunities to a broad range of qualified DBE firms to maximize the number of contracts in the following ranges:

- \$10k - \$50k
- \$50k - \$100k
- \$100k - \$250k
- \$250k - \$500k
- \$500k - \$1million

**(9) Negotiation** - Negotiate in good faith with interested DBE firms. As part of the documentation to demonstrate and document that good faith efforts have been made, including the names, addresses, and telephone numbers of the DBE firms that were contacted.

**(10) Unqualified DBE** - Do not reject any DBE firm as unqualified without a thorough investigation of its capabilities. Work with a technical assistance provider to determine the qualifications of any potentially unqualified DBE.

**(11) Make efforts** to assist interested DBE firms in obtaining insurance, and/or software as required by the Contractor. Make efforts to assist interested DBE firms in obtaining the necessary Equipment, supplies, or related assistance or services needed for a competitive bid/proposal.

**(12) Bids / Proposals** - Follow up with all competitive bids/proposals from DBE and MWESB firms to clarify any questions that may arise. If DBE proposals are not utilized, document in writing the reasons for this decision.

**(13) Make Use of Services Available** - Use the services of available minority/women community organizations; minority/women Contractors' groups; local, State, and federal minority/women business assistance offices; Agency DBE Directory; and other organizations and resources to provide assistance in the recruitment and placement of DBE firms.

**(b) On-The-Job Training / Apprenticeship Policy Statement** - Take all necessary and reasonable steps to ensure that apprentices/trainees have the opportunity to work and train on federal and state-funded Highway

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construction projects and to develop as journey-level workers through a State of Oregon registered apprenticeship program in the type of trade employed.

**(c) Equal Employment Opportunity** – Because the Project involves federal funding, the Agency’s aspirational targets do not apply. Nonetheless, the Agency desires to encourage the highest possible participation of minorities and women in the project. Accordingly, the Agency will work with ODOT personnel to optimize participation. Agency goals including OJT/Apprenticeship goals for this Project will be developed by ODOT and provided prior to the Construction Phase of the Project. The CM/GC will be required to comply with the goals that are incorporated into the Construction Phase Amendments to this Contract.

**(d) Workforce Diversity Actions** - The Contractor shall respond to the OJT/Apprenticeship goals for construction set forth in the **CM/GC Contract**, Article 15.7, and the federal requirements in Sample Exhibit C-8 to the **CM/GC Contract**, and shall respond with the required forms.

To maximize diversity participation, the Contractor may use the following:

**(1) Developing relationships with recruitment resources** - Possible recruitment sources: high schools, trade schools, junior colleges, and colleges with high minority enrollment; community-based programs; union halls. A list of resource centers is on located at:

<http://www.odot.state.or.us/civilrightspub/onthejobtraining.html>

Establish a schedule for identifying, contacting, and setting up relationships with appropriate recruitment sources. Recruit broadly and consistently for all job openings.

**(2) Register for iMatchSkills for an employer (two (2) options):**

- **Option 1:** Request registration assistance either by phone during online set up or on site at a local Employment Department office
  - Call 1-800-237-3710
  - Or find your local Employment Department Office number at <http://dasapp.oregon.gov/statephonebook/index.asp> and call for assistance
- **Option 2:** Register online at: <http://www.WorkingInOregon.org>, or [https://empportal.emp.state.or.us/im\\_imsdod\\_dad/pkg\\_general.proc\\_navigate](https://empportal.emp.state.or.us/im_imsdod_dad/pkg_general.proc_navigate) and follow the online instructions

**(3) For union employers** - Call unions prior to starting large jobs to discuss company needs for both a diverse workforce and, if applicable, apprentices. Stay in constant contact with union halls to ensure availability of minority and female workers.

**(4) Developing relationships with the community** - Initiate community relations and community involvement activities to promote your firm’s image as an employer in minority communities.

**(5) Defining jobs** - Develop a program to ensure that job descriptions are current, that they accurately reflect the job as it is performed, and that they meet the requirements if applicable.

**(e) Recruiting Diversity:**

**(1) Outreach** - Recruit from the minority community: post notices in minority community gathering places and at college campuses located in minority communities; recruit on **Indian reservations** and in minority communities in other parts of the State.

Develop a standard fax form that can be sent to minority and women’s organizations as well as unions and other sources, when your firm is seeking applicants. Such a form will simplify your efforts and underscore your commitment to a diverse workforce.

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**(2) Design** – make contacts with Oregon community and 4-year colleges minority organizations for internships.

**(3) Advertising** - Advertise job opportunities in the minority press and in women's publications: targeted advertising, particularly with a strong EEO message, is one effective method for attracting women and minorities.

**(4) Applications** - Set up an applicant tracking system to trace the progress of an applicant through the selection process. This may help you identify particular components of your firm's selection process that have an adverse impact on minority, women, and disadvantaged applicants.

**(5) Internal resources** - Encourage employees from underutilized groups to refer potential job applicants: conduct a workshop with these employees, enlist their assistance as recruiters, and ask them to provide additional ideas for increasing your firm's employment of underutilized groups.

**(6) Interviewing/Hiring** - Ensure that accurate, job-related job descriptions are available to those conducting interviews.

**(7) Internal training** - Make reasonable attempts to keep OJT or apprentices working, and train them in all work processes described in your standards or apprenticeship standards.

**(8) Documentation** - Document all diversity actions taken and have documentation readily available for review.

**00144.30 Monthly Reporting** - The Contractor's Diversity Administrator shall have coordination, implementation, and reporting responsibilities regarding the Subcontracting and Diversity Management Plans (Also see 2.(i)). The representative shall have authority to act on behalf of the Contractor and Subcontractors and take corrective action if needed.

**00144.40 Workforce Monitoring and Compliance** - The Contractor's Diversity Administrator shall have authority to act on behalf of the Contractor and Subcontractors and take corrective action if needed with respect to workforce monitoring and compliance. The Agency will monitor the Contractor's compliance with this Section regarding:

- Employment of apprentices/trainees;
- Hours worked by all employees;
- Maintenance of the Project Records and submission of required reports ;
- Prevailing Wage Rate Payroll/Certified Statements (weekly); and
- Actual training provided, for consistency with approved training program(s).

The Agency will also hold monthly meetings to review subcontracting and workforce reports for compliance.

If Subcontractors participate in the OJT/Apprenticeship Program, the Contractor shall be responsible for the Subcontractor's compliance with the requirements of this Section.

**00144.50 Submittals** - The Contractor shall submit to the Agency the following, and shall meet with the Agency as required:

- All weekly Prevailing Wage Rate Payroll/Certified Statement Forms
- Diversity Plan. The Diversity Plan shall address both Workforce Diversity and Subcontracting. The Diversity Plan shall include, at a minimum, the following federal Contract requirements, which are subject to change, defined in the **CM/GC Contract**:
- **Exhibit C-1** – DBE Commitment Requirements
- **Exhibit C-2** – DBE Commitment Certification and Utilization Form
- **Exhibit C-3** – DBE Subcontractor/Supplier Solicitation and Utilization Form
- **Exhibit C-4** – DBE Directory Statement

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- **Exhibit C-5** – DBE Supplemental Required Contract Provisions
  - **Exhibit C-6** – Equal Employment Opportunity Provisions
  - **Exhibit C-7** – On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts
  - **Exhibit C-8** – FHWA-1273 Required contract Provisions for Federal-Aid Construction Contracts

**00144.60 Reporting** - The Contractor's Diversity Administrator shall meet monthly with the Agency to review compliance with the approved Diversity Plan and to identify steps that should be taken to optimize diverse participation. Further, during the meeting, the parties will review the Contractor's submittal of all reports specified in the **CM/GC Contract**.

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## Section 00150 – Control of Work during Construction Phase Services

**00150.00 Authority of the Engineer** – The Engineer has full authority over the Work and its suspension. (see Section 00180) The Contractor shall perform all Work to the complete satisfaction of the Engineer. The Engineer's decision shall be final on all matters, including but not limited to the following:

- Quality and acceptability of Materials and workmanship
- Measurement of unit price Work
- Timely and proper prosecution of the Work
- Interpretation of Plans and Specifications
- Payments due under the Contract

The Engineer's decision is final and, except as provided in 00180.80 for adjustments of Contract Time and Section 00199 for claims for additional compensation, may be challenged only through litigation.

Work performed under the Contract will not be considered complete until it has passed Final Inspection by the Engineer and has been accepted by the Agency.

Interim approvals issued by the Engineer, including but not limited to Third Notification, will not discharge the Contractor from responsibility for errors in prosecution of the Work, for improper fabrication, for failure to comply with Contract requirements, or for other deficiencies, the nature of which are within the Contractor's control.

**00150.01 Project Manager's Authority and Duties** - The Engineer may designate a Project Manager as its representative on the Project, with authority to enforce the provisions of the Contract.

When the Engineer has designated a Project Manager, the Contractor shall direct all requests for clarification or interpretation of the Contract, in writing, to the Project Manager. The Project Manager will respond in writing within a reasonable time. Contract clarification or interpretation obtained from persons other than the Project Manager will not be binding on the Agency.

The Project Manager shall have the authority to appoint Inspectors and other personnel as required to assist in the administration of the Contract.

**00150.02 Inspectors' Authority and Duties** – To the extent delegated under 00150.01 Inspectors are authorized to represent the Engineer and Project Manager to perform the following:

- Inspect Work performed and Materials furnished, including without limitation, the preparation, fabrication, or manufacture of Materials to be used;
- Orally reject defective Materials and to confirm such rejection in writing;
- By oral order, temporarily suspend the Work for improper prosecution pending the Engineer's decision; and
- Exercise additional delegated authority.

Inspectors are not authorized to:

- Accept Work or Materials;
- Alter or waive provisions of the Contract; or
- Give instructions or advice inconsistent with the Contract Documents.

**00150.05 Cooperative Arrangements** – The Contractor may be required to enter into multiple cooperative arrangements with the Agency and the A&E for the Work covered by this Contract. Some elements of this arrangement are described in 00120.95.

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**00150.10 Coordination of Specifications and Plans** – The Contract Documents, including but not limited to Contract Change Orders, the **Special Provisions**, the Plans, the **CM/GC General Provisions**, and the Standard Specifications are intended to collectively describe all of the items of Work necessary to complete the Project.

**(a) Order of Precedence** – The Engineer will resolve any discrepancies between these documents in the order of precedence as set forth in the **CM/GC Contract, Article 2.3**.

**(b) Discrepancies** – The Contractor shall bring all discrepancies to the attention of the Engineer for resolution and direction.

**00150.15 Construction Stakes, Lines and Grades:**

**(a) General** – The Contractor shall perform no work until the Engineer establishes field controls. Work performed without field controls will be subject to removal at the Contractor's expense.

**(b) Agency Responsibilities** – The Engineer will perform the responsibilities described in 00305.04.

**(c) Contractor Responsibilities** – The Contractor shall perform the responsibilities described in Section 00305.05.

**00150.20 Inspection:**

**(a) Inspection by the Engineer** – The Engineer may test Materials furnished and inspect Work performed by the Contractor to ensure Contract compliance.

If the Contractor performs Work without the Engineer's inspection or uses Materials that the Engineer has not approved, the Engineer may order affected portions of the Work removed at the Contractor's expense. The foregoing sentence shall not apply if the Engineer fails to inspect the Work within a specific period of time required in the Contract, or in the absence of a specific period of time, within a reasonable period of time after receiving the Contractor's timely written request for inspection or testing.

At the Engineer's direction, any time before the Work is accepted; the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore these portions of Work to the standard required by the Contract. If the Engineer rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Engineer, the Contractor shall bear all costs of uncovering and restoring the Work. If the Engineer accepts the uncovered Work, and the Contractor performed the Work only after providing the Engineer with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Agency as Extra Work.

**(b) Inspection Facilities** – The Contractor shall furnish walkways, railings, ladders, shoring, tunnels, platforms and other facilities necessary to permit the Engineer to have safe access to the Work to be inspected. The Contractor shall require producers and fabricators to provide safe inspection access as requested by the Engineer.

**(c) Sampling** – The Contractor shall furnish the Engineer with samples of Materials that the Engineer will test. All of the Contractor's costs related to this required sampling are Incidental.

**(d) Inspection by Third Parties** – Where third parties have the right to inspect the Work, the Contractor shall coordinate with the Engineer and shall provide safe inspection access.

**(e) Contractor's Duty to Make Corrections** – The Contractor shall perform all Work according to the Specifications and Plans. The Contractor shall correct Work that does not comply with the Specifications and Plans at its own expense. Inspection of the Work by the Engineer does not relieve the Contractor of responsibility for improper prosecution of the Work.

**00150.25 Acceptability of Materials and Work** - The Contractor shall furnish Materials and shall perform Work in Close Conformance to the Plans and Specifications. If the Engineer determines that the Materials furnished or the Work performed are not in Close Conformance with the Plans and Specifications, the Engineer may:

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- Reject the Materials or Work and order the Contractor, at the Contractor's expense, to remove, replace, or otherwise correct any non-conformity; or
  - Accept the Materials or Work as suitable for the intended purpose, adjust the amount paid for applicable Pay Items to account for diminished cost to the Contractor or diminished value to the Agency, document the adjustment, and provide written documentation to the Contractor regarding the basis of the adjustment.

The Engineer's decisions concerning acceptability of Materials or Work will be final.

**00150.30 Delivery of Notices** – Notices shall be delivered as set forth in the **CM/GC Contract, Article 15.9.**

**00150.35 Plans and Working Drawings:**

**(a) Plans** – The Plans will show details of lines, grades, and Typical Section of the Roadway, and locations and design details of Structures.

**(b) Working Drawings** – The Contractor shall supplement the Agency-prepared Plans with stamped or unstamped Working Drawings that show all information necessary to complete the Work. The applicable Section or Subsection of the Standard Specifications will indicate the supplemental information required and whether the drawings are to be stamped or unstamped. Stamped and unstamped Working Drawings are defined as follows:

**(1) Stamped Working Drawings** – Working Drawings, calculations and other data which are prepared by or under the direction of a Professional Engineer licensed in the State of Oregon, and which bear the engineer's signature, seal, and expiration date.

**(2) Unstamped Working Drawings** - Working Drawings, calculations and other data that do not bear an engineering seal.

**(c) Number and Size of Drawings** – The Contractor shall submit seven (7) copies of Working Drawings for steel Structures, and six (6) copies of Working Drawings for other Structures to the Engineer. The submitted copies shall be clear and readable. Drawing dimensions shall be 8-½ inches by 11 inches, 11 inches by 17 inches, or 22 inches by 36 inches in size. One (1) copy of the submitted Working Drawings will be returned to the Contractor after processing. The Contractor shall submit such additional number of copies to the Engineer for processing that the Contractor would like to have returned.

**(d) Processing Working Drawings** – The Engineer will process Working Drawings and include all comments on them as follows:

**(1) Stamped Working Drawings** – Stamped Working Drawings will be designated as “reviewed and accepted” by the Engineer.

**(2) Unstamped Working Drawings** – Unstamped Working Drawings will be designated on the face of the Drawing as “approved”, “approved as noted”, “returned for correction”, or “rejected” by the Engineer.

The Contractor shall not fabricate or construct any structural components until the stamped or unstamped Working Drawings are returned by the Engineer with written notation of approval or review, as applicable, of the Working Drawings.

The Engineer's processing of the Working Drawings does not amend any contractual obligations of the parties.

The Engineer will process and return Working Drawings within 21 Calendar Days (65 Calendar Days if Railroad approval is required) after receipt by the Engineer. If the Engineer fails to return such drawings within this period of time, the Engineer will consider granting a Contract Time extension according to 00180.80.

**00150.37 Equipment Lists and Other Submittals** – The Contractor shall submit Equipment lists, and other required submittals for approval by the Engineer. The Engineer will respond to requests for approval within time frames set forth in each Section of the Specifications that requires such approval.

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**00150.38 Contractor Management Personnel**

**(a) Contractor Management Personnel** - The Contractor shall furnish all required management personnel, as specified in the Contract Documents.

**(b) Replacement of Contractor Management Personnel** - If the Agency discovers information that leads the Agency to reasonably believe a person selected by the Contractor is unqualified does not perform satisfactory Work, or engages in conduct interferes with the progress of the Work, the Contractor shall replace such person upon the request of the Agency. The Contractor shall provide the Agency at least 15 Calendar Days prior written notice of the proposed replacement and request the Agency's authorization, which shall not be unreasonably withheld by Agency.

**00150.40 Cooperation and Superintendence by the Contractor:**

**(a) General** - The Contractor shall:

- Keep one (1) complete set of Contract Documents available on the Project Site at all times.
- Cooperate in good faith with the Engineer, Inspectors, and any other contractors in performance of the Work.
- Ensure the services of a competent Construction Manager, experienced in the type of Work being performed, and capable of reading and thoroughly understanding the Plans and Specifications.
- Provide access, facilities and assistance to the Engineer in establishing such lines, grades and points as the Engineer requires.
- Carefully protect and preserve the Engineer's marks and stakes.
- Provide all assistance reasonably required by the Engineer to obtain information regarding the nature, quantity, and quality of any part of the Work.
- Allow the Agency reasonable access to the Contractor's books and records at all times. To the extent permitted by public records laws, the Engineer will make reasonable efforts to honor the Contractor's request for protection of confidential information.
- Furnish the Engineer all data necessary to determine the actual cost of all, or any part, of the Work.
- Diligently pursue progress of the Work according to the schedule requirements of Section 00180.
- Coordinate and control all Work performed under the Contract, including without limitation the Work performed by Subcontractors.

**(b) Construction Manager Superintendence** – The Construction Manager shall:

- Have full authority and responsibility to promptly execute orders or directions of the Engineer,
- Have full authority and responsibility to promptly supply the Materials, Equipment, labor and Incidentals required for performance of the Work,
- Be available during the hours of work on the Project Site for communication with the Engineer, and
- Be present for all On-Site Work except as provided in the Contract Documents, or approved by the Agency.

For short periods of time during the performance of minor or Incidental portions of the Work, the Contractor may designate a person to act on behalf of the Construction Manager. The Contractor shall submit the designation in writing to the Engineer. The form of designation shall state the designee's name, duration of appointment, and scope of authority. The Construction Manager shall be available to the Engineer at all times for contact by telephone or radio. The Engineer expressly reserves the right to require the Construction Manager to be on the Project Site by giving 48 hours advance verbal or written notice thereof to the Contractor.

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The Contractor's failure to provide the superintendence required by these provisions constitutes a material breach of the Contract, and the Engineer may impose any remedies available under the Contract, including but not limited to Contract termination or suspension of Contract performance.

**00150.50 Cooperation with Utilities:**

**(a) General** – Unless otherwise specified in any Standard Specification, **CM/GC General Provision**, in the **Special Provisions**, or on the Plans, existing Utilities requiring adjustment may be adjusted by the Utility before, during, or after Project construction. "Adjustment of Utilities" shall mean the alteration, improvement, connection, disconnection, relocation, or removal of existing Utility lines, facilities, or systems in temporary or permanent manner.

**(b) Agency Responsibilities** – Before Proposals are received or prior to execution of an Early Work Amendment, the Agency will make preliminary arrangements for planned Adjustment of Utilities. The Agency will list in the **Special Provisions** the estimated completion dates or times for adjustment work by the Utility owner, and will include a general statement describing any relocation. The Plans will not normally show the anticipated new location of Utilities that have been, or will be, adjusted.

**(c) Contractor's Responsibilities** – The Contractor shall:

- Follow applicable rules adopted by the Oregon Utility Notification Center;
- Contact Utility owners during Proposal preparation and after the Contract is awarded to verify all Utilities' involvement on the Project Site;
- Coordinate Project construction with the Utilities' planned adjustments, take all precautions necessary to prevent disruption of Utility service, and perform its Work in the manner that results in the least inconvenience to the Utility owners;
- Include all Utility adjustment work, whether to be performed by the Contractor or the Utilities, on the Contractor's Project Work schedule submitted under 00180.41;
- Protect from damage or disturbance any Utility that remains within the area in which Work is being performed;
- Not disturb an existing Utility if it requires an unanticipated adjustment, but shall protect it from damage or disturbance and promptly notify the Engineer; and
- Report to the Engineer any Utility owner who fails to cooperate or fails to follow the planned Utility adjustment.

Subject to the Engineer's approval, the Contractor may adjust the Utilities by asking the Utility owners to move, remove, or alter their facilities in ways other than as shown on the Plans, in the **CM/GC General Provisions**, or in the **Special Provisions**. The Contractor shall conduct all negotiations, make all arrangements, and assume all costs that arise from such changes.

**(d) Delays** – If the Contractor complies with Subsection (c) above, and if Utility adjustments are completed later than the date specified in the **Special Provisions**, thus causing Project completion to be delayed (provide notification under 00180.60), additional Contract Time will be considered under 00180.80 and additional compensation, if applicable, will be considered under 00195.40.

**(e) Notification** – If the Project is located within the area served by the Oregon Utility Notification Center, the Contractor shall notify owners of Utilities prior to the performance of Work in the vicinity of their facilities. The Utilities notification system telephone number is 1-800-332-2344.

The Contractor shall comply with the rules of the Oregon Utility Notification Center, OAR 952-001-0010 through 952-001-0090 and ORS 757.993. The Contractor may contact the Oregon Utility Notification Center at (503) 232-1987 about these rules.

**00150.55 Cooperation with Other Contractors** - The Agency reserves the right to perform other work on or near the Project Site, including without limitation any Materials site, with forces other than those of the Contractor.

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If such work takes place within or next to the Project Site, the Contractor shall have the following obligations:

- The Contractor shall coordinate Work with all other contractors or forces.
- The Contractor shall cooperate in good faith with all other contractors or forces.
- The Contractor shall perform the Work set forth in the Contract in a way that will minimize interference and delay for all forces involved.
- The Contractor shall place and dispose of the Materials being used so as not to interfere with the operations of other forces.
- The Contractor shall join the Work with that of other forces in a manner acceptable to the Engineer or the Agency, and shall perform it in the accepted sequence with the work of the other forces.

The Engineer will resolve any disagreements under this Subsection that may arise among the Contractor and other work forces, or between the Contractor and the Agency. The Engineer's decision in these matters is final, as provided in 00150.00.

When the schedules for the Work of the Contractor and the work of other forces overlap each contractor involved shall submit a current, realistic progress schedule to the Engineer. Before the Engineer accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, the Engineer will determine acceptable schedules.

The Contractor waives any right it may have to make claims against the Agency for any damages or claims that may arise because of inconvenience, delay, or loss due solely to the presence of other contractors working on the Project Site.

If the Contract gives notice of work to be performed by other forces that may affect the Contractor's Work under the Contract, the Contractor shall include any costs associated with coordination of the Work in the appropriate Pay Item or as a portion of a Pay Item.

In an emergency, the contractor most immediately able to respond may repair a facility or Utility of another contractor in order to prevent further damage to the facility, Utility, or other Structure as a result of the emergency.

#### **00150.60 Construction Equipment Restrictions:**

**(a) Load and Speed Restrictions for Construction Vehicles and Equipment** – The Contractor shall comply with legal mass (weight) and speed restrictions when moving Materials or Equipment beyond the limits of the Project Site.

The Contractor shall control vehicle and Equipment loads and speeds within the Project Site according to the following restrictions, unless the **Special Provisions** provide otherwise:

- The Contractor shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on Subgrades and Aggregate bases.
- The Contractor shall restrict weights to legal loads, and shall travel at speeds of no more than 45 mph or the posted construction speed, whichever is less, on treated Bases, Pavement, or wearing Courses.
- The Contractor shall not cross Bridges or other Structures with Equipment or vehicles exceeding the legal load limit without prior written permission of the Engineer. The Contractor shall make any such request in writing, describing the loading details and the arrangement, movement, and position of the Equipment on the Structure. The Contractor shall comply with any restrictions or conditions included in the Engineer's written permission.

**(b) Protection of Buried Items** – The Contractor shall use temporary fill or other methods to avoid overload of pipes, box culverts, and other items that are covered, or to be covered, by fill or backfill.

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**(c) Responsibility for Damages** - The Contractor shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site. The Engineer's permission to cross Bridges and other Structures according to 00150.60(a) will not relieve the Contractor from responsibility for load-caused damages.

**00150.70 Detrimental Operations** - The Contractor shall avoid operations whose methods, conditions, or timing may injure people or damage property or the Work. Damage may include without limitation, staining surfaces with mud or asphalt. (also see 00150.60, 00150.75, and Section 00170)

When any such damage occurs, the Engineer will determine if it is to be corrected by repair, replacement, or compensatory payment by the Contractor. If compensatory payment is required, the Engineer will determine the amount. Compensatory payment may be deducted from monies due or to become due to the Contractor under the Contract.

**00150.75 Protection and Maintenance of Work During Construction** – The Contractor shall protect and maintain the Work during construction and until Third Notification has been issued, unless otherwise provided in the Contract. For the purposes of this Subsection, “maintenance” shall include measures to prevent deterioration of Roadway and Structures at the Project Site, and to keep them in good condition at all times during the prosecution of the Work. The Contractor shall continuously allocate sufficient Equipment and workers to achieve such maintenance.

If the Contract requires the placement of a Course upon a previously constructed Course or Subgrade, the Contractor shall maintain the previous Course or Subgrade during all construction operations.

The Contractor shall include costs of protecting and maintaining the Work during construction in the unit prices bid for the various Pay Items. The Contractor will not be paid an additional amount for this Work, unless otherwise specified.

The Engineer will immediately notify the Contractor of Contractor's noncompliance with this Subsection. If the Contractor fails to remedy unsatisfactory protection or maintenance within 24 hours after receipt of such notice, the Engineer may proceed immediately to remedy the deficiency, and deduct the entire cost from monies due or to become due the Contractor under the Contract.

**00150.80 Removal of Unacceptable and Unauthorized Work** - The Contractor shall correct or remove unacceptable or unauthorized work, as directed by the Engineer in writing. The Contractor shall replace such work with Work and Materials conforming to the requirements of the Contract.

For the purposes of this Subsection, “unauthorized Work” shall include without limitation the following:

- Work that extends beyond lines shown on the Plans or otherwise established by the Engineer;
- Work that is contrary to the Engineer's instructions; and
- Work that is conducted without the Engineer's written authorization.

The Agency will not pay the Contractor for unauthorized or unacceptable work. The Engineer may issue a written order for the correction or removal of such work at the Contractor's expense.

If, when ordered by the Engineer, the Contractor fails to correct or remove unacceptable or unauthorized work, the Engineer may have the correction, or removal and replacement, done by others and deduct the entire cost from monies due or to become due the Contractor under the Contract.

**00150.90 Final Inspection**

**(a) On-Site Construction Work** - The Engineer will inspect the Project at a time close to the completion of On-Site Work to ensure the Contractor's compliance with the Plans and Specifications.

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When all On-Site Work on the Project is completed, including but not limited to Change Order Work and Extra Work, the Engineer will issue Second Notification as specified in 00180.50(g).

Within 15 Calendar Days after the Engineer receives the Contractor's written notification that all punch-list items, final trimming and cleanup according to 00140.90 have been completed, the Engineer will review the Project and notify the Contractor that all Work is complete or will give the Contractor written instruction regarding incomplete or unsatisfactory Work.

**(b) All Contract Work** - The Engineer will issue the Third Notification when the Contractor has satisfactorily accomplished all of the following:

- The Contractor has completed all On-Site Work required under the Contract;
- The Contractor has removed all Equipment, and;
- The Contractor has submitted all required certifications, bills, forms, warranties and other documents.

**00150.91 Post-Construction Review** - The Contractor shall attend a Post-Construction Review meeting, to be held by the Agency prior to issuance of Third Notification but not earlier 15 Calendar Days following the date of Second Notification. The time and place of this meeting will be announced by the Engineer at least 15 Calendar Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects. The Contractor's attendance at the Post-Construction Review meeting is mandatory.

**00150.95 Final Acceptance** - After the Engineer completes Final Inspection of all Work and issues Third Notification to the Contractor, the Agency will issue final payment and acknowledge Final Acceptance. The Agency will notify the Contractor in writing of the date of Final Acceptance within seven (7) Calendar Days after Final Payment or as soon thereafter as is practicable.

**00150.96 Maintenance Warranties and Guarantees** - Prior to Third Notification, the Contractor shall transfer to the Agency the benefits of all unexpired manufacturers' warranties and guarantees for Materials and Equipment installed on the Project. Such warranties and guarantees shall recite that they are enforceable by the Agency.

**00150.97 Responsibility for Materials and Workmanship:**

**(a)** As stated in the Performance Bond, the Contractor shall perform the Work according to the terms, conditions, requirements, Plans, and Specifications set out in the Contract.

**(b)** Whether before or after the Agency's acceptance of the work, the Contractor shall be responsible for:

- Correcting or repairing any defects in, or damage to, the Work which results from the use of improper or defective materials or workmanship; or
- Replacing, in its entirety, the Work affected by the use of improper or defective materials or workmanship to the extent provided by law; and
- Correcting or repairing any Work, Materials, Structures, Existing Surfacings, Pavement, Utilities, or sites, including without limitation, Wetlands, damaged or disturbed in that correction, repair, or replacement. (see 00170.80 to 00170.85)

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## SECTION 00160 – SOURCE OF MATERIALS

**00160.00 Definitions** – The following definitions apply to Section 00160:

**(a) Prospective Source** – Agency-furnished Materials source, use of which by the Contractor is optional. The Agency makes no guarantee or representation, by implication or otherwise, of the land use status, quantity, quality, or acceptability of Materials available from it, except as may be stated in the Special Provisions.

**(b) Mandatory Source** – Agency-furnished Materials source, use of which by the Contractor is required.

**00160.01 Notification of Source of Supply and Materials:**

**(a) All Materials** - The Contractor shall notify the Engineer in writing of all proposed Materials sources of supply, including without limitation any steel or other fabricators, within the following time frames:

- At least 15 Calendar Days before using or fabricating Materials, if the source is within the State; or
- At least 45 Calendar Days before using or fabricating Materials, if the source is outside the State

**(b) Prospective Source Materials** - When given an option to use Prospective Sources of Materials to be incorporated into the Work, the Contractor shall notify the Engineer in writing of the option selected within 15 Calendar Days from date of Notice to Proceed. Otherwise, such Materials sources may become unavailable.

**(c) Approval Required** - Before allowing production or delivery of Materials to begin from any source, the Contractor must obtain the Engineer's approval. Approval to use any source does not imply that Materials from that source will be accepted. If approved sources do not provide Materials that meet Specifications, the Materials will be rejected. The Contractor will then be responsible for locating other sources and obtaining the Engineer's approval.

**00160.05 Qualified Products List (QPL)** - The QPL is a listing of manufactured products available on the market (shelf items) that the Agency has evaluated and found suitable for a specified use in Highway construction. The QPL is published twice a year and is available from ODOT's Construction Section; 800 airport Road SE; Salem, OR 97301-4798; phone 503-986-3000. It may also be viewed on ODOT's website:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/QPIndex.shtml>.

The current version of the QPL in effect at the time Notice to Proceed is issued for the first Early Work Amendment, or, if no Early Work Amendments are issued, at the time of Notice to Proceed for the GMP Amendment, and is the version in effect for the Project. The Engineer may approve for use a conditionally-qualified product, or a product qualified for inclusion in a later edition of the QPL, if the Engineer finds the product acceptable for use on the Project.

Use of listed products shall be restricted to the category of use for which they are listed. The Contractor shall install all products as recommended by the manufacturer. The Contractor shall replace qualified products not conforming to Specifications or not properly handled or installed at the Contractor's expense.

**00160.10 Ordering, Producing, and Furnishing Materials** – The Contractor shall not place orders for or produce full quantities of Materials anticipated to be required to complete the Work until the Work has advanced to a stage that allows the quantities to be determined with reasonable accuracy. Upon request, the Engineer will notify the Contractor in writing of the quantities required. Quantity estimates by the Engineer before this notification are only approximate.

**(a) Contractor's Duties** – In purchasing, producing, or delivering Materials, the Contractor shall take into account the following:

- Kind of work involved;
- Amount of work involved;

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- Time required to obtain Materials; and
  - Other relevant factors.

**(b) Approval of Quantity of Materials Ordered** – Materials quantities shown on the Plans or indicated by quantities and Pay Items, are subject to change or elimination. Therefore, the Contractor is cautioned to order or produce Materials only after having received the approval of the Engineer. The Contractor is responsible for payment for excess Materials delivered to the Project Site or storage sites without advance authorization from the Engineer. Unless otherwise specified in the Contract, the Agency will not be responsible for:

- Materials the Contractor may deliver or produce in excess of Contract requirements;
- Extra expense the Contractor may incur because Materials were not ordered or produced earlier; or
- The Contractor's expenses related to Materials ordered by the Contractor that are not subsequently approved for use.

Excess Materials, ordered or produced by the Contractor, without approval of the Engineer, may be purchased by the Agency at the sole discretion of the Agency. (see 00195.80).

#### **00160.20 Preferences for Materials:**

**(a) Buy America** – If federal Highway funds are involved on the Project, Contractor shall limit the quantity of foreign Materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act (ISTEA) require that all iron or steel manufacturing processes, including without limitation the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States, unless the cost of foreign-origin iron or steel Materials does not exceed one-tenth of one percent (0.1%) of the GMP or \$2,500.00, whichever is greater. The Contractor shall not incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated into the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at Contractor's expense. For purposes of this Specification, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component.

The Contractor shall provide the Engineer with a Certificate of Materials Origin, on a form furnished by the Engineer before, incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the Engineer, the Materials shall be considered of foreign origin.

The Contractor shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for three (3) years after the date of final payment for the Project and shall furnish copies to the Engineer upon request.

**(b) Buy Oregon** - Pursuant to ORS 279A.120, the Contractor shall give preference to goods or services produced in Oregon if price, fitness, availability, and quality are equal. This provision does not apply to contracts financed wholly or in part by federal funds.

**(c) Recycled Materials** - Pursuant to ORS 279A.010, ORS 279A.125, ORS 279A.145, ORS 279A.150, and ORS 279A.155, and subject to the approval of the Engineer, the Contractor shall use recycled products to the maximum extent economically feasible.

**00160.30 Agency-Furnished Materials** - Unless otherwise specified in the **Special Provisions**, Materials listed as Agency-furnished will be available to Contractor free of charge.

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The Contractor shall be responsible for all Materials furnished by the Agency, and shall pay all demurrage and storage charges. The Contractor shall replace at its expense Agency-furnished Materials lost or damaged due to any cause.

The locations at which Agency-furnished Materials are available will be specified in the **Special Provisions**. If the locations are not listed in the **Special Provisions**, the Agency-furnished Materials will be furnished to the Contractor at the Project Site. In either case, all costs of handling, hauling, unloading, and placing Agency-furnished Material shall be considered included in the price paid for the Pay Item involving such Material.

All Agency-furnished Materials not incorporated into the Work remains the property of the Agency. The Contractor shall deliver such Materials as directed by the Engineer.

**00160.40 Agency-Furnished Sources** - The Agency may list in the **Special Provisions**, or show on the Plans, Borrow pits or Aggregate sources from which the Contractor may, or shall, obtain Materials. These sources will be identified and referred to as Prospective or Mandatory Sources. A development plan will be included in Section 00235 of the **Special Provisions** when such sources are shown on the Plans.

**(a) Working in a Different Area of the Materials Source** – If the Contractor desires to work in a different area of the Materials source than that shown on the development plan, the Contractor must submit a written request stating the reasons for the requested change. If a new land use permit, development plan, or reclamation plan is needed, the Contractor must submit it and obtain approval from the Engineer before starting work in any area other than that shown on the Plans. Approval for work in a different area will not entitle the Contractor to any added compensation or adjustment of Contract Time.

The Agency will not be responsible for the availability of sources other than as stated in the **Special Provisions**. If the Contractor has given notice of intent to use, but does not use the sources(s) on the Project, the Contractor shall reimburse the Agency for costs the Agency incurs in making such sources(s) available.

**(b) Cost of Sources** – Unless otherwise specified in the **Special Provisions**, any Prospective or Mandatory Source will be provided by the Agency for use without payment of royalty or other charge. (see 00160.50).

**(c) Exhaustion of Sources** - If the Engineer determines that the quantities of specified Materials that can be produced from a Mandatory Source are insufficient for the Work, and it becomes necessary to move to another source, the Agency will pay for the reasonable cost of moving the plant to, and erecting it at, a new approved source from which specified Materials can be produced. Adjustment in hauling costs, other costs, and Contract Time will be determined as provided in 00140.30.

No allowance, reimbursement, compensation, or adjustment will be made for changes in the use of sources, or for moving from one source to another, except as provided above.

**00160.50 Agency-Controlled Land; Limitations and Requirements:**

**(a) General** - The Contractor shall have no property rights in, or right of occupancy on, Agency-Controlled Land. Nor shall the Contractor have the right to sell, use, remove, or otherwise dispose of any material from Agency-Controlled Land, except upon the written authorization of the Engineer.

Unless authorized in the Contract, the Contractor shall not disturb any materials within Rights-of-Way without written authorization from the Engineer.

Unless otherwise specified in the Contract, the ownership of all materials originating on Agency-Controlled Lands will at all times vest in, and remain the property of, the Agency.

**(b) Waste, Excess, and By-Product Materials** – All waste, excess, and by-product materials, collectively referred to in this Subsection as “By-Products”, from the manufacture or production of Materials shall remain Agency property. Unless otherwise ordered by the Engineer in writing, By-Products shall be placed as required by the development plan:

- In stockpiles at designated locations;

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- At locations and in shapes that are readily accessible; and
  - In such a manner as to avoid fouling areas containing useable materials or interfering with future plant setups to use materials from the property.

The Agency will not compensate the Contractor for handling and stockpiling By-Products in accordance with the development plan requirements. If by written order the Engineer directs the Contractor to stockpile or place designated By-Products at alternate sites, the By-Products designated shall be loaded, hauled, and placed as directed, and this work will be paid for as Extra Work.

**00160.60 Contractor-Furnished Materials and Sources:**

**(a) General** - The Contractor shall furnish, at its own expense, all products and Materials required for the Project from sources of its own choosing, unless such sources have been designated in the **Special Provisions** or Plans as Prospective or Mandatory Sources.

**(b) Acquisition of Sources** - The Contractor shall acquire, at its own expense, the rights of access to, and the use of, all sources the Contractor chooses which are not Agency-controlled and made available by the Agency to the Contractor.

**(c) Additional Requirements** - Except for continuously-operated commercial sources, Work shall not begin, nor will any Materials be accepted by the Engineer, until the Contractor has done the following:

**(1)** Given to the Engineer a copy of permits from, or proof that permits are not required from:

- The Department of Geology and Mineral Industries, as required under ORS 517.790;
- The Division of State Lands, as required under ORS 196.815 (when removing material from the bed or banks of any waters or from any Wetland); and
- Local governmental authorities having jurisdiction over land use at the source location.

**(2)** Furnished to the Engineer written approval of the property owner, if other than the Contractor, for Contractor's proposed plans of operation in, and reclamation of, the source. The Contractor shall include in the document containing the property owner's written approval a summary of the requirements of the permits described above, which shall be subject to the Engineer's approval.

**00160.70 Requirements for Plant Operations** - Before operating mixing plants, rock crushers, or other Equipment, the Contractor shall provide the Engineer copies of all applicable discharge permits for noise, air contaminants, and water pollutants from DEQ or applicable local jurisdictions, or a letter from DEQ or local jurisdiction stating that no permits are required for the use of the Equipment and sites.

**DB160.80 Requirements for Sources of Borrow and Aggregate** – The Contractor shall conduct operations according to all applicable federal, State, and local laws (including without limitation ORS 517 and OAR 632-030) when developing, using, and reclaiming all sources of Borrow material and Aggregate. The Contractor shall provide erosion control at Borrow sources that are not within the Project Site. The Contractor shall not operate in Wetlands except as allowed by permit. The Contractor shall comply with all requirements for pollution and sediment control, including without limitation the National Pollutant Discharge Elimination System where applicable.

Except for continuously-operated commercial sources, the Contractor shall also conform to the following:

**(a)** If a natural growth of trees or shrubs is present, the Contractor shall preserve a border of such to conceal land scars.

**(b)** Excavate Borrow sources and Aggregate sources, except for those in streams and rivers, to provide:

- Reasonably uniform depths and widths;
- Natural drainage so no water stands or collects in excavated areas, when practicable;

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- Slopes trimmed to blend with the adjacent terrain upon completion of operations;
  - Slopes covered with native soil, or acceptable plant rejects to support plant growth, if required by Specifications, Plans, or permits; and
  - A vegetative cover that blends with the adjacent natural growth.

**(c)** Excavate in quarries so that:

- Faces will not be steeper than vertical (no overhang);
- Vertical faces conform to Oregon OSHA Standards, Division 3, and as shown on an approved development plan;
- Floors or benches are excavated to a uniform slope free of depressions and will drain and not interfere with the downland owner's property; and
- Upon completion, the quarry is left appearing neat and compatible with surrounding terrain.

**(d)** Obliterate haul roads specifically built for access to sources and restore the areas disturbed by these roads as nearly as practicable to the conditions that existed before the roads were built, unless otherwise directed by the landowner or regulatory body.

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## SECTION 00165 – QUALITY OF MATERIALS

### Description

**00165.00 General** - The Contractor shall incorporate into the Work only Materials conforming to the Specifications and approved by the Engineer. The Contractor shall incorporate into the Work only manufactured products made of new materials unless otherwise specified in the Contract. The Agency may require additional testing or retesting to determine whether the Materials or manufactured products meet Specifications.

Materials or manufacturer products not meeting the Specifications at the time they are to be used are unacceptable and must be removed immediately from the Project Site, unless otherwise directed by the Engineer.

**00165.01 Rejected Materials** – The Engineer may reject any Materials that appear to be defective (00150.25) or that contain asbestos. The Contractor shall not incorporate any rejected Materials into the Work. Rejected Materials whose defects have been corrected may not be incorporated into the Work until the Engineer has approved their use. The Engineer may order the removal and replacement by the Contractor, at Contractor's expense, of any defective Materials. (refer also to 00150.20).

**00165.02 Materials Conformance and Quality Compliance Documents** - For purposes of this Section, "Materials Conformance Documents" means the Contractor's quality-control, the Agency's verification, and the independent assurance test results, and the identity of the testing facility. "Quality Compliance Documents" means those documents specified in ODOT's Nonfield-Tested Materials Acceptance Guide unless otherwise specified in the Contract.

**00165.03 Testing by Agency** - When testing Materials, the Agency will conduct the tests in its central laboratory, field laboratories, or other laboratories designated by the Engineer, even though certain AASHTO, ASTM, and other Materials specifications may require testing at the place of manufacture. Results of the Agency's tests will be made available to the Contractor.

**00165.04 Costs of Testing** - When the Contract requires that the Agency performs the testing, the testing will be at the Agency's expense. The Agency will pay the cost of Contractor-requested source-review tests on unprocessed Aggregates from no more than two (2) sources for each Project, and on no more than three (3) unprocessed samples from each source. Additional source-review tests performed at the Contractor's request shall be at the Contractor's expense.

Unless otherwise provided in the Contract, all testing required to be performed by the Contractor will be at the Contractor's expense.

### Provisions and Requirements

**00165.10 Materials Acceptance Guides** - Unless otherwise specified elsewhere in the Contract, Materials will be accepted according to the following guides:

**(a) Field-Tested Materials** - Field-tested Materials will be accepted according to the ODOT Manual of Field Test Procedures ("MFTP"). The MFTP is available at the ODOT Procurement Office - Construction, Contractor Plans, 455 Airport Road, S.E., Bldg. K, Salem, Oregon 97301-5348 (telephone 503-986-6936).

**(b) NonField-Tested Materials** - Nonfield-tested Materials will be accepted according to the ODOT Nonfield-Tested Materials Acceptance Guide ("NTMAG"), unless otherwise specified in the Contract. The NTMAG is available at the ODOT Procurement Office – Construction, Contractor Plans.

**00165.20 Materials Specifications and Test Method References** - References to Materials specifications and test methods of ODOT, WAQTC, AASHTO, ASTM, other governmental agencies, or other recognized organizations, mean those officially adopted and in current use by the agency or organization on the date the Request for Proposals is released.

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If there are conflicting references, or if no reference is made to Materials specifications or test method, Materials must meet the Materials specifications or test methods required by the first applicable of the following agencies and organizations:

- Field-Tested Materials:
  - (1) Special Provisions;
  - (2) MFTP
  - (3) Supplemental Specifications; and
  - (4) Standard Specifications
  
- Nonfield Tested Materials:
  - (1) ODOT;
  - (2) WAQTC;
  - (3) AASHTO;
  - (4) ASTM;
  - (5) Other recognized national organizations, such as ANSI, AWPA, IMSA, and UL; and
  - (6) Industry standards in the location where the Work is being performed.

If there are conflicting references in the Contract or the Quality Assurance program, to required sampling and testing frequencies, the Contractor shall sample and test the Materials according to the first applicable of the following:

- (1) **Special Provisions;**
- (2) MFTP;
- (3) Supplemental Specifications; and
- (4) **Standard Specifications.**

**00165.30 Field-Tested Materials:**

**(a) Contractor Duties** – The Contractor shall:

- Furnish Materials of the quality specified in the Contract;
- Provide and administer a quality control program as described in the Quality Assurance Manual portion of the MFTP. Upon request, the Contractor shall provide to the Engineer the names, telephone numbers, and copies of certifications for all personnel performing field testing; and
- Perform other testing as required by the Contract.

**(b) Types of Tests** - The types of tests and testing methods generally required by ODOT are described in the MFTP.

**(c) Acceptance of Field-Tested Materials** – The Contractor's test results for field-tested Materials will be verified by the Agency according to the Quality Assurance program outlined in the MFTP. If the Agency's QA test results verify the Contractor's results, the Materials will be analyzed for acceptance according to one of the following methods before the Engineer will accept them for incorporation into the Work:

- Statistically, according to 00165.40, to determine "Pay Factors" for produced Aggregate;
- Statistically, 00165.40, to determine "Composite Pay Factors" for mixtures; or

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- Other methods determined by the Engineer.

If acceptance testing reveals that the Contractor's data is incorrect, the Agency may require additional testing to determine whether the Materials meet Specifications. The Contractor shall perform additional quality control testing or provide split samples to the Agency for additional testing as directed. If the Materials do not meet Specifications, the Contractor shall reimburse the Agency for the cost of the additional testing, which may be deducted from monies due or to become due the Contractor under the Contract. Incorporated Materials that do not meet Specifications will be evaluated according to 00165.01 and 00150.25. If the Materials meet Specifications the Agency will pay the cost for the additional testing.

**00165.35 NonField-Tested Materials** - The Contractor shall furnish Materials meeting Specifications, along with Materials Conformance and Quality Compliance Documents.

**(a) Test Results Certificate** - The Certificate shall:

- Be from the manufacturer verifying that the Material furnished has been sampled and tested, and the test results meet the Specifications.
- Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL, or other).
- Identify the testing agency and the representative responsible for the test results.
- Permit positive determination that Material delivered to the Project Site is the same Material covered by the test results.
- Be delivered to the Engineer with the shipment of the Material.

**(b) Quality Compliance Certificate** - The Certificate from the manufacturer shall:

- Verify that the Material meets the Specifications, and identify by number the specified test methods used (ODOT, AASHTO, ASTM, UL, or other).
- Permit positive determination that Material delivered to the Project Site is the same Material covered by the certificate.
- Be delivered to the Engineer with the shipment of the Material, or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material.

**(c) Equipment List and Drawings** – These consist of lists of proposed Equipment and Materials, such as:

- Shop drawings
- Material lists
- Equipment lists
- Catalog description sheets
- Manufacturer's brochures

Submit these lists to the Engineer for review of conformance with the Specifications.

**(d) Certificate of Origin of Steel Materials** – When specified, complete this document (ODOT Form 734-2126) as required by 00160.20 for Federal-aid projects.

Materials will be subject to acceptance testing if the Engineer so elects. The Engineer may reject damaged or non-Specification Materials regardless of the Materials Conformance Documents furnished.

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**00165.40 Statistical Analysis** - When 00165.30(c) or 00165.50 applies, the Contractor shall divide the Materials into lots and sublots, randomly sample and test them as required, and analyze the results statistically to determine whether the Materials conform to the Specifications.

All acceptance test results of lots and sublots shall be analyzed collectively using the Quality Level Analysis procedure set out in this Subsection. This procedure shall not be used for a lot with less than three (3) sublots. Sampling of Material for a lot that contains two (2) or fewer sublots shall be increased to obtain at least three (3) sublots. The Engineer has discretion to either accept or reject lots originating with two (2) or fewer sublots, even after sampling is increased.

**(a) Lot** - A lot is the quantity of Materials produced by a single process or JMF that is sampled, tested, and statistically evaluated as specified in this Subsection.

**(b) Sublot** - A sublot is a portion of a lot for which a sample test value may be normally obtained.

**(c) Quality Level Analysis** - Quality Level Analysis is a statistical procedure to determine, for each lot:

- The percentage of each constituent of the Materials meeting Specifications;
- The Pay Factor for each constituent; and
- The Composite Pay Factor, when specified.

**(d) Pay Factor and Composite Pay Factor Computation** - Procedures for determining the percent meeting Specifications, Pay Factors, and Composite Pay Factor for a lot of Materials are as follows:

**(1)** Compute lot arithmetic mean ( $\bar{X}$ ) for each constituent:

$$\bar{X} = \frac{\sum X}{n}$$

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Where  $\Sigma X$  = summation of sample test values  
 $n$  = total number of samples

**(2)** Compute standard deviation (sd) for each constituent:

$$sd = \sqrt{\frac{\Sigma x^2 - \frac{(\Sigma x)^2}{n}}{n-1}}$$

Where  $\Sigma x^2$  = summation of the squares of each sample test value  
 $\bar{x}^2$  = square of the lot arithmetic mean

**(3)** Compute the upper quality index ( $Q_U$ ) for each constituent:

$$Q_U = \frac{USL - \bar{x}}{sd}$$

Where USL (upper Specification limit) is the target value plus allowable tolerance

**(4)** Compute the lower quality index ( $Q_L$ ) for each constituent:

$$Q_L = \frac{\bar{x} - LSL}{sd}$$

Where LSL (lower specification limit) is the target value minus allowable tolerance.

**(5)** From Table 00165-1, for each constituent, determine the percent within the upper specification limit ( $P_U$ ) which corresponds to a given  $Q_U$ . If USL is 100% or is not specified,  $P_U$  will be 100.

**(6)** From Table 00165-1, for each constituent, determine the percent within the lower Specification limit ( $P_L$ ) which corresponds to a given  $Q_L$ . If LSL is 0 or not specified,  $P_L$  will be 100.

**(7)** Compute the quality level, or total percent within Specification limits ( $P_T$ ), for each constituent:

$$P_T = (P_U + P_L) - 100$$

**(8)** Using the  $P_T$  from Step 7, determine the Pay Factor (PF) from Table 00165-2 for each constituent tested. A minimum PF of 1.00 will be used when all subplot test values are within the upper and lower specification limits, regardless of the calculated PF.

**(9)** Compute the Weighted Pay Factor (WPF) for each constituent:

$$WPF = (PF) \times (f_i)$$

Where  $f_i$  = weighting factor listed in the Specifications for each constituent tested.

**(10)** Compute the Composite Pay Factor (CPF) for the lot and report the results to three decimal places.

$$CPF = \frac{\Sigma WPF}{\Sigma f_i}$$

Where  $\frac{\Sigma WPF}{\Sigma f_i}$  = sum of the weighted pay factors for each constituent  
 $\Sigma f_i$  = sum of the weighting factors listed in the specifications

**Table 00165-1**

| <b>QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD</b>  |   |       |       |       |       |       |       |              |
|---|---|-------|-------|-------|-------|-------|-------|--------------|
| P <sub>U</sub> or P <sub>L</sub><br>PERCENT<br>WITHIN LIMITS<br>FOR POSITIVE<br>VALUES OF Q <sub>U</sub><br>or Q <sub>L</sub> | <b>UPPER QUALITY INDEX Q<sub>U</sub> OR LOWER QUALITY INDEX Q<sub>L</sub></b> |       |       |       |       |       |       |              |
|   |   |       |       |       |       |       |       | n = 10<br>to |
|   | n = 3   | n = 4 | n = 5 | n = 6 | n = 7 | n = 8 | n = 9 | n = 11       |
| 100   | 1.16  | 1.50  | 1.79  | 2.03  | 2.23  | 2.39  | 2.53  | 2.65         |
| 99  | -   | 1.47  | 1.67  | 1.80  | 1.89  | 1.95  | 2.00  | 2.04         |
| 98  | 1.15  | 1.44  | 1.60  | 1.70  | 1.76  | 1.81  | 1.84  | 1.86         |
| 97  | -   | 1.41  | 1.54  | 1.62  | 1.67  | 1.70  | 1.72  | 1.74         |
| 96  | 1.14  | 1.38  | 1.49  | 1.55  | 1.59  | 1.61  | 1.63  | 1.65         |
| 95  | -   | 1.35  | 1.44  | 1.49  | 1.52  | 1.54  | 1.55  | 1.56         |
| 94  | 1.13  | 1.32  | 1.39  | 1.43  | 1.46  | 1.47  | 1.48  | 1.49         |
| 93  | -   | 1.29  | 1.35  | 1.38  | 1.40  | 1.41  | 1.42  | 1.43         |
| 92  | 1.12  | 1.26  | 1.31  | 1.33  | 1.35  | 1.36  | 1.36  | 1.37         |
| 91  | 1.11  | 1.23  | 1.27  | 1.29  | 1.30  | 1.30  | 1.31  | 1.31         |
| 90  | 1.10  | 1.20  | 1.23  | 1.24  | 1.25  | 1.25  | 1.26  | 1.26         |
| 89  | 1.09  | 1.17  | 1.19  | 1.20  | 1.20  | 1.21  | 1.21  | 1.21         |
| 88  | 1.07  | 1.14  | 1.15  | 1.16  | 1.16  | 1.16  | 1.16  | 1.17         |
| 87  | 1.06  | 1.11  | 1.12  | 1.12  | 1.12  | 1.12  | 1.12  | 1.12         |
| 86  | 1.04  | 1.08  | 1.08  | 1.08  | 1.08  | 1.08  | 1.08  | 1.08         |
| 85  | 1.03  | 1.05  | 1.05  | 1.04  | 1.04  | 1.04  | 1.04  | 1.04         |
| 84  | 1.01  | 1.02  | 1.01  | 1.01  | 1.00  | 1.00  | 1.00  | 1.00         |
| 83  | 1.00  | 0.99  | 0.98  | 0.97  | 0.97  | 0.96  | 0.96  | 0.96         |
| 82  | 0.97  | 0.96  | 0.95  | 0.94  | 0.93  | 0.93  | 0.93  | 0.92         |
| 81  | 0.96  | 0.93  | 0.91  | 0.90  | 0.90  | 0.89  | 0.89  | 0.89         |
| 80  | 0.93  | 0.90  | 0.88  | 0.87  | 0.86  | 0.86  | 0.86  | 0.85         |
| 79  | 0.91  | 0.87  | 0.85  | 0.84  | 0.83  | 0.82  | 0.82  | 0.82         |
| 78  | 0.89  | 0.84  | 0.82  | 0.80  | 0.80  | 0.79  | 0.79  | 0.79         |
| 77  | 0.87  | 0.81  | 0.78  | 0.77  | 0.76  | 0.76  | 0.76  | 0.75         |
| 76  | 0.84  | 0.78  | 0.75  | 0.74  | 0.73  | 0.73  | 0.72  | 0.72         |
| 75  | 0.82  | 0.75  | 0.72  | 0.71  | 0.70  | 0.70  | 0.69  | 0.69         |
| 74  | 0.79  | 0.72  | 0.69  | 0.68  | 0.67  | 0.66  | 0.66  | 0.66         |
| 73  | 0.76  | 0.69  | 0.66  | 0.65  | 0.64  | 0.63  | 0.63  | 0.62         |
| 72  | 0.74  | 0.66  | 0.63  | 0.62  | 0.61  | 0.60  | 0.60  | 0.59         |
| 71  | 0.71  | 0.63  | 0.60  | 0.59  | 0.58  | 0.57  | 0.57  | 0.57         |
| 70  | 0.68  | 0.60  | 0.57  | 0.56  | 0.55  | 0.55  | 0.54  | 0.54         |
| 69  | 0.65  | 0.57  | 0.54  | 0.53  | 0.52  | 0.52  | 0.51  | 0.51         |
| 68  | 0.62  | 0.54  | 0.51  | 0.50  | 0.49  | 0.49  | 0.48  | 0.48         |
| 67  | 0.59  | 0.51  | 0.47  | 0.47  | 0.46  | 0.46  | 0.46  | 0.45         |
| 66  | 0.56  | 0.48  | 0.45  | 0.44  | 0.44  | 0.43  | 0.43  | 0.43         |
| 65  | 0.52  | 0.45  | 0.43  | 0.41  | 0.41  | 0.40  | 0.40  | 0.40         |
| 64  | 0.49  | 0.42  | 0.40  | 0.39  | 0.38  | 0.38  | 0.37  | 0.37         |
| 63  | 0.46  | 0.39  | 0.37  | 0.36  | 0.35  | 0.35  | 0.35  | 0.34         |
| 62  | 0.43  | 0.36  | 0.34  | 0.33  | 0.32  | 0.32  | 0.32  | 0.32         |
| 61  | 0.39  | 0.33  | 0.31  | 0.30  | 0.30  | 0.29  | 0.29  | 0.29         |
| 60  | 0.36  | 0.30  | 0.28  | 0.27  | 0.27  | 0.27  | 0.26  | 0.26         |
| 59  | 0.32  | 0.27  | 0.25  | 0.25  | 0.25  | 0.24  | 0.24  | 0.24         |
| 58  | 0.29  | 0.24  | 0.23  | 0.22  | 0.21  | 0.21  | 0.21  | 0.21         |
| 57  | 0.25  | 0.21  | 0.20  | 0.19  | 0.19  | 0.19  | 0.18  | 0.18         |
| 56  | 0.22  | 0.18  | 0.17  | 0.16  | 0.16  | 0.16  | 0.16  | 0.16         |
| 55  | 0.18  | 0.15  | 0.14  | 0.14  | 0.13  | 0.13  | 0.13  | 0.13         |

**Table 00165-1**

| <b>QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD</b>  |   |       |       |       |       |       |       |                        |
|---|---|-------|-------|-------|-------|-------|-------|------------------------|
| P <sub>U</sub> or P <sub>L</sub><br>PERCENT<br>WITHIN LIMITS<br>FOR POSITIVE<br>VALUES OF Q <sub>U</sub><br>or Q <sub>L</sub> | <b>UPPER QUALITY INDEX Q<sub>U</sub> OR LOWER QUALITY INDEX Q<sub>L</sub></b> |       |       |       |       |       |       |                        |
|   | n = 3   | n = 4 | n = 5 | n = 6 | n = 7 | n = 8 | n = 9 | n = 10<br>to<br>n = 11 |
| 54  | 0.14  | 0.12  | 0.11  | 0.11  | 0.11  | 0.11  | 0.10  | 0.10                   |
| 53  | 0.11  | 0.09  | 0.08  | 0.08  | 0.08  | 0.08  | 0.08  | 0.08                   |
| 52  | 0.07  | 0.06  | 0.06  | 0.05  | 0.05  | 0.05  | 0.05  | 0.05                   |
| 51  | 0.04  | 0.03  | 0.03  | 0.03  | 0.03  | 0.03  | 0.03  | 0.03                   |
| 50  | 0.00  | 0.00  | 0.00  | 0.00  | 0.00  | 0.00  | 0.00  | 0.00                   |

NOTE: For negative values of Q<sub>U</sub> or Q<sub>L</sub>, P<sub>U</sub> or P<sub>L</sub> is equal to 100 minus the table value for P<sub>U</sub> or P<sub>L</sub>. If the value of Q<sub>U</sub> or Q<sub>L</sub> does not correspond exactly to a figure in the table, use the next higher figure.

**Table 00165-2**

| <b>REQUIRED QUALITY LEVEL FOR A GIVEN<br/>SAMPLE SIZE (n) AND A GIVEN PAY FACTOR</b> |       |       |       |       |       |       |       |                        |
|--|-------|-------|-------|-------|-------|-------|-------|------------------------|
| PAY FACTOR   |       |       |       |       |       |       |       |                        |
|  | n = 3 | n = 4 | n = 5 | n = 6 | n = 7 | n = 8 | n = 9 | n = 10<br>to<br>n = 11 |
| 1.05   | 100   | 100   | 100   | 100   | 100   | 100   | 100   | 100                    |
| 1.04   | 90    | 91    | 92    | 93    | 93    | 93    | 94    | 94                     |
| 1.03   | 80    | 85    | 87    | 88    | 89    | 90    | 91    | 91                     |
| 1.02   | 75    | 80    | 83    | 85    | 86    | 87    | 88    | 88                     |
| 1.01   | 71    | 77    | 80    | 82    | 84    | 85    | 85    | 86                     |
| 1.00   | 68    | 74    | 78    | 80    | 81    | 82    | 83    | 84                     |
| 0.99   | 66    | 72    | 75    | 77    | 79    | 80    | 81    | 82                     |
| 0.98   | 64    | 70    | 73    | 75    | 77    | 78    | 79    | 80                     |
| 0.97   | 62    | 68    | 71    | 74    | 75    | 77    | 78    | 78                     |
| 0.96   | 60    | 66    | 69    | 72    | 73    | 75    | 76    | 77                     |
| 0.95   | 59    | 64    | 68    | 70    | 72    | 73    | 74    | 75                     |
| 0.94   | 57    | 63    | 66    | 68    | 70    | 72    | 73    | 74                     |
| 0.93   | 56    | 61    | 65    | 67    | 69    | 70    | 71    | 72                     |
| 0.92   | 55    | 60    | 63    | 65    | 67    | 69    | 70    | 71                     |
| 0.91   | 53    | 58    | 62    | 64    | 66    | 67    | 68    | 69                     |
| 0.90   | 52    | 57    | 60    | 63    | 64    | 66    | 67    | 68                     |
| 0.89   | 51    | 55    | 59    | 61    | 63    | 64    | 66    | 67                     |
| 0.88   | 50    | 54    | 57    | 60    | 62    | 63    | 64    | 65                     |
| 0.87   | 48    | 53    | 56    | 58    | 60    | 62    | 63    | 64                     |
| 0.86   | 47    | 51    | 55    | 57    | 59    | 60    | 62    | 63                     |
| 0.85   | 46    | 50    | 53    | 56    | 58    | 59    | 60    | 61                     |
| 0.84   | 45    | 49    | 52    | 55    | 56    | 58    | 59    | 60                     |
| 0.83   | 44    | 48    | 51    | 53    | 55    | 57    | 58    | 59                     |
| 0.82   | 42    | 46    | 50    | 52    | 54    | 55    | 57    | 58                     |

| Table 00165-2   |   |       |       |       |       |       |       |              |
|---|---|-------|-------|-------|-------|-------|-------|--------------|
| REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR |   |       |       |       |       |       |       |              |
| PAY FACTOR  |   |       |       |       |       |       |       | n = 10<br>to |
|   | n = 3   | n = 4 | n = 5 | n = 6 | n = 7 | n = 8 | n = 9 | n = 11       |
| 0.81  | 41  | 45    | 48    | 51    | 53    | 54    | 56    | 57           |
| 0.80  | 40  | 44    | 47    | 50    | 52    | 53    | 54    | 55           |
| 0.79  | 38  | 43    | 46    | 48    | 50    | 52    | 53    | 54           |
| 0.78  | 37  | 41    | 45    | 47    | 49    | 51    | 52    | 53           |
| 0.77  | 36  | 40    | 43    | 46    | 48    | 50    | 51    | 52           |
| 0.76  | 34  | 39    | 42    | 45    | 47    | 48    | 50    | 51           |
| 0.75  | 33  | 38    | 41    | 44    | 46    | 47    | 49    | 50           |
| REJECT  | QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75 |       |       |       |       |       |       |              |

NOTE: If the computed Quality Level does not correspond exactly to a figure in the table, use the next lower value.

| Table 00165-3   |                        |                        |                        |                        |                        |                         |                        |
|---|------------------------|------------------------|------------------------|------------------------|------------------------|-------------------------|------------------------|
| REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR |                        |                        |                        |                        |                        |                         |                        |
| PAY FACTOR  | n = 12<br>to<br>n = 14 | n = 15<br>to<br>n = 18 | n = 19<br>to<br>n = 25 | n = 26<br>to<br>n = 37 | n = 38<br>to<br>n = 69 | n = 70<br>to<br>n = 200 | n = 201<br>to<br>n = ∞ |
|   | 1.05                   | 100                    | 100                    | 100                    | 100                    | 100                     | 100                    |
| 1.04  | 95                     | 95                     | 96                     | 96                     | 97                     | 97                      | 99                     |
| 1.03  | 92                     | 93                     | 93                     | 94                     | 95                     | 95                      | 97                     |
| 1.02  | 89                     | 90                     | 91                     | 92                     | 93                     | 94                      | 95                     |
| 1.01  | 87                     | 88                     | 89                     | 90                     | 91                     | 93                      | 94                     |
| 1.00  | 85                     | 86                     | 87                     | 89                     | 90                     | 91                      | 93                     |
| 0.99  | 83                     | 85                     | 86                     | 87                     | 88                     | 90                      | 92                     |
| 0.98  | 81                     | 83                     | 84                     | 85                     | 87                     | 88                      | 90                     |
| 0.97  | 80                     | 81                     | 83                     | 84                     | 85                     | 87                      | 89                     |
| 0.96  | 78                     | 80                     | 81                     | 83                     | 84                     | 86                      | 88                     |
| 0.95  | 77                     | 78                     | 80                     | 81                     | 83                     | 85                      | 87                     |
| 0.94  | 75                     | 77                     | 78                     | 80                     | 81                     | 83                      | 86                     |
| 0.93  | 74                     | 75                     | 77                     | 78                     | 80                     | 82                      | 84                     |
| 0.92  | 72                     | 74                     | 75                     | 77                     | 79                     | 81                      | 83                     |
| 0.91  | 71                     | 73                     | 74                     | 76                     | 78                     | 80                      | 82                     |
| 0.90  | 70                     | 71                     | 73                     | 75                     | 76                     | 79                      | 81                     |
| 0.89  | 68                     | 70                     | 72                     | 73                     | 75                     | 77                      | 80                     |
| 0.88  | 67                     | 69                     | 70                     | 72                     | 74                     | 76                      | 79                     |
| 0.87  | 66                     | 67                     | 69                     | 71                     | 73                     | 75                      | 78                     |
| 0.86  | 64                     | 66                     | 68                     | 70                     | 72                     | 74                      | 77                     |
| 0.85  | 63                     | 65                     | 67                     | 69                     | 71                     | 73                      | 76                     |

**Table 00165-3**

| <b>REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR</b> |  |              |              |              |              |               |             |
|--|--|--------------|--------------|--------------|--------------|---------------|-------------|
| <b>PAY FACTOR</b>  | n = 12   | n = 15       | n = 19       | n = 26       | n = 38       | n = 70        | n = 201     |
|  | to<br>n = 14   | to<br>n = 18 | to<br>n = 25 | to<br>n = 37 | to<br>n = 69 | to<br>n = 200 | to<br>n = ∞ |
| 0.84   | 62   | 64           | 65           | 67           | 69           | 72            | 75          |
| 0.83   | 61   | 63           | 64           | 66           | 68           | 71            | 74          |
| 0.82   | 60   | 61           | 63           | 65           | 67           | 70            | 72          |
| 0.81   | 58   | 60           | 62           | 64           | 66           | 69            | 71          |
| 0.80   | 57   | 59           | 61           | 63           | 65           | 67            | 70          |
| 0.79   | 56   | 58           | 60           | 62           | 64           | 66            | 69          |
| 0.78   | 55   | 57           | 59           | 61           | 63           | 65            | 68          |
| 0.77   | 52   | 56           | 57           | 60           | 62           | 64            | 67          |
| 0.76   | 51   | 55           | 56           | 58           | 61           | 63            | 66          |
| 0.75   | 51   | 53           | 55           | 57           | 59           | 62            | 65          |
| <b>REJECT</b>  | <b>QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75</b> |              |              |              |              |               |             |

**NOTE:** If the computed Quality Level does not correspond exactly to a figure in the table, use the next lower value.

**00165.50 Statistical Acceptance Sampling and Testing** - The Contractor shall sample and test Materials for acceptance, as required by the Contract. The Contractor may statistically evaluate test results for purposes of quality control, or to predict a Pay Factor or Composite Pay Factor. The following apply:

**(a) Statistical Acceptance** – The Engineer will perform statistical analysis according to 00165.40 for acceptance and to determine a Pay Factor (PF) or Composite Pay Factor (CPF). The Engineer’s determination of the PF or CPF shall be controlling.

**(b) Pay Adjustments** - As an incentive to produce quality Materials, the Engineer’s acceptance will be based upon the following:

**(1) Specification Materials** - Any constituent with a PF of 1.00 or greater, or any Materials with a CPF of 1.0000 or greater, will be considered Specification Materials. A constituent with a PF greater than 1.00 or Materials with a CPF greater than 1.0000 will be considered of superior quality and, when specified, may earn a PF adjustment greater than 1.00, up to a maximum of 1.05.

**(2) Non-Specification Materials** - Any constituent with a PF less than 1.00, or any Materials with a CPF less than 1.0000 will be considered non-Specification Materials. When specified, a lot containing non-Specification Materials may be accepted at a reduced price as described in (c) below.

**(c) Non-Specification Materials:**

**(1) Isolation of a Partial Sublot** – The Engineer may isolate from a subplot any Material that is suspected of being nonspecification. The Contractor shall perform additional testing or provide split samples to the Agency as directed. Such isolated Material will not include an original test location.

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**(2) Isolation of an Entire Sublot** – The Engineer may isolate from a subplot or a series of sublots in which tests show the Material to be nonspecification. The Contractor shall perform additional testing or provide split samples to the Agency as directed. Isolated Material will be statistically evaluated as a separate lot.

**(3) A Lot-in-Progress** – The Contractor shall shut down production when any of the following occurs:

- The CPF for a lot-in-progress drops below 1.0000, and the Contractor is taking no corrective action;
- The CPF is less than 0.7500; or
- Any constituent test is continually out of specification limits, regardless of whether or not the CPF is below 0.7500.

The Contractor shall not resume production until the Engineer has determined that Specification Materials can be produced, and has given approval to resume.

**(4) An Entire Lot** - The Engineer may reject an entire lot of Materials with a CPF between 0.7500 and 1.0000, or may take action according to 00150.25.

For a lot of Material with a CPF below 0.7500, the Engineer will take one or more of the following actions:

**a. Remain in Place** – Allow Materials to remain in place with an appropriate price reduction that may range from 25% to 100% (no payment);

**b. Corrective Work** – Require corrective work, at the Contractor's expense, with an appropriate price reduction that may range from zero (full payment) to 100% (no payment); or

**c. Remove and Replace** - Require complete removal and replacement with Specification Materials. No payment will be made for the rejected Materials, the cost of removal, or for the costs of sampling and testing.

**00165.70 Use of Materials without Acceptable Materials Conformance Documents:**

**(a) General** - The Contractor shall not incorporate Materials into the Project prior to submittal of Materials Conformance Documents acceptable to the Engineer. The Engineer may waive this requirement temporarily if Materials are necessary for immediate traffic safety.

**(b) Materials Incorporated for Immediate Traffic Safety** - If Materials are incorporated into the Project for immediate traffic safety before acceptable Materials Conformance Documents are available, no payment will be made for the value of the Materials, or the costs of incorporating them, until acceptable Materials Conformance Documents have been submitted to and approved by the Engineer, or the Materials are otherwise found through testing to comply with Specifications.

**(c) Contractor Request for Testing Assistance** - If acceptable Materials Conformance Documents are not available, the Contractor may either have the necessary tests performed at a private laboratory or request in writing that the Engineer:

- Determine if the Agency or its agents can sample and test;
- Estimate the cost to the Contractor for the testing service; and

- Estimate the time required to obtain the test results.

The Engineer will provide this information to the Contractor in writing. If the Contractor requests the Engineer, in writing, to proceed, the Engineer will arrange for the sampling and testing at the Contractor's expense. If these tests determine the Material complies with the Specifications, the Materials may be incorporated into the Project or for Materials previously incorporated according to (b) above, payment will be authorized.

**00165.75 Storage and Handling of Materials** – The Contractor shall store and handle Materials so as to preserve their quality and fitness for incorporation into the Work. The Contractor shall restore all storage sites to their original condition according to 00140.90, or to comply with any applicable permits, orders, or agreements, at the Contractor's expense.

Stored Materials:

- Shall be readily accessible for Inspection;
- May be stored on approved parts of the Right-of-Way; and
- May be stored on private property if written permission of the owner or lesser is obtained.

**Measurement**

**00165.80 Measurement** – No separate measurement will be made of Work performed under this Section.

**Payment**

**00165.90 Incidental Basis** – No separate or additional payment will be made for sampling, testing, certification, or other associated Work performed under this Section, whether performed by the Contractor, manufacturer, producer, or supplier. No payment will be made for providing quality control personnel.

**00165.91 Fabrication Inspection Expense** - Fabrication of certain items outside of the State creates additional shop and plant Inspection expense to the Agency. It is impractical, and extremely difficult, to determine the actual additional expenses incurred. Therefore, each time that Inspection by Agency personnel is necessary, payment to the Contractor will be reduced by an amount computed at the following rates:

| <b>Zone</b> | <b>Place of Fabrication</b>  | <b>Reduction in Payment</b>  |
|-------------|--|--|
| 1           | All of State of Oregon, and those portions of adjacent states within 50 airline miles of the Oregon border.    | \$0  |
| 2           | Outside of Zone 1, and up to 300 airline miles from the Oregon border.   | \$100 per Calendar Day   |
| 3           | Outside of Zone 2, up to 3,000 airline miles from the Oregon border, and within the continental United States. | Round trip coach airfare from Portland, Oregon plus \$100 per Calendar Day |

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| <b>Zone</b> | <b>Place of Fabrication</b>                                     | <b>Reduction in Payment</b>  |
|-------------|---|--|
| 4           | Outside of Zone 3, or outside of the continental United States. | Round trip coach airfare from Portland, Oregon plus \$150 per Calendar Day |

Calendar Day charges begin on the first day the Agency's inspector begins travel to begin work at the fabrication site, and continue each Calendar Day without interruption through the final day of travel back to the State. The Contractor will be notified in writing of the dates of beginning and ending of Calendar Days used in computing payment reduction.

This Subsection applies to all fabricated items or manufactured Materials that are inspected by Agency personnel when fabricated or manufactured in the State. They include, but are not limited to:

- Structural steel fabrication;
- Prestressed concrete members;
- Precast concrete;
- Signs;
- Preservative treatment of wood products;
- Epoxy coating of reinforcing steel, and
- Other items specifically identified in the Specifications as requiring fabrication site or in-plant inspection by the Agency.

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## SECTION 00170 – LEGAL RELATIONS AND RESPONSIBILITIES

### Description

**00170.00 General** - The Contractor shall comply with all laws, ordinances, codes, regulations and rules (collectively referred to as "Laws" in this Section), that relate to the Work or to those engaged in the Work. Where the provisions of the Contract are inconsistent or in conflict, the Contractor shall comply with the more stringent standard.

The Contractor shall indemnify, defend, and hold harmless the Agency and its representatives from liability arising from or related to the violation of Laws by those engaged in any phase of the Work. This provision does not apply to Work performed by Agency employees.

### Provisions and Requirements

**00170.01 Other Agencies Affecting Agency Contracts** - Representatives of regulatory bodies or units of government whose Laws may apply to the Work shall have access to the Work according to 00150.20(d). These may include, but are not limited to, those in the following (a), (b), (c), and (d).

The following federal, State, and local agencies are known to have enacted ordinances and regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

**(a) Federal Agencies:**

Agriculture, Department of  
Forest Service  
Natural Resource Conservation Service

Army, Department of the  
Corps of Engineers

Commerce, Department of  
National Marine Fisheries Service

Defense, Department of

Energy, Department of

Environmental Protection Agency (EPA)

Federal Energy Regulatory Commission

Geology Survey

Health and Human Services, Department of

Homeland Security, Department of  
U.S. Coast Guard (USCG)

Housing and Urban Development, Department of

Interior, Department of  
Heritage, Conservation, and Recreation Service  
Bureau of Indian Affairs  
Bureau of Land Management  
Bureau of Mines  
Bureau of Reclamation

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Geological Survey  
Minerals Management Service  
Office of Surface Mining, Reclamation, and Enforcement

Minerals Management Service

Solar Energy and Energy Conservation Bank

U. S. Fish and Wildlife Service

Labor, Department of  
Mine Safety and Health Administration  
Occupational Safety and Health Administration (OSHA)

Transportation, Department of  
Federal Highway Administration

Water Resources Council

**(b) State of Oregon Agencies:**

Administrative Services, Department of

Agriculture, Department of  
Natural Resources Division  
Soil and Water Conservation District

Columbia River Gorge Commission

Consumer and Business Services, Department of  
Insurance Division  
Oregon Occupational Safety and Health Division (OR-OSHA)

Energy, Office of

Environmental Quality, Department of (DEQ)

Fish and Wildlife, Department of

Forestry, Department of

Geology and Mineral Industries, Department of

Human Resources, Department of

Labor and Industries, Bureau of

Land Conservation and Development Department

Parks and Recreation, Department of

State Lands, Division of

Water Resources Department

**(c) Local Agencies:**

City Councils

County Courts

County Commissioners, Boards of

Design Commissions

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Historical Preservation Commissions  
Lane Regional Air Pollution Authority (LRAPA)  
Planning Commissioners  
Port Districts  
Special Districts

**(d) Oregon Federally Recognized Tribal Governments:**

Burns Paiute Tribe  
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians  
Confederated Tribes of Grande Ronde  
Confederated Tribes of Siletz  
Confederated Tribes of Umatilla Indian Reservation  
Confederated Tribes of Warm Springs  
Coquille Tribe  
Cow Creek Band of Umpqua Indians  
Klamath Tribe

**00170.02 Permits, Licenses, and Taxes** - As required to accomplish the Work, the Contractor shall do the following:

- Obtain all necessary permits and licenses, except for those noted in 00170.03;
- Pay all applicable charges, fees, and taxes, except for those noted in 00170.03;
- Give all notices required by applicable Laws or under the terms of the Contract;
- Comply with ORS 274.530 relating to the lease of stream beds by the Oregon Division of State Lands;
- License, in the State of Oregon, all vehicles subject to licensing;
- Comply with ORS 477.625 and ORS 527.670 relating to clearing and fire hazards on forest lands; and
- Comply with all orders and permits issued by a governmental authority, whether local, State, or federal.

**00170.03 Furnishing Right-of-Way and Permits** – Unless required to be obtained in the name of the Contractor, the Agency will obtain and pay for the following when they are required by applicable Laws or by Plans or Specifications:

- All necessary Rights-of-Way;
- Permits required for crossing or encroaching upon navigable streams;
- Permits required for removing materials from or depositing materials in waterways;
- Permits required for operating in an Agency-controlled source of Materials or disposal area;
- System development fees charged by local units of government;
- Building construction permits, not including specialty work such as heating, ventilation, air conditioning, or electrical;

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- Cost of referencing and replacing endangered survey monuments; and
  - Environmental permits, including erosion control permits.

**00170.04 Patents, Copyrights and Trademarks** - Prior to use of designs, devices, Materials, or processes protected by patent, copyright, or trademark, the Contractor shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of legal right.

The Contractor shall indemnify, defend, reimburse, and hold harmless the Agency and all third parties and political subdivisions having a possessory or ownership interest or regulatory authority over the Project or Project Site from claims of patent, copyright, or trademark infringement, and from costs, expenses, and damages the Contractor or the Agency may be obligated to pay as a result of such infringement during or after completing the Work.

**00170.05 Assignment of Antitrust Rights** – The Contractor irrevocably assigns to the Agency any claim for relief or cause of action the Contractor acquires during the term of the Contract, or which may accrue thereafter, by reason of any violation of:

- Title 15 (Commerce and Trade), United States Code;
- ORS 646.725; and
- ORS 646.730

In connection with this assignment, it is an express obligation of the Contractor to take no action that would in any way impair or diminish the value of the rights assigned to the Agency pursuant to the provisions of this Subsection. Further, it is the express obligation of the Contractor to take all action necessary to preserve the rights assigned. It is an express obligation of the Contractor to advise the Agency's legal counsel:

- In advance, of its intention to commence any action involving such claims for relief or causes of action;
- Immediately upon becoming aware of the fact that an action involving such claims for relief or causes of action has been commenced by some other person or persons;
- The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of the Contractor's assignment to the Agency according to the provisions of this Subsection; and
- Immediately upon the discovery of any such antitrust claim for relief or cause of action.

In the event any payment is made to the Contractor under any such claims for relief, the Contractor shall promptly pay the full sum over to the Agency. In the event the Contractor fails to make such payment, the Agency may deduct the amount from monies due or to become due to the Contractor under the Contract.

**00170.06 Federal-Aid Participation** – This Project is to be conducted according to the regulations applying to Federal-Aid Highway Projects.

**00170.07 Ownership of Work Product**

**(a) Work Product** - All Work Product created by the Contractor for the Project, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of the Agency. The Agency and the Contractor agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created for the Project is not "work made for hire," the Contractor hereby irrevocably assigns to the Agency any and all of its rights, title, and interest in all original Work Product created for the Project, whether arising from copyright, patent, trademark, trade secret, or any

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other state or federal intellectual property Law, doctrine or otherwise. The Contractor agrees to (a) ensure and confirm to the Agency that the Contractor's agreements with its Subcontractors, employees and agents conform to the requirements of this Subsection, and (b) execute such further documents and instruments as may be reasonably necessary or as Agency may reasonably request in order to fully vest such rights in the Agency. The Contractor forever waives and shall obtain waivers from its Subcontractors, employees and agents of any and all rights relating to original Work Product created for the Project, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**(b) Contractor Intellectual Property** - In the event that any Work Product is the Contractor Intellectual Property or in the event any Contractor Intellectual Property is needed by the Agency to reasonably enjoy and use any Work Product, the Contractor hereby grants to the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, including the right of the Agency to authorize contractors, consultants and others to do the same on Agency's behalf. At the request of the Contractor, the Agency shall take reasonable steps to protect the confidentiality and proprietary interests of the Contractor in any Contractor Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

**(c) Third Party Works** - In the event that Work Product is Third Party Intellectual Property or in the event any Third Party Intellectual Property is needed by the Agency to reasonably enjoy and use any Work Product, the Contractor shall secure on the Agency's behalf and in the name of the Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of the Agency to authorize contractors, consultants and others to do the same on Agency's behalf.

**(d) Contractor Intellectual Property-Derivative Work** - In the event that Work Product created by the Contractor for the Project is a derivative work based on the Contractor Intellectual Property, or is a compilation that includes the Contractor Intellectual Property, the Contractor hereby grants to the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, including the right of the Agency to authorize others to do the same on Agency's behalf.

**(e) Third Party Works-Derivative Work** - In the event that Work Product created by the Contractor for the Project is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, the Contractor shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Agency's behalf.

**(f) Limited Agency Indemnity** - If the Agency reuses or modifies the Work Product without the Contractor's involvement or prior written consent, to the extent permitted by Article XI, Section 7, of the Oregon Constitution, and subject to the protections afforded by the Oregon Tort Claims Act, the Agency shall indemnify the Contractor, within the limits of the Tort Claims Act and any other protections afforded the Agency, against liability for damage to life or property arising from the State's reuse or modification of the Work Product; provided however, the Agency shall not be required to indemnify the Contractor for any such liability arising out of or related to defective Plans and Specifications, or Contractor's breach of the Contract, professional negligence, or the negligent or wrongful acts of the Contractor's Subcontractors, employees, or agents in preparing the Plans and Specifications or testing and inspection conducted for the Project.

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**(g) Contractor Use of Work Product** – The Contractor, despite other conditions of this provision, shall have the right to utilize such Work Products on its brochures or other literature that it may disseminate for its sales promotions, and in addition, unless specifically otherwise prohibited elsewhere in the Contract Documents, the Contractor may use its standard line drawings, Specifications, and calculations on other, unrelated projects.

**00170.10 Required Payments by Contractor** – The Contractor shall comply with ORS 279C.505 and ORS 279C.515 during the term of the Contract.

**(a) Prompt Payment by Contractor for Labor and Materials** - As required by ORS 279C.505, Contractor shall:

- Make payment promptly, as due, to all Entities supplying labor or Materials under the Contract;
- Pay all contributions or amounts due the Industrial Accident Fund, whether from the Contractor or a Subcontractor, incurred in the performance of the Contract;
- Not permit any lien or claim to be filed against the State or any political subdivision thereof on account of any labor or Materials furnished in performance of the Contract; and
- Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**(b) Prompt Payment by Contractor to First-Tier Subcontractor(s)** – In accordance with ORS 279C.580(3)(a), after the Contractor has determined and certified to the Agency that one or more of its Subcontractors has satisfactorily performed subcontracted Work, the Contractor may request payment from the Agency for the Work, and shall pay the Subcontractors within ten Calendar Days out of such amounts as the Agency has paid to the Contractor for the subcontracted Work.

**(c) Interest on Unpaid Amount** - If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract within 30 Calendar Days after the Contractor's receipt of payment, the Contractor or first-tier Subcontractor shall owe the Entity the amount due, plus interest charges commencing on the date payment was due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

As required by ORS 279C.515(2), the rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three (3) times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 Calendar Days after the date when the payment was received from the Agency or from the Contractor. The amount of interest due may not be waived, but the rate of interest shall not exceed 30 percent.

**(d) Agency's Payment of Contractor's Prompt Payment Obligations** - If the Contractor fails, neglects, or refuses to make prompt payment of any invoice or other demand for payment for labor or services furnished to the Contractor or a Subcontractor by any Entity in connection with the Contract as such payment becomes due, the Agency may pay the Entity furnishing the labor or services and charge the amount of the payment against monies due or to become due the Contractor under the Contract. (The Agency has no obligation to pay these Entities, and will not normally do so, but will refer them to the Contractor and the Contractor's Surety.)

The payment of a claim by the Agency in the manner authorized in this Subsection shall not relieve the Contractor or the Contractor's Surety from obligations with respect to any such claims.

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**(e) Right to Complain to the Construction Contractors Board** - If the Contractor or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

**(f) Notice of Claim Against Bond** - An Entity (which by definition includes a natural person) claiming not to have been paid in full for labor or Materials supplied for the prosecution of the Work may have a right of action on the Contractor's Payment Bond as provided in ORS 279C.600 and ORS 279C.605.

The Commissioner of the Bureau of Labor and Industries (BOLI) may have a right of action on the Contractor's and Subcontractors' public works bonds and Payment Bonds for workers who have not been paid in full, as provided in ORS 279C.600 and ORS 279C.605.

**00170.20 Public Works Bond** – Before starting Work, the Contractor and Subcontractors shall each file with the Construction Contractors Board, and maintain in full force and effect, a separate public works bond, in the amount of \$30,000 unless otherwise exempt, as required by ORS 279C.830(3) and ORS 270C.836. The Contractor shall verify Subcontractors have filed a public works bond before the Subcontractor begins Work.

**00170.32 Protection of Navigable Waters** – The Contractor shall comply with all applicable Laws, including without limitation the Federal River and Harbor Act of March 3, 1899, and its amendments.

The Contractor shall not interfere with waterway navigation or impair navigable depths or clearances, except as U.S. Coast Guard or Corps of Engineers permits allow.

**00170.60 Safety, Health and Sanitation Provisions** – The Contractor shall comply with all Laws concerning safety, health, and sanitation standards. The Contractor shall not require workers to perform Work under conditions that are hazardous, dangerous, or unsanitary.

Workers exposed to traffic shall wear upper body garments or safety vests that are highly visible and meet the requirements of Section 00225.27 of the Standard Specifications.

Workers exposed to falling or flying objects or electrical shock shall wear hard hats.

Upon their presentation of proper credentials, the Contractor shall allow inspectors of the U.S. Occupational Safety and Health Administration (OSHA) and the Oregon Occupational Safety and Health Division (OR-OSHA) to inspect the Work and Project Site without delay and without an inspection warrant.

According to ORS 468A.715 and ORS 468A.720, the Contractor or a Subcontractor who performs Project Work involving asbestos abatement shall possess a valid DEQ asbestos abatement license.

**00170.61 Industrial Accident Protection:**

**(a) Workers' Compensation** – The Contractor shall provide workers' compensation coverage for on-the-job injuries as required by Exhibit G to the **CM/GC Contract**.

**(b) Longshoremen's and Harbor Workers' Compensation** - If Work to be performed is over or adjacent to navigable waters, the Longshoremen's and Harbor Workers' Compensation Act (Chapter 18, Title 33 of the USC) may apply, and the Contractor shall be responsible for

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complying with its provisions (which may include the provision of additional workers' compensation benefits to employees).

**00170.62 Labor Nondiscrimination** - The Contractor shall comply with all Laws concerning equal employment opportunity, including without limitation those prohibiting discrimination on the basis of race, religion, color, sex, disability, or national origin.

**00170.63 Payment for Medical Care** – According to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

**00170.65 Minimum Wage and Overtime Rates for Public Works Projects:**

**(a) General** - The Contractor shall be responsible for investigating local labor conditions. The Agency does not imply that labor can be obtained at the minimum hourly wage rates specified in State or federal wage rate publications, and no increase in the GMP will be made if wage rates paid are more than those listed.

The Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included in the Contract. The Contractor shall pay workers at no less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts according to 00170.65(b) and 00170.65(c).

As required in ORS 279C.845, the Agency will retain 25% of any amount earned by the Contractor on the Project until the Contractor has filed the certified statements required in ORS 279C.845 or in FHWA Form 1273. The Agency will pay to the Contractor the amount retained within 14 Calendar Days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

As required in ORS 279C.845, the Contractor shall retain 25% of any amount earned by a first-tier Subcontractor on the Project until the first-tier Subcontractor has filed with the Agency the certified statements required in ORS 279C.845 or FHWA Form 1273. Before paying any amount retained, the Contractor shall verify that the first-tier Subcontractor has filed the required certified statement. Within 14 Calendar Days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor the amount retained.

The Contractor shall comply with the pertinent provisions of ORS 279C.520 and ORS 279C.540. According to ORS 279C.520, no person shall be employed to perform Work under this Contract for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, the Contractor shall pay the employee at least time and a half pay:

- For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five days, Monday through Friday; or
- For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four days, Monday through Thursday; and
- For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

The above will not apply to the Contractor's work under this Contract if the Contractor is currently a party to a collective bargaining agreement with any labor organization.

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According to ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Engineer on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the Project, and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or Subcontractor that the Contractor or Subcontractor has read such statement and certificate and knows the content thereof and that the same is true to the Contractor or Subcontractor's best knowledge and belief. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth Calendar Day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of six (6) years from the date of completion of the Contract.

**(b) When Federal Funds Are Involved** – The Contractor shall comply with the following wage rate requirements:

The CM/GC shall pay and comply with, and require Subcontractors to pay and comply with the higher of (a) the "General Wage Determinations issued Under the Davis-Bacon and Related Acts" from the U.S. Secretary of Labor or, (b) State prevailing wage rates as listed in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", and any amendments thereto; in either case, rates will be those in effect at the time of execution of the first Early Work Amendment, or in its absence, the GMP Amendment, that incorporates Construction Phase Services into the Contract. Proposers should ignore any references elsewhere in this RFP or its attachments that may conflict with these instructions as to how prevailing wage rates are to be established.

The Contractor shall comply with provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts" and ORS 279C.520 and ORS 279C.540.

With regard to overtime pay, the Contractor shall comply with the provision affording the greatest compensation.

**(c) When No Federal Funds Are Involved** – Not Applicable

**(d) Time Limitation on Claim for Overtime** - According to ORS 279C.545, the Contractor shall:

- (1) Cause a circular, clearly printed in blackface pica type and containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed to perform Work, and
- (2) Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

**(e) Owner/Operator Data** - The Contractor shall furnish data to the Engineer for each owner/operator providing trucking services. The data must be provided before the time the services are provided and must include the following information without limitation for each owner/operator:

- Driver's name;
- Copy of drivers license;

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- Vehicle identification number;
  - Copy of vehicle registration;
  - Motor vehicle license plate number;
  - Motor Carrier Plate Number;
  - Copy of ODOT Motor Carrier 1-A Permit; and
  - Name of owner/operator from the side of the truck.

**00170.70 Insurance Coverages** – The Contractor shall obtain, and keep in effect during the term of the Contract, the insurance coverages listed in Exhibit G to the **CM/GC Contract**.

**(a) Builders' Risk** - CM/GC shall provide insurance in the types and amounts as described in Exhibit G.

**00170.71 Independent Contractor Status** - The service or services to be rendered under this Contract are those of an independent contractor. The Contractor is not an officer, employee, or agent of the State as those terms are used in ORS 30.265.

**00170.72 Indemnity / Hold Harmless** – To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, the CM/GC shall indemnify, defend (with council approved by the Agency), reimburse and hold harmless Agency, Agency's Authorized Representative, the State of Oregon, the Oregon Transportation Commission, the Oregon Department of Transportation, and their respective partners, members, officers, employees and agents (the "Indemnified Parties") from all claims, suits, allegations, damages, liabilities, costs, expenses, losses, penalties and judgments, whether or not they relate to third party claims, and including, but not limited to, those which relate to personal or real property damage (including to the Project itself or otherwise), personal injury or death, attorney and expert/consultant fees and costs, and both economic and non-economic losses, to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of CM/GC Contractor, its employees, subcontractors, or anyone for whose acts CM/GC Contractor is responsible. If claims are asserted against any Indemnified Party by an employee of the CM/GC Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the CM/GC's indemnification obligation and other obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to the employee by or for the CM/GC Contractor or subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party, Entity, or person described in this Subsection.

**00170.74 Employee Drug-Testing Program** - As required by ORS 279C.505(2), the Contractor shall have in place, and maintain for the duration of the Contract, an employee drug-testing program. The Agency retains the right to audit and/or monitor the program. Upon request, the Contractor shall furnish to the Agency a copy of the employee drug-testing program.

**00170.78 Conflict of Interest** - The Contractor shall not give or offer any gift, loan, or other thing of value to any member of the Agency's governing body or employee of the Agency in connection with the Award or performance of any Contract.

The Contractor shall not rent, lease, or purchase Materials, supplies, or Equipment from or through any Agency employee or member of the Agency's governing body.

The Contractor and its Subcontractors, along with their officers, employees, and agents, are prohibited from acquiring any interest, including purchase options, in property within or adjacent

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to the Project Site that is reasonably anticipated to be impacted by the Project. The Contractor and its Subcontractors, along with their officers, employees, and agents, are also prohibited from receiving any real estate fees, compensation, or benefit associated with the sale of a replacement dwelling to a displaced person in connection with any real estate acquisition activity related to this Project. The Contractor shall include in all of its subcontracts these prohibitions. Any such acquisition of a property interest or receipt of fees, compensation, or benefit shall constitute a material breach of Contract, and may result in the termination of the Contract by the Agency.

Under Agency's Code of Conduct Policy regarding former employees, when an Agency employee has performed functions for Agency in any phase or stage of a procurement, including but not limited to drafting Specifications, reviewing or scoring bids or Proposals, authorizing services or assigning work, or Awarding a contract, and the employee leaves Agency and is employed by an Entity (including the Contractor) that has a contract with Agency, or is a bidder or Proposer on a procurement with the intent of signing a contract with Agency, Entity shall be subject to specific restrictions described below for a one (1) year period from the date Agency employee last performed the functions cited above. This one (1) year prohibition applies to work performed under any such contract and failure to disclose such relationship or to remedy such potential violation shall result in the rejection of Entity's bid or Proposal or cancellation of the contract (including the Contract) with Agency at any time. It would also constitute grounds for a determination of Entity not being a responsible contractor for future procurements.

Entity (including Contractor) shall declare if a former Agency employee works for Entity, the job the employee previously performed for Agency, and the role the employee now serves for Entity. Use of the former Agency employee by Entity in any role relating to the same or substantially similar Agency procurement or contract for which the employee participated while employed by Agency is prohibited. This prohibition applies to an employee for only the one (1) year period immediately following the date the employee left Agency employment. Each such declaration by an Entity shall include a signed statement by the former Agency employee describing the proposed role of the employee in the particular procurement or contract.

**00170.79 Third Party Beneficiary** - There are no third-party beneficiaries of the Contract.

**00170.80 Responsibility for Damage to Work:**

**(a) Responsibility for Damage in General** - Except as otherwise provided in this Subsection, the Contractor shall perform Work, and furnish Materials and Equipment for incorporation into the Work, at the Contractor's own risk, until the entire Project has been completed and accepted by the Agency. The Contractor shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Work, except as otherwise provided in this Subsection.

**(b) Repair of Damage to Work** – The Contractor shall promptly rebuild, repair, restore, and make good damages to any portion of the permanent or temporary Work, regardless of whether the Contractor has been relieved of responsibility according to the provisions of this Subsection, unless the Engineer directs otherwise. Where the Contractor has been relieved of responsibility for the damage, Work required to repair damage to the Work shall be considered Extra or Changed Work. (See 00140.30 and 00140.60). The Engineer may elect to have such Extra or Changed Work performed by Agency forces or other means.

Where the Contractor has not been relieved of responsibility for the damage according to a provision of this Subsection, the Contractor shall be responsible for promptly rebuilding, repairing, restoring, and making good damage to any portion of the permanent or temporary Work occurring before issuance of Third Notification with no additional compensation, except for repairs necessitated by damage caused by the following:

- Acts of God or Nature, as defined in Section 00110; or

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- Actions of governmental authorities.

**(c) Partial Relief of Responsibility for Damage to Work Caused by Public Traffic:**

**(1) Interim Acceptance** - The Contractor may request in writing interim acceptance of certain completed portions of the Work, such as drainage facilities and traffic control devices. If approved, the Engineer will issue written interim acceptance stipulating the scope and duration of the Contractor's relief from responsibility for damage to Work caused by public traffic. The Engineer will also include in the interim acceptance the scope and duration of the Contractor's relief, if any, from responsibility for protection and maintenance under 00150.75.

**(2) Scope of Relief** – For the duration of interim acceptance issued by the Engineer, the Contractor will be relieved of responsibility to repair those portions of the Work upon which relief was granted under this Subsection. The scope of potential relief applies only to damages caused by public traffic, and is limited to the following:

- A segment of Roadway, drainage facilities, Slopes, lighting, traffic control devices and access facilities;
- A Bridge or other Structure within a segment of Roadway;
- Traffic signals and appurtenances at an intersection;
- Permanent, passive traffic control devices;
- Complete circuits of a highway lighting system; and
- Portions of a building open to public use.

**(d) Vandalism** - The Contractor shall provide reasonable protection of the Work from vandalism until Third Notification. If reasonable protection has been provided, the Contractor's responsibility for damage resulting from vandalism will be limited to \$5,000.00 per occurrence. Requests for reimbursement of amounts in excess of \$5,000.00 shall be in writing and directed to the Engineer. Upon receipt, the Engineer will investigate, evaluate the amount of damages and their cause, and determine whether, and how much, the Contractor will be recompensed.

**00170.82 Responsibility for Damage to Property and Facilities:**

**(a) In General** - As used in this Subsection, the term "Contractor" shall include the Contractor's agents, Subcontractors, and all workers performing Work under the Contract; and the term "damage" shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature.

The Contractor shall be solely responsible for damages arising from:

- The Contractor's operations;
- The Contractor's negligence, gross negligence, or intentional wrongful acts; and
- The Contractor's failure to comply with any Contract provision.

The Agency may withhold funds due to the Contractor or the Contractor's Surety until all lawsuits, actions, and claims for injuries or damages are resolved and satisfactory evidence of resolution is furnished to the Agency.

**(b) Protection and Restoration of Agency Property and Facilities** - The following requirements apply to Highways, highway Structures, and other improvements that are existing, under construction, or completed. The Contractor shall:

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- Provide adequate protection to avoid damaging Agency property and facilities;
  - Be responsible for damage to Agency property and facilities caused by or resulting from Contractor's operations; and
  - Clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by the Engineer.

**(c) Protection and Restoration of Non-Agency Property and Facilities** – The Contractor shall determine the location of properties and facilities that could be damaged by the Contractor's operations and shall protect them from damage. The Contractor shall protect monuments and property marks until the Engineer has referenced their location and authorized their removal. The Contractor shall restore property or facilities damaged by its operations to the condition that existed before the damage, at no additional compensation.

The Contractor shall provide temporary facilities when needed, e.g., to maintain normal service or as directed by the Engineer, until the required repair, rebuilding, or replacement is accomplished.

The Contractor shall protect specific service signs, e.g., business logos and tourist-oriented directional signs (TODS) from damage, whether the signs are to remain in place or be placed on temporary supports. The Contractor shall repair or replace damaged signs at no cost to the Agency. Liquidated damages will be assessed against the Contractor in the amount of \$200.00 per Calendar Day for each sign out of service for more than five (5) Calendar Days because of the Contractor's operations.

**00170.85 Responsibility for Defective Work** - The Contractor shall make good any defective Work, Materials or Equipment incorporated into the Work, in accordance with the provisions of Section 00150.

**(a) Latent Defects** - The Contractor shall remain liable for all latent defects resulting from causes other than fraud or gross mistakes that amount to fraud until the expiration of the Performance Bond, Warranty Bond, or warranty period, whichever expires last. The Contractor shall remain liable for all latent defects resulting from fraud or gross mistakes that amount to fraud regardless of when those latent defects may be discovered, and regardless of whether such discovery occurs outside any applicable Performance Bond, Warranty Bond, or corrective period.

**(b) Contractor Furnished Warranties and Corrective Obligations:**

**(1) Warranties** – The Contractor warrants to the Agency that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that materials and equipment to be selected by the Contractor or its Subcontractors will be suitable for the purposes intended by the Contract documents, that the Work will be performed in a workmanlike manner, and that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor warrants that all Work shall meet the technical and performance Specifications required under the Contract. The Contractor shall be responsible for all costs associated with, caused by, or resulting from any breach of this Subsection 00170.85(b)(1). This warranty provision shall survive expiration or termination of the Contract. The obligations of this Subsection 00170.85(b)(1) are in addition to and not in lieu of other obligations of the Contractor under the Contract Documents, including without limitation those under Subsection 00170.85(b)(2).

**(2) Corrective Obligation** – Contractor shall (i) correct or repair any defects in, or damage to, the Work that results from the use of improper or defective materials or

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workmanship, (ii) replace, in its entirety, the Work affected by the use of improper or defective materials or workmanship and (iii) correct or repair any Work, Equipment, Materials, Structures, Existing Surfacings, Pavement, Utilities, Wetlands, vegetation, systems, sites or other property damaged or disturbed in that correction, repair or replacement. The obligations of this Subsection 00170.85(b)(2) and those of Subsection 00150.97 shall survive for a term of one year after Third Notification. The obligations of this Subsection 00170.85(b)(2) are in addition to and not in lieu of other obligations of the Contractor under the Contract Documents including without limitation those under Subsection 00170.85(b)(1).

**(c) Manufacturer Warranties and Guarantees:**

**(1) Manufacturer Warranties** – For those Specification Sections referencing this 00170.85(c-1) Subsection, the Contractor shall furnish Warranties from the Manufacturer and signed by a Manufacturer's Representative.

The Warranty period will be specified in the applicable Specification Section for which it applies.

The Warranty will start on the date the Engineer accepts the Work and authorizes final payment, unless otherwise specified in the Contract.

When the Agency makes written notification to the Manufacturer of failure of an item covered by this Warranty, the Warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining Warranty period.

Warranty work shall be performed when weather permits. If, in the opinion of the Engineer, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Agency.

The Manufacturer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Agency.

**(2) Trade Practice Guarantees** – For those items installed on the Project that have customary trade practice guarantees, the Contractor shall furnish the guarantees to the Engineer at the completion of the Contract.

**00170.89 Protection of Utility, Fire-Control, and Railroad Property and Services; Repair; Roadway Restoration:**

**(a) Protection of Utility, Fire Control, and Railroad Property and Services; Coordination** - The Contractor shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control authorities during performance of the Work. The Contractor shall cooperate with and facilitate the relocation or repair of all Utilities and Utility services, as required under 00150.50, and of Railroad and fire-control property and railways.

The Contractor shall conduct no activities of any kind around fire hydrants until the local fire-control authority has approved provisions for continued service.

The Contractor shall immediately notify any Utility, Railroad, or fire control authority whose facilities have been damaged.

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If an Entity has a valid permit from the proper authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, the Contractor shall allow the permit holder to perform the work.

**(b) Restoration of Roadway after Repair Work** - The Contractor shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Engineer. Restoration will be paid, if applicable, as provided in the **Special Provisions**, or may be paid as Extra Work.

**00170.92 Fencing, Protecting Stock, and Safeguarding Excavations** - The Contractor shall be responsible for loss, injury, or damage which results from its failure to restrain stock and persons.

**(a) At the Contractor's Expense** - The Contractor shall restrain stock to lands on which they are confined using temporary fences or other adequate means. The Contractor shall provide adequate temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

The Contractor shall repair, at the Contractor's expense and to the Engineer's satisfaction, fences damaged by the Contractor's operations and the operations of the Contractor's agents, employees, and Subcontractors.

**(b) At the Agency's Expense** - The Contractor shall construct fences, or move and reconstruct fences, as shown on the Contract Documents or as directed by the Engineer. The Contractor shall tear down and remove fencing within the Right-of-Way when no longer needed, as part of the removal Work described in and paid for pursuant to Section 00310.

**00170.93 Trespass** - The Contractor shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

**00170.94 Use of Explosives** - The Contractor shall comply with all Laws pertaining to the use of explosives. The Contractor shall notify anyone having facilities near the Contractor's operations of Contractor's intended use or storage of explosives. The Contractor shall be responsible for all damage resulting from its own, its agents' and employees', and its Subcontractors' use of explosives. (See Sections 00330.41(e) and 00335)

**00170.95 Review or Approval by Agency of Contractor's Performance of Work** - Review or approval by Agency or its agents of Contractor's means, methods, techniques, procedures, submittals, manner of performing its Work, or of any other aspect of Contractor's work or services shall not relieve Contractor of its sole liability for any damages resulting from or arising out of defects or deficiencies in the Contractor's means, methods, techniques, procedures, submittals, manner of performing its Work, or of any other aspect of Contractor's work or services

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## SECTION 00180 – PROSECUTION AND PROGRESS

**00180.00 Scope** - This Section consists of requirements for assignment of the Contract, subcontracting, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

**00180.05 Assignment / Delegation of Contract** - Unless the Agency gives prior written consent, the Contractor shall not assign, delegate, sell, or transfer to any Entity, or otherwise dispose of any Contract rights or obligations, including, without limitation:

- The power to execute or perform the Contract; or
- Any of its right, title, or interest in the Contract.

Any attempted assignment, delegation, or disposition without prior Agency consent shall be void.

Such Agency consent will not normally be given except for the assignment of funds due under the Contract, as provided in 00180.06.

If written Agency consent is given to assign, delegate, or otherwise dispose of any Contract rights or obligations, such assignment, delegation or disposition shall not relieve the Contractor or its Surety of any part of their responsibility under the Contract.

**00180.06 Assignment of Funds Due under the Contract** - Assignment of funds due or to become due under the Contract to the Contractor shall not be permitted unless:

- The assignment request is made on the form provided by the Agency;
- The Contractor secures the written consent of the Contractor 's Surety to the assignment; and
- The Engineer approves the assignment.

**00180.10 Responsibility for the Contract** - The Contractor shall direct and coordinate the operations of its employees, Subcontractors, and agents performing Work and see that the Engineers' orders are carried out promptly. The Contractor's failure to direct, supervise, and control its employees, Subcontractors, and agents performing Work will result in one or more of the following actions, as the Engineer deems appropriate:

- Suspension of the Work;
- Withholding of Contract payments, as necessary to protect the Agency;
- Ordering removal of individuals from the Project Site; or
- Termination of the Contract.

**00180.15 Agency's Right to do Work at Contractor's Expense** – Except as otherwise provided in 00150.75 and 00220.60, if the Contractor neglects to prosecute the Work properly or fails to perform any provision of the Contract, the Agency may, after two (2) Calendar Days' written notice, correct the deficiencies at the Contractor's expense. In situations where the Agency reasonably believes there is danger to life or property, the Agency may immediately and without notice correct the deficiencies at the Contractor's expense.

Action by the Agency under this provision will not prejudice any other remedy it may have.

**00180.20 Subcontracting Limitations:**

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**(a) General** - The Contractor's own organization shall perform Work amounting to at least 30% of the Construction Phase Services Work. The Contractor must subcontract out a minimum of 30% of the Construction Phase Services Work. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the subcontract(s).

**(b) Own Organization** - The term "own organization", as used in Section 00180, includes only employees of the Contractor, Equipment owned or rented by the Contractor, incidental rental of operated Equipment, and Materials and Equipment to be incorporated into the Work purchased or produced by the Contractor.

**(c) Rental of Operated Equipment** - The Agency will not allow a Disadvantaged Business Enterprise (DBE) firm to provide services without a subcontract covering all Work to be performed by the DBE firm. For non-DBE firms, the use of Equipment rented with operators will be permitted without a subcontract only when the following requirements are met:

**(1) Written Request** - The Contractor has submitted to the Engineer a written request describing the service to be provided, its estimated cost, and the estimated duration. The Engineer must approve the request before the service is provided.

**(2) Limitations** - The use of Equipment rented with operators is limited to the following services:

- Truck hauling of Materials (if the trucking is by an owner/operator, in addition to the requirements of 00170.65(e), each truck shall have the name of the owner/operator clearly displayed on the side of the truck), or
- Performing minor, Incidental, short-duration work under the direct supervision of the Contractor or a Subcontractor, with Equipment not customarily owned, leased, or operated by a contractor, or with Equipment that is temporarily unavailable to the Contractor.

**(3) Submittals** - The Contractor shall provide the Engineer with a copy of the rental agreement or purchase order covering the service to be provided. For owner/operator trucking, attach copies of the data required under 00170.65(e). The Contractor shall make certain that the provider of services submits payrolls required under Section 00170, and complies with applicable Contract provisions. The service provider will not be considered a Subcontractor under the Contract, but will be considered an agent of the Contractor in the performance of the Work.

**(4) Revocation of Approval** - The Engineer may revoke approval for the services provided through rented, operated Equipment at any time the Engineer determines that the work is outside that authorized under Subsection 00180.20(c-2). Unless the Contractor promptly submits to the Engineer a subcontract agreement as required under 00180.21, the service provider shall be immediately removed from the Project Site.

#### **00180.21 Subcontracting:**

**(a) General** – The Contractor shall self-perform Work and subcontract Work in accordance with the Contracting and Diversity Plan approved by the Agency. A request for consent to subcontract, at any tier, solely for the furnishing of a labor force will not be considered.

A written request for consent to subcontract any portion of the Contract, at any tier, shall be submitted to the Engineer, and when required by the Engineer, shall be accompanied by background information showing that the organization proposed to perform the Work is

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experienced and equipped for such Work. The Agency will review the Contractor's submission to verify compliance with Contract requirements, confirm the percentage of Work subcontracted, and evaluate the proposed Subcontractor's ability to perform the Work. If the Agency approves the Contractor's request to subcontract, the Agency will provide its consent to the Contractor's request as follows:

- If the Subcontractor is not providing any of the insurance coverages as permitted under Exhibit G to the **CM/GC Contract**, the Agency will respond within seven (7) Calendar Days after the Engineer's receipt of the request.
- If the Subcontractor is providing any of the insurance coverages as permitted under Exhibit G to the **CM/GC Contract**, the Agency will respond within 35 Calendar Days after the Engineer's receipt of the request. (28 Calendar Days for the Agency to review and approve the Certificates of Insurance required by Exhibit G to the **CM/GC Contract**, plus seven (7) Calendar Days to review and approve the subcontract request).

**(b) Submittal of Requests** - The Contractor must submit requests for consent to subcontract any portion of the Contract, at any tier, on the Agency's form, available from the Engineer. The Contractor shall attach a duplicate original subcontract agreement. The Contractor must also submit in writing any amendments or modifications proposed Agency-approved subcontract agreements, at any tier, before the affected Work begins. The Agency's written consent will be required before such amendments or modifications become effective.

**(c) RESERVED**

**(d) Terms of Subcontracts** - Subcontracts shall provide that Work performed under the subcontract shall be conducted and performed according to the terms of the Contract. All subcontracts, including Contractor's with its first-tier Subcontractors and those of the Subcontractors with their subcontractors, and any other lower-tier subcontracts, shall contain a clause or condition that if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

**(1)** A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten Calendar Days of the Contractor's receipt of payment from the Agency for the subcontracted Work.

**(2)** An interest clause that obligates the Contractor, if payment is not made within 30 Calendar Days after receipt of payment from the Agency, to pay to the first-tier Subcontractor interest on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract according to paragraph (1) of this Subsection. A Contractor or first-tier Subcontractor shall not be obligated to pay interest if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the Agency or the Contractor when payment was due. The interest shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and shall be computed at the rate specified in 00170.10(c).

**(3)** A provision requiring the first-tier Subcontractor to include a payment clause and an interest clause conforming to the standards of ORS 279C.580 (see 00180.21(d-1) and 00180.21(d-2)) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Materials supplier.

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This payment clause shall require the Contractor to return all retainage withheld from the Subcontractor, whether held by the Contractor or the Agency, as specified in 00195.50(d).

As required by ORS 279C.800 through 279C.870, subcontracts shall include:

- A provision requiring the Subcontractor to have a Public Works Bond filed with the Construction Contractors Board before starting Work on the Project, unless exempt.
- A provision requiring that workers shall be paid not less than the specified minimum hourly rate of wage.

**(e) Contractor's Responsibilities** – As a condition of the Agency's grant of consent to subcontract, whether or not stated in the subcontract agreement itself, the Contractor shall remain solely responsible for administration of the subcontract, including, but not limited to:

- Performance of subcontracted Work;
- Progress of subcontracted Work;
- Payments for accepted subcontracted Work; and
- Disputes and claims for additional compensation regarding subcontracted Work.

The Engineer's consent to subcontract will not create a contract between the Agency and the Subcontractor, shall not convey to the Subcontractor any rights against the Agency, and shall not relieve the Contractor or the Contractor's Surety of any of their responsibilities under the Contract.

**(f) Failure to Comply** - Failure to comply with 00180.21 will be cause for the Engineer to take action reasonably necessary to obtain compliance. This action may include, but is not limited to:

- Suspension of the Work;
- Withholding of Contract payments as necessary to protect the Agency; and
- Termination of the Contract.

**(g) Mentor-Protégé Agreement** – If the Contractor enters into a subcontract with an Emerging Small Business (ESB) Subcontractor, the Agency may offer the Contractor and its ESB Subcontractor an opportunity to enter into a Project specific Mentor Protégé Agreement.

The Project specific Mentor Protégé Agreement will be paid for and specified by Change Order.

**00180.22 Payments to Subcontractors and Agents of the Contractor** – To the extent practicable, the Contractor shall pay in the same units and on the same basis of measurement as listed in the Schedule of Items for subcontracted Work or other Work not done by the Contractor's own organization. In making payment to Subcontractors and to its other agents performing Work and furnishing Materials and Equipment to be incorporated into the Project, the Contractor shall assume all losses resulting from overpayment.

If requested, the Engineer will make estimates of the Work quantities performed by Subcontractors or by others on the Project, and of Materials eligible for advances on Materials in the progress payments. These estimates are approximate only and will be made in units of measure as listed in the Schedule of Items. The Agency does not guarantee the accuracy of these estimates, and an incorrect estimate will not bind the Agency in final settlement.

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If requested in writing by a first-tier Subcontractor, the Contractor shall send to the Subcontractor, within ten Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to the Agency, or pay document provided by the Agency to the Contractor, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.

**00180.30 Materials, Equipment, and Work Force** - The Contractor shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute the Work. The Contractor shall use only Equipment of adequate size and condition to meet the requirements of the Work and Specifications, and to produce a satisfactory quality of Work. Upon receipt of the Engineer's written order, the Contractor shall immediately remove, and not use again on the Project without the Engineer's prior written approval, Equipment that, in the Engineer's opinion, fails to meet Specifications or produce a satisfactory product or result.

The work force shall be trained and experienced for the Work to be performed. Upon receipt of the Engineer's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Engineer's prior written approval, any supervisor or employee of the Contractor or its Subcontractors who, in the Engineer's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If the Contractor fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment, and personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Engineer may terminate the Contract under the provisions of 00180.90(a).

**00180.31 Required Materials, Equipment, and Methods** - The Engineer's decisions under this Section are final.

**(a) General** - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, the Contractor shall use the Equipment or methods specified unless otherwise authorized by the Engineer in writing.

**(b) Substitution of Materials and Equipment to be Incorporated into the Work** - After execution of the Contract, the Engineer will consent to substitution of Materials and Equipment to be incorporated into the Work as follows:

**(1) Reasons for Substitution** - The Agency will consider substitution only if:

- The proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency, and utility, or
- Due to reasons beyond the control of the Contractor, the specified Materials or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence.

**(2) Submittal of Request** - The Contractor shall submit requests for substitution to the Engineer, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

**(c) Substitution of Equipment Specified to Perform Work** - The Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain

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portions of the Work, the Contractor may submit a request to the Engineer to use Equipment of a different size or type. The request will not be considered as a cost reduction proposal under 00140.70. The request shall:

- Be in writing and include a full description of the Equipment proposed and its intended use;
- Include the reasons for requesting the substitution; and
- Include evidence, obtained at the Contractor's expense and satisfactory to the Engineer that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Engineer will consider the Contractor's request and will provide a written response to the Contractor either permitting or denying use of the proposed Equipment.

Permission may be granted on a trial basis to test the quality of Work actually produced, subject to the following:

- There will be no cost to the Agency, either in Contract Amount or in Contract Time;
- The permission may be withdrawn by the Engineer at any time if, in the Engineer's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract;
- If permission is withdrawn, the Contractor shall perform the remaining Work with the originally-specified Equipment; and
- The Contractor shall remove and replace noncompliant Work resulting from the use of the Contractor's proposed Equipment, or otherwise correct it as the Engineer directs, at no additional compensation.

**(d) Substitution of Methods** - The Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, the Contractor may submit a request for a change by following the provisions of 00140.70, "Cost Reduction Proposals".

**00180.32 Alternative Materials, Equipment, and Methods** - Whenever the Contract authorizes certain alternative Materials, Equipment, or methods of construction for the Contractor's use to perform portions of the Work, and leaves the selection to the Contractor, the Agency does not guarantee that all listed alternative Materials, Equipment, or methods of construction can be used successfully throughout all or any part of the Work.

The Contractor shall employ only those alternatives that can be used to satisfactorily perform the Work. No additional compensation will be paid for corrective work necessitated by the Contractor's use of an inappropriate alternative.

**00180.35 Key Personnel and Major Subcontractors**

**(a) Key Personnel** - The Contractor represents that the Key Personnel identified in Article 4 of the **CM/GC Contract** meet the applicable minimum qualifications required to perform the Work. The Contractor commits to assign the Key Personnel to perform in the capacities identified therein, and represents that the identified Key Personnel shall be available to the extent within the Contractor's control for the duration of Pre-construction and Construction Phases of the Contract, as applicable. The Contractor commits to undertake all reasonable efforts to provide the Key Personnel on a full time basis for all periods necessary to fulfill the Contractor's Contract obligations.

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**(b) Temporary Absence of Key Personnel** - If any of the Key Personnel are to be absent from the Project Site for more than seven (7) Calendar Days, the Contractor shall inform the Agency in writing seven (7) Calendar Days in advance of who will represent the absent Key Personnel.

**(c) Substitution of Key Personnel** - The Contractor shall not substitute Key Personnel. Notwithstanding the procedures set out herein, the Agency will have no obligation to consider or approve a request to substitute, but may, in its sole discretion, do so.

**(1) Proposed Replacements** - To seek to add, delete, or substitute any Key Personnel the Contractor must submit to the Agency, in writing, a request at least 30 Calendar Days in advance of any desired replacement.

**(2) Required Information** - The Contractor shall submit with any request for substitution (a) the name and qualifications of the proposed replacement Key Personnel (b) the same selection evaluation information as was specified for inclusion in the Proposal; and (c) the reason for the proposed change. If the Agency elects to consider the request, the Agency, in its sole discretion, will determine whether the proposed substitute is appropriately qualified or otherwise acceptable, and will notify the Contractor of its determination whether or not to allow the substitution within fourteen Calendar Days of the original request. Failure of the Agency to respond within the response period shall indicate the Agency's election to not consider the request.

**(3) Agency Written Consent Required** - The Agency, in its sole discretion, will determine whether or not to consider or authorize the replacement of any Key Personnel, which decision shall be final. Any authorization will be in writing, and the Contractor shall not change Key Personnel except upon receipt of such written consent from the Agency. The Agency may require additional explanation from the Contractor as to the reason for the replacement.

**00180.40 Limitation of Operations:**

**(a) In General** – The Contractor shall comply with all Contract provisions and shall:

- Conduct the Work at all times so as to cause the least interference with traffic; and
- Not begin Work that may allow damage to Work already started.

**(b) On-Site Work** - The Contractor shall not begin On-Site Work until the Contractor has:

- Received Notice to Proceed;
- Filed with the Construction Contractor's Board the Public Works Bonds as required in 00170.20;
- An approved Project Work schedule;
- An approved Traffic Control Plan;
- An approved Pollution Control Plan;
- An approved Erosion and Sediment Control Plan;
- Met with the Engineer at the required preconstruction conference; and
- Assembled all Materials, Equipment, and labor on the Project Site or has reasonably assured that they will arrive on the Project Site, so the Work can proceed according to the Project Work schedule.

**00180.41 Project Work Schedules** - The Contractor shall submit a Project Work schedule meeting the requirements of this Subsection to the Engineer. The Project Work schedule is

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intended to identify the sequencing of activities and time required for prosecution of the Work. The schedule is used to plan, coordinate, and control the progress of construction. Therefore, the Project Work schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities. Sufficient detail shall also include all required double shifts, overtime work, or combination of both necessary to complete Contract Work within the Contract Time.

Contractor's activity related to developing, furnishing, monitoring, and updating these required schedules is Incidental.

A type "C" schedule will be required under the Contract. In developing the Baseline Schedule Task Deliverable in support of the GMP, the Contractor shall develop a Type "C" Schedule. The Baseline Schedule, approved by the Agency, shall be updated and maintained current during construction in accordance with the requirements for a Type "C" Schedule.

**(a) Type "A" Schedule** – Not Applicable

**(b) Type "B" Schedule** – Not Applicable

**(c) Type "C" Schedule** - When a Type "C" Schedule is required, the Contractor shall do the following:

**(1) Initial Schedule** – Ten Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer one (1) digital copy and four (4) paper copies of a time-scaled bar chart Project Work schedule. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The initial schedule shall show:

- The expected beginning and completion date of each activity, including all stages and phases;
- The time needed for completion of the utility relocation work; and
- The elements of the Traffic Control Plan as required under 00225.05.

A logic diagram and time-scaled bar chart will be acceptable in lieu of a time-scaled logic diagram.

The initial schedule shall show all Work intended for the first 60 days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

**(2) Detailed Project Work Schedule** – In addition to the above requirements and within 30 Calendar Days after First Notification, the Contractor shall provide the Engineer one digital copy and four (4) paper copies of a detailed time-scaled critical path method (CPM) network Project Work schedule and computer analysis printout, both clearly indicating the critical path. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The first submitted detailed time-scaled critical path method (CPM) network Project Work schedule shall also contain a listing of the quantity of Work for each activity, when appropriate, in common units of measure.

- Construction activities;
- Any limitations of operation specified in 00180.40;

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- The time needed for completion of the utility relocation work;
  - Implementation of TCP for each stage and phase;
  - Submittal and approval of Material samples, mix designs, and shop drawings;
  - Agency timeframes to process and return Contractor submitted plans, working drawings, equipment lists and other submittals;
  - Procurement of critical Materials;
  - Fabrication, installation, and testing of special Material and Equipment;
  - Duration of Work, including completion times of all stages and their sub-phases; and
  - Specified cure times for all concrete elements.

The activities shall be separately identifiable by coding or use of sub-networks or both. The duration of each activity shall be verifiable and consistent with the description in the Project narrative required in (3) below.

Detailed sub-networks will include all necessary activities and logic connectors to describe the Work and all restrictions on it. In the restraints, include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it.

The time scale used on the Contractor's detailed time-scaled critical path method (CPM) network Project Work schedule shall be appropriate for the duration of the activities and the Project duration. The time scale shall be in normal workdays, defined as every day except Saturday, Sunday, and legal holidays, with calendar dates identified no less than the first and midpoint of each calendar month. The smallest unit shown shall be one (1) day. The network shall show the length of the activity or part scaled to accurately represent the number of normal workdays scheduled. Distinct symbols or graphics shall be used to show multiple shift, holiday, or weekend work.

The schedule network drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch x 36 inch using multiple sheets when needed.

The Contractor shall include a tabulation of each activity in the computer mathematical analysis of the network diagram. The following information represents the minimum required for each activity:

- Event (node) number(s) for each activity;
- Maintain event (node) numbers throughout the Project;
- Activity description;
- Original duration of activities (in normal workdays);
- Estimated remaining duration of activities (in normal workdays);
- Earliest start date and actual start date (by calendar date);
- Earliest finish date and actual finish date (by calendar date);
- Latest start date (by calendar date);
- Latest finish date (by calendar date); and
- Slack or float time (in workdays).

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Computer print-outs shall consist of at least a node sort and an “early start/total-float” sort.

Within 14 Calendar Days after submission of the detailed time-scaled critical path method (CPM) Project Work schedule, the Engineer and the Contractor shall meet to review it. Within seven (7) Calendar Days after meeting, the Contractor shall resubmit to the Engineer one (1) digital and four (4) paper copies of the CPM schedule inclusive of required revisions.

The final accepted CPM Project Work schedule shall represent all Work, as well as the planned sequence and time for the Work. Review and acceptance of any Project Work schedules and Project narratives by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**(3) Project Narrative** – In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide to the Engineer a final written Project narrative that discusses the planning, coordinating, scheduling and resourcing of the Work. The Project narrative shall include the following written description:

- Plans for staging the Project;
- All critical activities;
- All near critical activities defined as those with less than 30 days of float.
- All Subcontractor activities which are critical, near critical, and those that are greater than two (2) weeks in duration.
- Labor resourcing, by stage and phase, to include the number of crews, average crew size and planned night/weekend shifts including that of Subcontractors.
- Equipment allocation, by stage and phase to include mobilization, demobilization and planned activities including that of Subcontractors.
- Notifications required under the Contract during each stage and phase which may include, but is not limited to, road closures, lane closures, night work, cold plane pavement removal, and pile driving.
- Provide discussion on addressing reasonably predictable weather conditions and their impact on all weather sensitive activities. Also, provide discussion on other weather limitations that may affect the Project schedule.
- Submittal and approval of Material samples, mix designs, and shop drawings.
- Procurement of critical Materials.
- Plans for dealing with “unique” construction items.
- Coordination of Utilities and any immediate concerns for impacts/delays.
- Constructability issues.
- Cost Reduction Proposals and/or immediate requests for changes to the Specifications.
- Concerns/issues that need to be addressed within the first 90 days following First Notification.

The accepted Project narrative shall represent all critical and near critical Work, as well as the planned sequence and time for the Work.

**(4) Review and Reporting** – The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

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**(a) Review with the Engineer** – The Contractor shall perform ongoing review of the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor’s own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting the Contractor and the Engineer shall review Project events and any changes for their effect on the accepted Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the accepted Project Work schedule and associated Project narrative. Upon acceptance by the Engineer, this will become the new accepted Project Work schedule and associated Project narrative.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include actual start and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it. The procedure for acceptance of the revised or updated Project Work schedule as the new accepted Project Work schedule will be as provided above.

The Contractor shall evaluate this information each month and compare it with the Contractor’s Project Work schedule. The Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit, digitally and in paper, copies of the updated bar chart to the Engineer within seven (7) days after the progress meeting, along with a progress report as required by (b) below.

**(b) Progress Report** – Each month the Contractor shall submit a progress report and an update of the Project Work schedule to the Engineer. The report and updated schedule shall be submitted both digitally and in paper copy and shall include the following:

- A sufficient description, in narrative form, to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule;
- Proposed corrective actions;
- Proposals to keep the Project on schedule in the event of a delay; and
- Any changes to the logic as compared to the accepted Project Work schedule.

**(d) Substitution of Schedules** – The Agency at its discretion may approve substitution of a different type schedule, or modifications to the requirements for a Type “C” schedule.

**(e) Specified Contract Time Not Superseded by Schedule Revisions** – The completion dates in any Project Work schedule and any revised or updated Project Work schedules, shall be within

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the Contract Time(s) specified for the Project, or within adjusted Contract Times approved according to 00180.80(c). Acceptance of any Project Work schedule or any revised or updated Project Work schedules shall not constitute approval of any completion dates that exceed such Contract Time(s). If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with a revised Project Work schedule, a request for adjustment of Contract Time according to 00180.80(c). A request for an adjustment of Contract Time will be evaluated using the most recently accepted Project Work schedule.

**(f) Float Time** – Float time shown on the Project Work schedule, including any time between a Contractor’s scheduled completion date and the specified Contract Time(s), does not exist for the exclusive use of either party to the Contract, and belongs to the Project.

**(g) Schedules Do Not Constitute Notice** – Submittal of a Project Work schedule, with supporting Project narrative does not constitute, or substitute for any notice the Contractor is required under the terms of the Contract to give the Agency.

**(h) Failure to Provide Schedule** – The Project Work schedule is essential to the Agency. The Contractor’s failure to provide the schedule, schedule information, progress reports, Project narratives, or schedule updates when required will be cause to suspend the Work, or to withhold Contract payments as necessary to protect the Agency, until the Contractor provides the required information to the Engineer.

**00180.42 Preconstruction Conference** – Unless otherwise approved in writing by the Engineer, before any Work is performed, and within 30 Calendar Days of the Notice to Proceed, the Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon.

**00180.43 Commencement and Performance of Work** - From the time of commencement of the Work to the time of Final Acceptance, the Contractor shall:

- Provide adequate Materials, Equipment, labor, and supervision to perform the Work;
- Perform the Work as vigorously and as continuously as conditions permit and according to a Project Work schedule that ensures completion within the Contract Time or the adjusted Contract Time;
- Not voluntarily suspend or slow down operations without prior written approval from the Engineer; and
- Not resume suspended Work without the Engineer’s written authorization.

**00180.50 Contract Time to Complete Work:**

**(a) General** - The time allowed to complete the Work will be stipulated in each Early Work Amendment and the GMP Amendment, and will be known as the “Contract Time”. (see 00110.20)

**(b) Kinds of Contract Time** – The Contract Time will be expressed in one or more of the following ways:

**(1) Fixed Date Calculation** – The calendar date on which the Work or Pay Item shall be completed; or

**(2) Calendar Day Calculation** – The number of Calendar Days from a specified beginning point in which the Work or Pay Item shall be completed.

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**(c) Beginning of Contract Time** – When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin with the fifteenth Calendar Day following the date of the Notice to Proceed.

**(d) Recording Contract Time** - All Contract Time will be recorded and charged to the nearest one-half day.

On Calendar Day Pay Items, the Engineer will furnish the Contractor a weekly statement of Contract Time charges. The statement will show the number of Calendar Days counted for the preceding week and the number of Calendar Days remaining prior to the established completion date for that Pay Item.

For Contracts with fixed completion dates for Pay Items, the Engineer will furnish the Contractor a weekly statement of Contract Time charges only after expiration of the Contract Time. The statement will show the number of days of liquidated damages that have been assessed, if any.

These statements will include any exclusions from, or adjustments to, Contract Time.

**(e) Exclusions from Contract Time** - Regardless of the way Contract Time is expressed in the Contract, certain days will not be charged against Contract Time. These exclusions will be allowed when the Contractor is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature;
- Court orders enjoining prosecution of the Work;
- Strikes, labor disputes, or freight embargoes that, despite the Contractor's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations. "Strike" and "labor dispute" may include union action against the Contractor, a Subcontractor, a Materials supplier, or the Agency; or
- Suspension of the Work by written order of the Engineer for reasons other than the Contractor's failure or neglect.

**(f) Time Calculation Protest** - In the event the Contractor disputes the accuracy of the statement of Contract Time charges, it shall immediately contact the Engineer and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Engineer within seven (7) Calendar Days of the date the Engineer mailed or delivered the statement. Failure to submit a formal written protest within the seven (7) Calendar Day period constitutes the Contractor's approval of the time charges or adjusted time charges itemized in the statement.

**(g) End of Contract Time** - When the Engineer determines that the Work has been completed, except for the items listed below, the Engineer will issue a Second Notification.

The Second Notification will list:

- The date the time charges stopped;
- Final trimming and cleanup tasks (see 00140.90);
- Equipment to be removed from the Project Site;
- Minor corrective Work not involving additional payment to be completed; and
- Submittals, including without limitation all required, certifications, bills, forms, warranties, certificates of insurance coverage (00170.70(b)), and other documents required to be provided to the Engineer before Third Notification will be issued.

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The Contractor shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame proposed by the Contractor and accepted by the Engineer. Unless otherwise agreed by the Agency, failure of the Contractor to complete all tasks listed in the Second Notification within the time frame accepted, will result in the Agency rescinding the Second Notification. Counting of time charges will resume upon expiration of the accepted time frame.

**(h) Early Completion** – The Contractor may propose, and has the right, to complete the Work earlier than required by the Contract Completion Date. Nonetheless, the Agency shall have no cost responsibility or liability to the Contractor in the event that the Contractor fails to complete the Work in accordance with an Early Completion schedule regardless of whether or not the Agency consented to or approved the Early Completion schedule, and regardless of the cause of the Contractor's failure to complete the Work in accordance with the Early Completion Schedule including but not limited to Agency directed changes in the Work. The difference in time between the Contract Completion Date and Early Completion Date shall be considered float that belongs to the Project and that may be used by either the Agency or the Contractor.

**00180.60 Notice of Delay** - The Contractor shall notify the Engineer of any delay that will likely prevent completion of the Work or a Pay Item by the date specified in the Project Work schedule. The notice shall be in writing and shall be submitted within seven (7) Calendar Days of when the Contractor knew or should have known of the delay. The notice shall include, to the extent available, the following:

- The reasons or causes for the delay;
- The estimated duration of the delay and the estimated resulting cumulative delay in Contract completion;
- Except for 00180.50(e) and 00180.65 delays, whether or not the Contractor expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Contractor expects to accelerate due to the delay; and
- Whether or not the Contractor expects to request additional compensation due to the delay. Except for 0180.50(e) and 00180.65 delays, failure to include this information will constitute waiver of the Contractor's right to later make such a request.

**00180.65 Right-of-Way and Access Delays** – Right-of-Way and access delays will be taken into consideration in adjusting Contract Time, and in approving additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Contractor:

- Necessary Rights-of-Way;
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for Contractor's use; or
- Access to, or rights of occupancy of, buildings and other properties the Contractor is required to enter or to disturb pursuant to Contract requirements.

If the ending date of an anticipated delay is stated in the **Special Provisions**, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

**00180.70 Suspension of Work:**

**(a) General** - The Engineer has authority to suspend the Work, or any part of the Work, for any of the following causes:

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- Failure of the Contractor to correct unsafe conditions;
  - Failure of the Contractor to carry out any provision of the Contract;
  - Failure of the Contractor to carry out orders issued by the Engineer, the Agency or any regulatory authority;
  - Existence of conditions unsuitable to proper or safe performance of the Work; or
  - Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Contractor shall not resume Work without the Engineer's written authorization.

**(b) Contractor's Responsibilities During and After Suspension** - During periods of suspension of the Work, the Contractor shall continue to be responsible for protecting and repairing the Work according to 00170.80, and for ensuring that a single designated representative responsible for the Project remains available according to 00150.40(b).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Contractor shall perform the following at no additional compensation:

- Replace or repair Work, Materials, and Equipment to be incorporated into the Work, that was lost or damaged because of the temporary use of the Project Site by the public; and
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Engineer.

**(c) Compensation and Allowances for Suspension** - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than the Contractor's failure or neglect. (refer to 00180.50(e), 00180.65 and 00195.40)

**00180.80 Adjustment of Contract Time:**

**(a) General** - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Contractor, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time." Except as provided in 00180.65 and 00195.40, an adjustment of Contract Time shall be the Contractor's only remedy for any delay arising from causes beyond the control of the Contractor.

**(b) Contractor's Request Not Required** - The Engineer may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Engineer may also increase Contract Time in the event of Right-of-Way and access delays (see 00180.65), and those delays due to causes beyond the Contractor's control specified in 00180.50(e). The Engineer will promptly inform the Contractor of adjustments made to Contract Time pursuant to this Subsection and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration in the **Special Provisions**, the Engineer will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

**(c) Contractor's Request Required** - In the event the Contractor believes that additional Contract Time is due, the Contractor shall submit to the Engineer a timely request for adjustment

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of Contract Time. The Engineer will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revised Project Work schedule submitted according to 00180.41, for comparison with the last revision of the Project Work schedule; or
- Are not otherwise deemed waived and are submitted within 15 days after the date of Second Notification, if Second Notification has been issued.

The Engineer will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Project Work schedule. The Engineer will not authorize, nor will the Agency pay, acceleration costs incurred by the Contractor prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Contractor's request for adjustment of Contract Time shall be submitted to the Engineer on a form provided by, or in a format acceptable to, the Engineer, and shall include a copy of the written notice required under 00180.60. The request shall include without limitation:

- Consent of the Contractor's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Engineer to evaluate the asserted justification for the amount of additional Contract Time requested;
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current approved Project Work schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion.

**(d) Bases for Adjustment of Contract Time** - In the adjustment of Contract Time, the Engineer will consider causes that include, but are not limited to:

- Failure of the agency to submit the Contract and bond forms to the Contractor for execution within the time stated in 00130.50, or to submit the Notice to Proceed within the time stated in 00130.90;
- Errors, changes, or omissions in the Supplemental Drawings, quantities, or Specifications;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;
- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in 00195.40;
- Causes cited in 00180.50(e); and
- Right-of-Way and access delays referenced in 00180.65.

The Engineer will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect the specified or Adjusted Contract Time;

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- Delays that affect the Contractor's planned early completion, but that do not affect the specified or adjusted Contract Time;
  - Shortage or inadequacy of Materials, Equipment, or labor;
  - Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in 00180.50(e);
  - Different area of Material source in 00160.40(a);
  - Substitution of Equipment in 00180.31(c);
  - Reasonably predictable weather conditions; or
  - Other matters within the Contractor's control or Contract responsibility.

**(e) Consideration and Response by Agency** - The Engineer will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Engineer may elect not to consider claimed delays that do not affect the specified or Adjusted Contract Time required to complete the Work.

The Engineer may adjust Contract Time for causes not specifically identified by the Contractor in its request.

The Engineer will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Engineer's findings. If the Contractor disagrees with the Engineer's findings, the Contractor may request review according to the procedure specified in 00199.40.

**00180.85 Failure to Complete on Time; Liquidated Damages:**

**(a) Time is of the Essence** - Time is of the essence in the Contractor's performance of the Contract. Delays in the Contractor's performance of the Work may inconvenience the traveling public, interfere with business and commerce, and increase cost to the Agency. It is essential and in the public interest that the Contractor prosecute the Work vigorously to Contract completion.

The Agency does not waive any rights under the Contract by permitting the Contractor to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

**(b) Liquidated Damages** - The Contractor agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount specified in the **CM/GC Contract**, Article 5, and in each Early Work Amendment, for each Calendar Day the Contractor expends performing the Contract in excess of the Contract Time or adjusted Contract Time specified in the **CM/GC Contract**, Article 5 or Early Work Amendment as applicable.

Payment by the Contractor of liquidated damages does not release the Contractor from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Contractor's failure to fully perform the Contract according to its terms. The liquidated damages shall constitute payment in full only of damages incurred by the Agency due to the Contractor's failure to complete the Work on time.

If the Contract is terminated according to 00180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages shall be assessed against the Contractor for the duration of time reasonably required to complete the Work.

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**00180.90 Termination of Contract and Substituted Performance:**

**(a) Termination for Default** - Termination of the Contract for default may result if the Contractor:

- Fails to deliver the initial, updated or final GMP with Supporting Documents on or before the Agency required due date;
- Violates any material provision of the Contract;
- Disregards applicable Laws or the Engineer's instructions;
- Refuses or fails to supply enough Materials, Equipment, or skilled workers for prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to Subcontractors;
- Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
- Has a receiver appointed because of the Contractor's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination; or
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

If the Contract is terminated by the Agency, upon demand the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site and of all Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the Agency because of the Contractor's breach of Contract; or
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the terms of 00195.50, except that the Engineer will be entitled to withhold sufficient funds to cover costs incurred by the Agency as a result of the termination. Final payment to the Contractor will be made according to the provisions of Section 00195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

**(b) Substituted Performance** - In accordance with the Agency's procedures, and upon the Engineer's recommendation that sufficient cause exists, the Agency, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety 10 Calendar Days' written notice, may:

- Terminate the Contract;
- Substitute the Contractor with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of Materials not on the Project Site, for which the Contractor received progress payments under 00195.50;
- Take possession of Equipment on the Project Site that is to be incorporated into the Work;

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- Take possession of Equipment not on the Project Site that is to be incorporated into the Work and for which the Contractor received progress payments under 00195.50; and
  - Finish the Work by whatever method the Agency deems expedient.

If, within the 10-Calendar-Day notice period provided above, the Contractor and/or its Surety corrects the basis for declaration of default to the satisfaction of the Engineer, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Engineer, the Contract will not be terminated.

**(c) Termination for Public Convenience** - The Engineer may terminate the Contract in whole or in part whenever the Engineer determines that termination of the Contract is in the best interest of the public. During Pre-construction Phase Services, termination for Public Convenience may result if: 1) the Agency deems in its sole discretion that it is in the Agency's best interests to do so; 2) the Contractor is ineffective in assisting the Agency achieve its objectives; 3) the Agency determines that it can complete the Project for significantly less cost through an alternative delivery method; or 4) the Agency and Contractor are unable to agree upon a final GMP by the Agency required due date.

The Engineer will provide the Contractor and, the Contractor's Surety, seven (7) Calendar Days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

Compensation for Work terminated by the Engineer under this provision will be determined according to the provisions of Subsection 00195.70(b).

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## SECTION 00190 – MEASUREMENT OF PAY QUANTITIES

### Description

**00190.00 Scope** – The Engineer will measure pay quantities for accepted Work according to the United States standard measure unless otherwise provided in the Contract. Unless otherwise specified in the Contract, the Engineer will round off all quantity computations using the following convention:

- The final significant digit will not be changed when the succeeding digit is less than five (5).
- The final significant digit will be increased by one (1) when the succeeding digit is five (5) or greater.

The measurement provisions contained in the Specifications for each Pay Item will supplement or modify the above convention by:

- Imposing measurement limitations
- Describing measurement or computation procedures
- Giving conversion factors or adjustment conditions
- Providing for determination of reasonably accurate and representative Pay Item quantities

Measurements required or allowed to be made by the Contractor will be subject to the Engineer's verification. The Engineer's decision about measurement is final.

**00190.10 Measurement Guidelines** - Measurement of quantities will be made on the following basis, unless otherwise specified in the Contract:

**(a) Unit Basis** – Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.

**(b) Length Basis** – Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length to at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Engineer.

**(c) Area Basis** – Area will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) to at least the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.

**(d) Weight Basis** – Weight will be pound or ton, unless otherwise specified in the Contract, and will be determined as follows:

**(1) Pound** – Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 0.1 pound unless otherwise specified in the Contract.

Provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

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**(2) Ton** – Ton weight will be determined on Contractor-provided scales as required under 00190.20 unless otherwise allowed by the Specifications. Weight by ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.

If bituminous materials, portland cement, lime, and similar bulk Materials are shipped by truck or rail, the supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on the Contractor-provided vehicle scales.

Shipping invoice weights of the supplier's truck or transport shall be subject to periodic check weighing on the Contractor's vehicle scales, or other scales designated, according to 00190.20. If the check weight is less than the supplier weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

No payment will be made:

- For quantities in excess of the supplier weight
- When Materials have been lost, wasted, or otherwise not incorporated into the Work
- For additional hauling costs resulting from the check weighing

**(e) Volume Basis** – Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract, and will be measured at least to the nearest 0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.

Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.

When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).

**(f) Time Basis** – Time will be hour, day, (or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.

**(g) Standard Manufactured Items** – If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract.

**(h) Lump Sum Basis** – Lump sum, when used, means the Work described shall be completed and accepted without measurement unless changes are ordered in writing by the Engineer. If estimated quantities of the Work to be performed are listed in the **Special Provisions**, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the Plans and Specifications. Computations based on the details and dimensions shown on the Plans or Specifications are not guaranteed to equal estimated quantities.

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If the Agency issues no Change Order, the Agency will make no pay adjustment for quantities based on the Contractor's computations that overrun or underrun the estimated quantities.

If the Agency issues Change Orders for changes in the Work, the Engineer will measure such changes according to the standards set by 00195.20 to determine adjustment of payment.

**00190.20 Contractor to Provide Vehicle Weigh Scales:**

**(a) General** - If the Specifications require measurement by weighing on vehicle weigh scales, the Contractor shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Engineer's approval, masses (weights) may be determined by plant or hopper scales according to 00190.30.

Contractor-provided scales shall be furnished, installed and maintained by the Contractor or its supplier, or, subject to the Engineer's approval, may be commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Pay Items to be measured by weight shall include all Contractor costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; and for transporting Materials to the scales or to check weighing.

**(b) Requirements** – The scales shall conform to ORS 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

- Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State;
- Technically suitable for weighing the Materials;
- Properly installed and maintained; and
- Accurate to the required tolerances.

The weight of any Materials weighed by anyone other than the Engineer will be subject to check weighing as the Engineer directs.

**(c) Approaches** – Vehicle scale approaches shall be:

- At each end of the scale platform;
- Straight and in line with the platform; and
- Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing.

**(d) Inspections** – The Contractor shall have all scales certified, that is inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company as follows:

- Before use if installed at a new site;
- 60 Calendar Days after initial inspection;
- Every six (6) months thereafter; and
- When the Engineer directs additional inspections.

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No Materials weighed on scales without current certifications according to this Subsection will be accepted. The Contractor shall provide a copy of all required certifications to the Engineer.

Testing by a scale service company within the State of Oregon shall comply with ORS 618.

If additional inspections directed by the Engineer confirm that the scale accuracy is within the required tolerances, the Agency will pay the cost for inspecting and testing the scales. If the scale accuracy is not within these tolerances, the Contractor shall pay the cost for inspecting and testing the scales.

**(e) Inspection Results** – If an inspection indicates the scales have been under-weighing (indicating less than the true weight), the Agency will make no additional payment to the Contractor for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true weight), the weights will be reduced for Materials received after the time the Engineer determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

**(f) Contractor-Provided Weigh Technician** – The Contractor shall provide a technician to operate Contractor-provided vehicle weigh scales. The Agency will observe procedures and require check weighing in accordance with the following:

**(1) Scale with Automatic Printer** – If the scales have an automatic weigh memo printer that does not require manual entry of gross weight information, the Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth day on which more than 50 tons is received, or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one (1) check weighing on projects where more than 2,000 tons of all types of Materials are received from a scale. The Contractor shall provide the Engineer with the results of the check weighing.

**(2) Scales Without Automatic Printer** – If the scales require manual entry of gross weight information, the agency may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Contractor shall inform the Engineer of his intent to use a scale without an automatic printer at least three (3) working days before weighing begins or before the Contractor changes to a scale that does not have an automatic printer. The Contractor shall pay costs for the weigh witness. The hourly cost of the weigh witness will be as stated in the **Special Provisions**. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20 (b) and 00190.20(d).

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If a different scale is not available within a 30 mile round trip from the regular haul route, the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs for check weighings will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one (1) check weighing on all projects where materials are received from a scale without an automatic printer. The Contractor shall provide the Engineer with the results of the check weighing.

**(3) Duties of Weigh Technician** – The Contractor’s weigh technician shall:

- Determine twice a day, or as otherwise directed by the Engineer, the empty haul weights (tare weights) of hauling vehicles, unless vehicles are tared before each load;
- Furnish daily a listing of the tare weights if 10 or more loads are hauled during that day;
- Furnish a note listing the net weight for each consecutive 10 loads with the following load;
- Furnish a daily listing the net weights and total weight for each type of Material hauled during that day; and
- Furnish a legible, serially numbered weigh memo for each load of Materials to the Agency’s Materials receiver at the point of delivery, or as directed by the Engineer. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of vehicle, driver, and weigh technician.

**(g) Agency-Provided Weigh Technician** – If the Contractor provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, the Agency will provide a weigh technician at the Contractor’s expense. The hourly cost for the weigh technician will be as stated in the **Special Provisions**. The Contractor shall provide a weighhouse for the weigh technician according to Section 00205. The Agency’s weigh technician will:

- Determine tare weights;
- Prepare weigh memos for each load;
- Compile the weigh records; and
- Not participate in the production of Materials or the loading of haul vehicles.

**00190.30 Plant Scales** – The Contractor, with the Engineer’s written approval, may weigh plant-mixed Materials on scales that have either:

- An automatic weight batching and mixing control printer system; or
- A weigh hopper printer system.

Any additional costs resulting from the use of these scales shall be borne by the Contractor. Check weighing will be done according to 00190.20(f).

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Except for 00190.20(c) regarding approaches, the Contractor's use of plant scales shall comply with all provisions of 00190.20.

The Engineer's approval for the Contractor's use of plant scales to determine pay weights will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine weights within the tolerances allowed by state law.

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## SECTION 00195 – PAYMENT FOR CONSTRUCTION PHASE SERVICES

### Description

#### 00195.00 Scope and Limit:

**(a) General** - The Agency will pay only for measured Pay Item quantities incorporated into the Work or performed according to the terms of the Contract. The Contractor understands and agrees that Pay Item quantities listed in the Schedule of Items do not govern payment.

Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, tools, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of 00170.80. The Contractor shall include the costs of bonds and insurance for the Project as a separate reimbursable item in each Early Work Amendment, and/or the GMP Amendment.

**(a) Essential or Incidental Materials or Work** – When the Specifications state that the unit price for a Pay Item is compensation for certain Materials or Work essential or Incidental to the Pay Item, the same Materials or Work will not be measured or paid under any other Pay Item.

**(b) Escalation/De-escalation** – The Agency and Contractor shall determine during the initial cost estimating and development of the GMP which materials and/or commodities will be priced subject to escalation and de-escalation, in accordance with Section 00195.10

### Provisions and Requirements

**00195.10 Asphalt Cement Material Price Escalation/De-escalation** – An asphalt cement price escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

**(a) Monthly Asphalt Cement Material Price (MACMP)** – The Monthly Asphalt Cement Material Price (MACMP) will be established by the Agency each month. For information regarding the calculation of the MACMP, and for the actual MACMP, go to the Agency website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt\\_fuel.aspx](http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt_fuel.aspx)

If the Agency selected index ceases to be available for any reason, the agency in its discretion will select and begin using a substitute price source or index to establish the MACMP each month. The MACMP will apply to all asphalt cement including but not limited to paving grade, polymer modified, and emulsified asphalts, and recycling agents. The Agency does not guarantee that asphalt cement will be available at the MACMP.

**(b) Base Asphalt Cement Material Price (Base)** – The Base asphalt cement material price for this Project is the MACMP published on the Agency website for the month immediately preceding the Proposal Due Date.

**(c) Monthly Asphalt Cement Adjustment Factor** – The Monthly Asphalt Cement Adjustment Factor will be determined each month as follows:

- If the MACMP is within  $\pm 5\%$  of the Base, there will be no adjustment.

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- If the MACMP is more than 105% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (1.05 \times \text{Base})$$

- If the MACMP is less than 95% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (0.95 \times \text{Base})$$

**(d) Asphalt Cement Price Adjustment** – A price adjustment will be made for the items containing asphalt cement listed below. The price adjustment as calculated in (c) above will use the MACMP for the month the asphalt is incorporated into the Project. The price adjustment will be determined by multiplying the asphalt incorporated during the month for subject Pay Items by the Adjustment Factor.

The Materials for which price adjustments may be applicable are:

- Asphalt in HMAC
- Emulsified Asphalt in Fog Coat
- Asphalt in Tack Coat
- Asphalt in Emulsified Asphalt Surface Treatment
- Asphalt in Multiple Application Emulsified Asphalt Surface Treatment
- Emulsified Asphalt in Mixture
- Recycling Agent

**00195.11 Fuel Cost Price Escalation/De-escalation** – A fuel escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

**(a) Monthly Fuel Price (MFP)** – A Monthly Fuel Price (MFP) will be established by the Agency each month. For the actual MFP, go to the Agency website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt\\_fuel.aspx](http://www.oregon.gov/ODOT/HWY/ESTIMATING/Pages/asphalt_fuel.aspx)

The MFP for a given month will be the average weekly price obtained from the OPIS weekly listing dated the first Monday of that month for No. 2 diesel fuel for Portland, Oregon. Prices are based solely on rack and resellers' prices exclusive of freight, taxes, and special discounts. If the average weekly price is not posted by OPIS or is otherwise not available to the Agency for the first Monday of any month for any reason, the Agency may use the average weekly price posted by OPIS immediately before or after the first Monday of that month. If the average weekly prices cease to be available from OPIS for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MFP each month. The Agency does not guarantee that fuel will be available at the MFP.

**(b) Base Fuel Price (Base)** – The Base fuel price for this Project is the MFP published on the Agency website for the month immediately preceding the Proposal Due Date.

**(c) Monthly Fuel Adjustment Factor** – A Monthly Fuel Adjustment Factor will be determined each month as follows:

- If the MFP is within  $\pm$  25% of the Base, there will be no adjustment.

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- If the MFP is more than 125% of the Base, then:  
Adjustment Factor = (MFP) – (1.25 x Base)
  - If the MFP is less than 75% of the Base, then:  
Adjustment Factor = (MFP) – (0.75 x Base)

**(d) Fuel Price Adjustment** – A fuel price adjustment for fluctuations in the cost of fuel will apply only to the major fuel usage Pay Items, and at the respective fuel factors listed in the **Special Provisions**, Section 00195.11(d).

The Contractor is cautioned to consider that its operations may require more or less fuel.

Estimated fuel requirements for construction the Project (gallons), are identified in the **Special Provisions**, Section 00195.11(d).

If the Contractor elects to use an alternate fuel (natural gas, wood pellets, propane, or other), the estimated fuel requirements will not be revised. Fuel cost adjustments will continue to be made as specified and will not be revised.

**00195.12 Steel Material Price Escalation/De-Escalation Clause** - Subsections 00192.12, 00192.12(a), 00195.12(b), 00195.12(c), and 00195.12(d) contain the price escalation/de-escalation clause relating to Steel Materials (as defined in 00195.12(d)) that is included in this Contract. This exclusive steel material price escalation/de-escalation clause, and the steel escalation/de-escalation program described in 00195.12 through 00195.12(d), are in effect for the life of this Contract regardless of the number of steel material Pay Items, if any, that are included, and whether or not the Contractor elects to participate in the steel escalation/de-escalation program according to 00195.12(d).

**(a) Steel material Price Escalation/De-escalation Participation** – The Contractor may select individual Pay Items to include in the steel escalation/de-escalation program from those Pay Items listed for this Project under 00195.12(d) by following the directions provided in 00195.12(d). The Contractor is not obligated to select any Pay Items. Before or within five (5) Business Days after the date of the preconstruction conference, the Contractor shall submit in writing to the Project Manager the Pay Items selected by the Contractor to be included in the steel escalation/de-escalation program in the manner required under 00195.12(d) (or the Contractor otherwise elects not to participate in the program), the Contractor thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Project.

**(b) Monthly Steel Materials Value (MV) and Base Steel Materials Value (BV)** – The Monthly Steel Materials Value (MV) will be established by the Agency from the IDWPUSISTEEL 1 Bureau of Labor Statistics (BLS), Producer Price Indexes (PPI) using non-seasonally adjusted indexes only. Preliminary numbers may be referenced on the IDWPUSISTEEL 1 BLS PPI for six (6) months or more before IDWPUSISTEEL 1 BLS PPI determines they are final numbers.

The Base Steel Materials Value (BV) for this Project will be the MV published on the Agency website for the month of the Proposal Due Date for this Project. The Agency will only publish values on the website for use after the IDWPUSISTEEL 1 BLS PPI establishes the numbers as final numbers. The final values of MV and BV will be available at the following Agency website:

<http://www.oregon.gov/ODOT/HWY/ESTIMATING/steel.shtml>

The Agency has no control of when the IDWPUSISTEEL 1 BLS PPI establishes final values. The Agency steel material price escalation/de-escalation adjustments made under 00195.12 through

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00195.12(d) may not be reflected on payments made to the Contractor for up to two (2) months after the IDWPUSISTEEL 1 BLS PPI applicable values become final. This timing for steel material price escalation/de-escalation adjustments is an agreed term of this Contract and shall not constitute late payment under ORS 279C.570, nor shall the Agency be responsible to pay interest on any such steel material price adjustments.

If the Agency-selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MV each month. The MV will only apply to Pay Items selected by the Contractor and provided in writing to the Agency from the Pay Item list contained under, and in the manner and within the time limits required by 00195.12(d). The Agency does not guarantee that steel material will be available at any stated or implied materials price.

**(c) Monthly Steel Materials Price Adjustment** – If the Contractor has properly informed the Agency of Pay Items to include in the steel escalation/de-escalation program as required by 00195.12(a) and 00195.12(d), a price adjustment evaluation will be made for the Pay Items individually selected. No adjustments will be made using the BV or MV until such time as they are listed as final values by the IDWPUSISTEEL 1 BLS PPI. The price adjustment as calculated in this provision for a given Pay Item will use the MV for the month the Work associated with that Pay Item is completed and added to the monthly progress estimate. A price adjustment for that Pay item will only be made if the MV for the month the Work associated with the Pay Item is completed and added to the monthly progress estimate differs by more than 10% from the BV. A price adjustment will be made, as and when required by 00195.12 through 00195.12(d), only for the Pay Items, if any, that were selected by the Contractor in the manner and within the time limits required under 00195.12(a) and 00195.12(d).

The Monthly Steel Materials Price Adjustment will be determined as follows:

- If the MV is within 10%  $\pm$  of the BV, there will be no adjustment
- If the MV is more than 110% of the BV, then:

$$PA = (((MV-BV) \div BV) - 0.10) \times (CB \times PIP)$$

- If the MV is less than 90% of the BV, then:

$$PA = (((MV-BV) \div 0.10) \times (CB \times PIP))$$

Where:

- PA = Price Adjustment, dollars
- MV = Monthly Steel Materials Value from BLS PPI for the month determined above (after becomes final)
- BV = Base Steel Materials Value from month of the Proposal Due Date (after becomes final)
- PIP = Amount paid for the Pay Item for the month for which the adjustment is made
- CB = Cost Basis for the applicable steel material, in percent (see 00195.12(d))

**(d) Steel materials Pay Item Selection** – ODOT has a process using estimated quantities to determine which Pay Items containing steel material qualify for the steel escalation/de-escalation program by meeting a minimum threshold, and are therefore included in the eligible Pay Items listed in the **Special Provisions**.

For purposes of 00195.12 through 00195.12(d), “steel material” means structural and reinforcing steel, steel studs, sheet piling, guardrail, ductile iron pipe, and other steel products used for the construction, reconstruction or major renovation of a road or Highway.

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The Contractor may elect to participate in the steel escalation/de-escalation program for this Project by marking the list in the **Special Provisions**, checking each box next to each Pay Item the Contractor wants included in the program and submitting this information in writing, signed and dated by the Contractor, to the Agency before or within five (5) Business Days after the date of the preconstruction conference. The steel material price escalation/de-escalation clause for price adjustments for fluctuations in the cost of steel material will apply only to the Pay Items selected by the Contractor, from the Pay Item list included in the **Special Provisions**, and provided in writing to the Agency in the manner and within the time limits stated above.

If the Contractor fails to inform the Agency of Pay Items to be included in the steel escalation/de-escalation program in the manner and within the time limits stated above (or the Contractor otherwise elects not to participate in the program), the Contractor thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Contract and this Project.

**00195.20 Changes to Plans or Character of Work:**

**(a) Insignificant Changed Work** – If the changes made under 00140.30 do not significantly change the character or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

If the Work involved in the change is measured on a lump sum basis, and its character is not significantly changed, payment for the Changed Work will be determined:

- As described in the applicable Section of the Specifications;
- If not described there, on a theoretical unit price determined by dividing the Contractor's lump sum price by the estimated quantity of the Pay Item listed in the **Special Provisions**; or
- If neither of the above apply, the Engineer will make an equitable adjustment.

**(b) Significant Changed Work** – If the changes made under 00140.30 significantly alter the character, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. Adjustments will exclude any loss of anticipated profits. Before the Contractor commences the Changed work, the parties shall agree upon the basis for payment and the amount of adjustment in the GMP, including any adjustment to the (1) the Pre-Construction Costs or (2) the CM/GC Fee, Cost of the Work, estimated Bonds and Insurance costs, and risk/contingency allowances, if any, or both (a) and (b). If the basis and amount cannot be agreed upon, the Agency will make an equitable adjustment, which may increase or decrease the GMP and Contract Time.

Any such adjustments shall not be more than the amount justified by the Engineer on the basis of the established procedures set out in Section 00197 for determining rates.

The term "Changed work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or unit cost from that involved or included in the originally proposed construction.

**00195.30 Differing Site Conditions** - Upon written notification, as required in 00140.40, the Engineer will investigate the identified conditions. If the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an adjustment in the GMP or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. The Engineer will notify the Contractor as to whether or not an adjustment of the Contract is warranted.

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No Contract adjustment which benefits the Contractor will be allowed unless the Contractor has provided the required written notice.

**00195.40 Unreasonable Delay by the Agency** - If the Contractor believes that performance of all or any portion of the Work is being suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of the Agency, or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due the Contractor because of the suspension, delay or interruption, the Contractor shall immediately file a written notice of delay according to 00180.60. The Contractor shall then promptly submit a properly supported request for any additional compensation, Contract Time, or both, according to the applicable provisions in 00180.60 through 00180.80 and Section 00199.

The Engineer will promptly evaluate a properly submitted request for additional compensation. If the Engineer determines that the delay was unreasonable, and that the cost required for the Contractor to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Engineer will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Engineer will notify the Contractor of the determination and whether an adjustment to the GMP is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless the Contractor has provided the written notice required by 00180.60;
- For costs incurred more than 10 Calendar Days before the Engineer receives the Contractor's properly submitted written request;
- For any portion of a delay that the Engineer deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract; or
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection.

**00195.50 Progress Payments and Retained Amounts:**

**(a) Progress Payments** – Unless otherwise required in the **CM/GC Contract, Article 11**, progress payments shall be made in accordance with this Section 00195.50. The Agency's payment of progress payments shall not be construed as acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective Materials or workmanship.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the Contractor uses these estimates as a basis for making payments to Subcontractors, the Contractor assumes all risk and bears any losses that result.

If the estimated amount due the Contractor for any given month is less than \$1,000, the Agency will make no payment for that month unless requested by the Contractor.

**(1) Progress Estimates** – At the same time each month, the Engineer will make an estimate of the amount and value of Pay Item Work completed. The amount of Work completed will be the sum of the estimated number of units completed for unit price Pay Items plus the estimated percentage completed of lump sum Pay Items.

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The estimated value of the Work completed will then be determined by using the Contract unit price for unit price Pay Items and by using the following method to determine the value of the lump sum Pay Items:

- A Contractor-submitted, Engineer-approved Schedule of Values. The percentage of completion shall be the share of the Early Work Amendment or GMP allocated to that portion of the Work in the Engineer-approved Schedule of Values.
- Applications for payment for hourly rate priced Work shall be determined by multiplying the total hours worked by the hourly rate, both of which are identified in the **CM/GC Contract**, Exhibit J.

**(2) Reductions to Progress Payments** - With each progress payment, the Contractor will receive a Contract payment voucher and summary setting forth the value of Work accomplished, reduced by the following:

- Amounts previously paid;
- Amounts deductible or owed to the Agency for any cause specified in the Contract;
- Additional amounts retained to protect the Agency's interests according to Subsection (e) below.

**(b) Retainage** – The amount to be retained from progress payments will be 2.5% of the value of Work accomplished, and shall be retained in one of the forms specified in Subsection (c) below. If the Agency determines that satisfactory progress is not being made on the Work, the Agency may withhold up to 5% of the value of Work accomplished from subsequent progress payments. No retainage will be withheld from Work performed as Force Account Work, escalation/de-escalation, bonuses, Pre-construction Phase Services, or other items decided by the Agency.

As provided in 00170.65(a) additional retainage of 25% of amounts earned will be withheld and released according to ORS 279C.845 when the Contractor fails to file the certified statements required in ORS 279C.845, FHWA Form 1273, and 00170.65.

**(c) Forms of Retainage** – Forms of acceptable retainage are set forth below in Subsections (1) through (3). "Cash, Alternate A" is the Agency-preferred form of retainage. If the Agency incurs additional costs as a result of the Contractor's election to use a form of retainage other than Cash, Alternate A, the Agency may recover such costs from the Contractor by a reduction of the final payment.

**(1) Cash, Alternate A** – Retainage will be deducted from progress payments and held by the Agency until final payment is made according to 00195.90, unless otherwise specified in the Contract.

The Agency will deposit the cash retainage withheld in an interest-bearing account in a bank, trust company, or savings association for the benefit of the Agency, as provided by ORS 279C.560(4). Interest earned on the account shall accrue to the Contractor. Amounts retained and interest earned will be included in the final payment made according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor shall be released to the Contractor according to 00195.50(d).

**(2) Cash, Alternate B (Retainage Surety Bond)** – Upon receipt of an approved retainage surety bond, the Agency will limit the amount of cash retainage withheld to \$10,000. The surety bond must be in the bond form provided by the Agency. The bond must be provided by the same Surety that provides the Performance and Payment Bonds.

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If the Contractor elects this form of retainage, the Agency will withhold from progress payments 2.5% of the value of Work accomplished as cash retainage until the retained amount equals \$10,000. After that amount is retained, no further cash retainage will be withheld until the additional required retainage that would have been withheld exceeds the face amount of the retainage surety bond provided. Thereafter, retainage will be withheld from progress payments according to these Specifications. According to 00195.50(b), if at any time the Agency determines that satisfactory progress is not being made on the Work, the Agency may withhold up to 5% of the value of the Work accomplished from subsequent progress payments.

If an acceptable retainage surety bond is provided, the Contractor shall notify all Subcontractors of the existence of the retainage surety bond and shall advise them of their rights under ORS 279C.560(6).

Amounts of retainage withheld under the provision will be included in the final payment according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor will be released to the Contractor according to 00195.50(d).

**(3) Bonds and Securities** – The Contractor may deposit bonds or securities with the Agency or with any bank or trust company, to be held instead of cash retainage for the benefit of the Agency (ORS 279C.560). In such event, the Agency will reduce the cash retainage by an amount equal to the value of the bonds and securities. Interest on the bonds and securities shall accrue to the Contractor.

Bonds and securities deposited instead of cash retainage shall be assigned or made payable to the Agency and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

- Bills, certificates, notes or bonds of the United States;
- Other obligations of the United States or its agencies;
- Obligations of any corporation wholly owned by the federal government; and
- Indebtedness of the Federal National Mortgage Association

The Contractor shall execute and provide such documentation respecting the bonds and securities as the Agency may require to protect its interests. When the Engineer determines that requirements for the protection of the Agency's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor.

**(d) Reduction of Retainage** – As the Work progresses, the amounts to be retained under (b) of this Subsection are subject to reduction in the Engineer's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, the Engineer may, without application by the Contractor, reduce the retained amount to 100% of the value of the Work remaining.
- When a Subcontractor has satisfactorily completed all of its Work, it may request release of retainage for that Work from the Contractor. The Contractor shall request reduction of retainage in the amount withheld for the Subcontractor's Work after certifying to the Agency that the Subcontractor's Work is complete, and that all contractual requirements pertaining to the Subcontractor's Work have been satisfied. Within 60 Calendar Days of the end of the month in which the Agency receives the Contractor's certification regarding the Subcontractor's Work, the Agency will either notify the Contractor of any deficiencies

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which require completion before release of retainage, or verify that the Subcontractor's Work complies with the Contract and release all retainage for that Work with the next scheduled progress payment. Within 10 Calendar Days of receipt of retainage, the Contractor shall pay to the Subcontractor all such retainage released except for latent defects or warranty.

- The Agency will only release retainage for satisfactorily completed portions of the Work represented by Pay Items in the Schedule of Items, or by Pay Items added by Change Order. Work not represented by a Pay Item, but which constitutes part of an uncompleted Pay Item, will not be regarded as satisfactorily completed Work for the purposes of this Subsection.

If retainage has been reduced or eliminated, the Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in 00195.50(b).

**(e) Withholding Payments** – The Engineer may withhold such additional amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Contractor has:

- Complied with all orders issued by the Engineer according to the Specifications; and
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and Agency employees that the Contractor is obliged to defend. (see 00170.72)

Notwithstanding ORS 279C.555 or 279C.570, if a Contractor is required to file certified statements confirming payment of prevailing rates of wage but fails to do so, the Agency will retain 25% of any amount earned as required in 00170.65.

**(f) Prompt Payment Policy** – Payments shall be made promptly in accordance with ORS 279C.570.

**00195.60 Advance Allowance for Materials on Hand:**

**(a) General** – If the total value of Materials on hand is at least \$1,000 or the total value of a single class of Materials on hand is at least \$500, the Engineer may authorize an advance allowance for the Materials in the progress payments. The Agency will not make advance allowances on the Materials unless the following three (3) conditions are satisfied:

**(1) Request for Advance Allowance** – If Materials on hand meet the requirement of (2) below, an advance allowance will be made if:

- A written request for advance allowance for Materials on hand has been received by the Engineer at least five (5) Calendar Days before the pay period cutoff date; and
- The request is accompanied by written consent of the Contractor's Surety.

**(2) Stored or Stockpiled Conditions** - The Materials shall have been delivered and/or acceptably stored or stockpiled according to the Specifications and as follows:

- At the Project Site;
- On Agency-owned property;
- On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Agency to enter upon the property and remove Materials for at least six (6) months after completion of the

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Project. The Contractor shall furnish a copy of the written permission to the Agency;  
or

- On property outside the State of Oregon on which the property owner has authorized storage in writing, provided that such storage location is allowed by the Special Provisions or authorized in writing by the Engineer. The permit must allow the Agency to enter upon the property and remove Materials for at least six (6) months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency.

To be eligible for advance allowance, the Materials shall:

- Meet Specification requirements;
- Have the required Materials conformance and quality compliance documents on file with the Engineer (see Section 00165);
- Be in a form ready for incorporation into the Work; and
- Be clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project.

**(3) Responsibility for Protection** – The Contractor has full control and responsibility for the protection of Materials on hand from the elements and against damage, loss, theft, or other impairment until the entire Project has been completed and accepted by the Agency.

If Materials are damaged, lost, stolen, or otherwise impaired while stored, the monetary value advanced for them, if any, will be deducted from the next progress payment.

If these conditions in 00195.60(a-1) through (a-3) have been satisfied, the amount of advance allowance, less the retainage described in 00195.50, will be determined by one of the following methods as elected by the Engineer:

- Net cost to the Contractor of the Materials, f.o.b. the Project Site or other approved site; or
- Price (or portion of it attributable to the Materials), less the cost of incorporating the Materials into the Project, as estimated by the Engineer.

**(b) Proof of Payment** – The Contractor shall provide the Engineer with proof of payment to the Materials suppliers for purchased Materials within 30 Calendar Days of the date of the progress payment that includes the advance allowance.

If proof of payment is not provided, sums advanced will be deducted from future progress payments, and the Engineer will not approve further prepayment advance allowance requests.

**(c) Terminated Contract** – If the Contract is terminated, the Contractor shall provide the Agency immediate possession of all Materials for which advance allowances have been received, as provided above. If, for any reason, immediate possession of the Materials cannot be provided, the Contractor shall immediately refund to the Agency the total amount advanced for the Materials. The Agency may deduct any amount not so refunded from final payment.

**00195.70 Payment under Terminated Contract** - Payment for Work performed under a Contract that is terminated pursuant to the provisions of 00180.90 will be determined under (a) or (b) of this Subsection.

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**(a) Termination for Default** – Upon termination of the Contract for the Contractor's default, the Agency will make no further payment until the Project has been completed. The Agency will make progress payments to the party to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs and damages, as determined by the Engineer, to complete the Project.

Upon completion of the Project, the Engineer will determine the total amount that the defaulting Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work (the "cost of the completed Work").

If the cost of the completed Work, less the sum of all amounts previously paid to the Contractor, exceeds the expense incurred by the Agency in completing the Work, including without limitation expenses for additional managerial and administrative services, the Agency will pay the excess to the Contractor, subject to the consent of the Contractor's Surety.

If the expense incurred by the Agency in completing the Work exceeds the GMP, the Contractor or the Contractor's Surety shall pay to the Agency the amount of the excess expense.

The Engineer will determine the expense incurred by the Agency and the total amount of Agency damage resulting from the Contractor's default. That determination will be final as provided in 00150.00.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Contractor will be made as provided in Subsection (b) below.

**(b) Termination for Public Convenience**

**(1) General** – Full or partial termination of the Contract shall not relieve the Contractor of responsibility for completed portions of the Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed Work.

**(2) Mobilization** – If mobilization is not a separate Pay Item, and payment is not otherwise provided for under the Contract, the Agency may pay the Contractor for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by the Contractor to the Engineer.

**(3) All Other Work** – The Agency shall pay the Contractor at the unit price for the number of Pay Item units, or the percentage of lump sum Pay Item units, of completed, accepted Work. For units of Pay Items partially completed, payment will be as mutually agreed, or, if not agreed, as the Engineer determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Agency will purchase Materials left on hand according to 00195.80 below.

**00195.80 Allowance for Materials Left on Hand:**

**(a) Purchase of Unused Materials** – If Materials are delivered to the Project Site, or otherwise acceptably stored at the order of the Engineer, but not incorporated into the Work due to complete or partial elimination of Pay Items, changes in Plan, or termination of the Contract for public convenience according to 00180.90, and it is not commercially feasible for the Contractor to return them for credit or otherwise dispose of them on the open market, the Agency will purchase them according to the formula and conditions specified in Subsection (b) below.

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**(b) Purchase Formula and Conditions:**

**(1) Formula** – The Agency will apply the following formula in determining the Contractor's allowance for Materials left on hand:

Contractor's Actual Cost, plus 5% Overhead Allowance, minimum Advance Allowances under 00195.60, but no markup or profit.

**(2) Conditions** – The Agency will not purchase the Contractor's Materials left on hand unless the Contractor satisfies the following conditions:

- Requests the Agency's purchase of unused Materials;
- Shows acquisition of the Materials according to 00160.10;
- Shows that the Materials meet Specifications; and
- Provides receipts, bills and other records of actual cost of Materials delivered to the designated delivery points.

**00195.90 Final Payment:**

**(a) Final Estimate** – As soon as practicable after Final Inspection of the Project, as provided in 00150.90, the Engineer will prepare a final estimate of the quantities of the Pay Items performed. With this estimate of quantities as a base, the total amount due the Contractor will be determined according to the terms of the Contract, including without limitation any amounts due for Extra Work performed.

**(b) Final Payment** – The amount of final payment will be the difference between the total amount due the Contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, and after Final Acceptance of the Project, final payment will be mailed to the Contractor's last known address, as shown in the records of the Agency.

Beginning 30 Calendar Days after the date of Third Notification, interest will begin to accrue at the rate established by ORS 279C.570 on any money due and payable to the Contractor as final payment, determined as described above. No interest will be paid on money withheld due to outstanding amounts owed by the Contractor under the provisions of 00170.10.

**(c) No Waiver of Right to Make Adjustment** – The fact that the Agency has made any measurement, estimate, or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, or payment for any part of the Work, shall not prevent either party from:

- Showing the true amount and character of the Work;
- Showing that any measurement, estimate or certification is incorrect (except for Agency verifications under 00195.50(d));
- Recovering from the other party damages that may have been suffered because the other party failed to comply with the Contract.

**00195.95 Error in Final Quantities and Amounts:**

**(a) Request for Correction of Compensation** – If the Contractor believes the quantities and amounts detailed in the final Contract payment voucher, prepared by the Engineer according to

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00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Engineer detailing all proposed corrections.

This statement must be submitted to the Engineer within 90 Calendar Days from the date the voucher was mailed to the Contractor according to 00195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Agency. This does not limit the application of Section 00199.

**(b) Acceptance or Rejection of Request:**

**(1) Consideration of Request** – The Engineer will consider and investigate the Contractor’s request for correction of compensation according to 00195.95(a) and will promptly advise the Contractor of acceptance or rejection of the request in full or in part.

**(2) Acceptance of Request** – If the Engineer accepts the Contractor’s request(s) in full or in part, the Engineer will prepare a post-Contract payment voucher, including all accepted corrections, and will forward it to the Contractor.

**(3) Rejection of Request** – If the Engineer rejects the request(s) in full, the Engineer will issue a written notice of rejection and mail it to the Contractor.

**(4) Contractor Objection to Revised Voucher or Notice of Rejection** – If the Contractor disagrees with the revised voucher or notice of rejection, the Contractor may request review pursuant to the procedure specified in 00199.40. If the Contractor fails to submit a request for 00199.40 review within 30 Calendar Days after the Engineer mails a post-final Contract payment voucher or notice of rejection, the Contractor waives all rights to a claim based on errors in quantities and amounts.

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## SECTION 00196 – PAYMENT FOR EXTRA WORK

### Description

**00196.00 General** - Only Work not included in the Contract as awarded but deemed by the Engineer to be necessary to complete the Project (see 00140.80) will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made in accordance with 00195.20

Compensation for Extra Work will be paid only for Work authorized in writing by the Engineer and performed as specified. Work performed before issuance of the Engineer's written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Engineer, in accordance with 00196.10 and 00196.20.

### Provisions and Requirements

**00196.10 Negotiated Price** - If the Engineer can reasonably determine a price estimate for Extra Work, the Engineer may then give written authorization to the Contractor to begin the Extra Work. As soon as practicable, but within ten (10) Calendar Days after that authorization, the Contractor shall respond in writing to the Engineer's Extra Work price estimate by submitting to the Engineer an Extra Work price quote. The price quote shall detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit
- Other costs associated with the proposed Extra Work

Pending approval of the price quote, the Engineer will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, the Engineer will review the price quote and advise the Contractor if it is accepted or rejected. The Engineer will not accept a price quote that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Engineer will issue a Change Order, and the Extra Work will be paid at the accepted price.

**00196.20 Force Account** - If the Engineer and the Contractor cannot agree on a price for the Extra Work, the Engineer may issue a Force Account Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be governed by Section 00197.

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**SECTION 00197 – PAYMENT FOR FORCE ACCOUNT WORK DURING CONSTRUCTION  
PHASE SERVICES**

**ODOT Provisions and Requirements**

**Force Account Work**

**00197.00 Scope** - The Materials, Equipment, and labor rates established in this Section apply only to Extra Work ordered by the Engineer to be performed as Force Account Work. These rates do not apply to any other Work performed under the Contract.

**00197.01 General** - Before ordering Force Account Work, the Engineer will discuss the proposed work with the Contractor, and will seek the Contractor's comments and advice concerning the formulation of Force Account Work specifications. The Engineer is not bound by the Contractor's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment, and labor to be used on the approved Force Account Work; and
- Determine the time of the Contractor's performance of the ordered Force Account Work.

If the Engineer orders the performance of Extra Work as Force Account Work, the Engineer will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that day. The Engineer and the Contractor shall sign the record daily to indicate agreement on the Materials, Equipment, labor, and Special Services used for the Force Account Work performed on that day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by the Engineer, except those furnished and paid under rental rates for use of Equipment;
- Equipment which the Engineer considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour.
- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work;
- Special Services; and
- The Engineer's and Contractor's signatures confirming its accuracy.

**00197.10 Materials:**

**(a) General** - The Contractor will be paid for Materials actually used in the Force Account Work as directed by the Engineer, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the supplier to the purchaser, whether the purchaser is the Contractor, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

**(b) Trade Discount** - If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Agency, even though the discount may not have actually been taken. The Agency will not take any discounts for prompt or early payment, whether or not offered or taken.

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**(c) Not Directly Purchased From Supplier** - If Materials cannot be obtained by direct purchase from and direct billing by the supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Engineer, but not more than the purchaser paid for the Materials. No markup other than actual handling costs will be permitted.

**(d) Purchaser-Owned Source** - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source on Pay Items, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

**00197.20 Equipment:**

**(a) General** - Equipment approved by the Engineer to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated, or on standby if so ordered by the Engineer. Equipment hours will be recorded on the daily record to the nearest quarter hour. Rates shall be based upon the Contractor's internal cost rate and, in no event, shall the internal rates exceed the current Bluebook rate, as follows:

Equipment use approved by the Engineer will be paid at the Contractor's internal cost rates which, in any event, shall not exceed rental rates given in the most current edition of the Rental Rate Blue Books for Construction Equipment ("Blue Book"), Volumes 1, 2, and 3, published by Penton Media, Inc., and available from EquipmentWatch (phone 1-800-669-3282).

**(b) Equipment Description** - On the billing form for Equipment costs, the Contractor shall submit to the Engineer sufficient information for each piece of Equipment and its attachments to enable the Engineer to determine the proper cost rate.

**(c) Rental Rates (without Operator):**

**(1) Rental Rate Formula** – Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate} \times \text{Rate Adjustment Factor}}{176 \text{ hours/month}} + \text{Hourly Operating Rate}$$

Some attachments are considered "standard Equipment" and are already included in the monthly base rate for the Equipment. That information can be obtained from EquipmentWatch.

**(2) Monthly Base Rate** – The monthly base rate used above for the machinery and for attachments represents the major costs of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.

**(3) Rate Adjustment Factor** – The rate adjustment factor used above will be determined as per page iii of each section of the Blue Book.

**(4) Hourly Operating Rate** – The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.

**(5) Limitations** – The Blue Book "Regional Adjustment Factor" shall not apply.

If multiple attachments are included with the rental Equipment and are not considered "standard Equipment," only the attachment having the higher rental rate will be eligible for

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payment, provided the attachment has been approved by the Engineer as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than \$5, or for unlisted Equipment that has a fair market value of \$400 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the Work, may be rejected by the Engineer or accepted and paid for at reduced rates.

**(d) Moving Equipment** - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, its On-Site Work location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on Pay Item or related Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with the Contractor's own forces, transportation costs will include the rental rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment, without attachments, plus the Equipment operator's wage.

**(e) Standby Time** – If ordered by the Engineer, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than \$1 per hour will not be paid. Payment will be limited to not more than eight (8) hours in a 24-hour period or 40 hours in a one-week period.

**(f) Blue Book Omissions** - If a rental rate has not been established in the Blue Book, the Contractor may:

- If approved by the Engineer, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type;
- Request EquipmentWatch to furnish a written response for a rental rate on the Equipment, which shall be presented to the Engineer for approval; or
- Request that the Engineer establish a rental rate.

**(g) Outside Rental Equipment** – If Contractor- or Subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice.

If the invoice specifies that the rental rate does not include fuel, lubricants, field repairs, or servicing, an amount equal to the Blue Book hourly operating cost may be added for those items that were excluded.

The Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of 00180.20(c) apply to owner-operated Equipment.

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**00197.30 Labor** - The Contractor will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations.

**(a) Standard Calculation** - The hourly amount paid to the Contractor for each employee engaged on Force Account Work will be two (2) times the actual base hourly wage (excluding fringe benefits, vacation, and all other direct and indirect costs including subsistence) paid to the employee for:

**(1)** Work under each Force Account Work order, up to an accumulated total value for labor under that order of \$10,000; and

**(2)** Workers whose work class has an industrial accident insurance rate of 25% or less, as determined by the National Council on Compensation Insurance (NCCI) for the assigned risk pool for the appropriate worker class.

The amount paid to the Contractor shall be full compensation for all costs associated with labor on Force Account Work, including wages, fringe benefits, vacation, insurance, markup, and other direct and indirect costs, except for per diem costs. If per diem is paid to workers for similar Pay Item Work, per diem costs will be paid on an actual-cost basis for the Force Account Work. The markup described in 00197.80 will not be added, except that the supplemental markup for Force Account Work performed by Subcontractors will be allowed.

**(b) Work Value for Labor over \$10,000.00 or NCCI Rate over 25%** - After the accumulated value of labor performed under a Force Account Work order exceeds either 00197.30(a-1) or 00197.30(a-2), payment for Force Account Work labor will be calculated as follows:

**(1) Wages** - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current prevailing rates in the locality of the Project.

**(2) Required Contributions** - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required by statutory law and these Specifications. The actual cost of industrial accident insurance is the NCCI rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.

**(3) Required Benefits** - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

The cost of labor calculated under this Subsection will also be subject to the applicable markups in 00197.80.

**00197.40 Invoices for Special Services** - Invoices for Special Services that reflect current market pricing may be accepted without complete itemization of Materials, Equipment, and labor costs if the itemization is impractical or not customary. The invoice for Special Services shall show credit for commercial trade discounts offered or available.

No percentage markup will be allowed other than that specified in 00197.80.

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**00197.80 Percentage Allowances** - To the Contractor's actual costs incurred, as limited in this Section 00197, amounts equal to a percentage markup of such costs will be allowed and paid to the Contractor as follows:

| <b>Subsection</b>         | <b>Percent</b> |
|---------------------------|----------------|
| 00197.10 Materials        | 17             |
| 00197.20 Equipment        | 17             |
| 00197.30(b) Labor         | 22             |
| 00197.40 Special Services | 17             |

When a Subcontractor performs ordered Force Account Work, the Contractor will be allowed a supplemental markup of 8% on each Force Account Work order.

These allowances made to the Contractor will constitute full compensation for overhead, general and administrative expenses, profit, and all other Force Account Work costs incurred by the Contractor, or by other forces that the Contractor furnished. No other reimbursement, compensation, or payment will be made, including, but not limited to, the CM/GC Fee.

**00197.90 Billings** – Billings for Force Account Work by the Contractor shall be submitted for the Engineer's approval on forms provided by the Agency or approved by the Engineer. Billings for Materials (other than Incidental items out of the inventory of the Contractor or Subcontractors), rental Equipment from sources other than the Contractor or Subcontractors, and Special Services shall be accompanied by copies of each supplier's invoice for the goods and services. The invoices shall be fully itemized, showing dates, quantities, unit prices, and complete descriptions of goods and services provided. Invoices for amounts of \$10 or less per invoice are not required unless requested by the Engineer.

Costs included on the billings shall comply with the guidelines of 00197.10 through 00197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount to less than \$10.

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## SECTION 00199 – DISAGREEMENTS, PROTESTS, AND CLAIMS

### Description

**00199.00 General** - This Section details the process through which the parties agree to resolve any disagreement concerning additional compensation or concerning a combination of compensation and Contract Time. (See 00180.80 for disagreements and claims concerning additional Contract Time only, and 00195.95 for disagreements and claims concerning correction of final compensation). The Agency will not consider direct disagreements, disputes, or claims from Subcontractors, Materials suppliers, or any other Entity not a party to the Contract.

### Provisions and Requirements

**00199.10 Procedure for Resolving Disagreements** - When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Engineer of all issues in the dispute, including, without limitation, the items to be included in the written notice in 00199.20. If the discussion fails to provide satisfactory resolution of the disagreement, the Contractor shall follow the protest procedures outlined in 00199.20. If the Engineer denies all or part of the Contractor's protest, and the Contractor desires to further pursue the issues, the Contractor shall submit a claim for processing according to 00199.30.

**00199.20 Protest Procedure** - If the Contractor disagrees with anything required in a Change Order or other written or oral order from the Engineer, including any direction, instruction, interpretation, or determination that, in the Contractor's opinion, entitles or would entitle the Contractor to additional compensation, the Contractor shall do all of the following in order to pursue a protest and preserve its claim:

**(a) Oral Notice** – Give oral notice of protest to the Engineer and outline the areas of disagreement before starting or continuing the protested Work.

**(b) Written Notice** – File a proper written notice of protest with the Engineer within seven (7) Calendar Days after receiving the protested order. In the notice the Contractor shall:

- Describe the acts or omissions of the Agency or its agents that allegedly caused, or may cause, damage to the Contractor, citing specific facts, persons, dates, and Work involved;
- Describe the nature of the damages;
- Cite the specific Contract provision(s) that support the protest;
- Include the estimated dollar cost, if any, of the protested Work, and furnish a list of estimated Materials, Equipment, and labor for which the Contractor might request additional compensation; and
- If additional compensation is estimated to be due, the estimated amount of additional time required, if any.

The Engineer has no responsibility to evaluate the protest unless the Contractor has timely filed a proper notice submitting all of the above information. Failure to comply with this notice requirement renders the notice improper.

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**(c) Records** – Keep complete records of all costs and time incurred throughout the protested Work, and allow the Engineer access to those and other supporting records. Provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with the Engineer.

**(d) Comparison of Records** – Provide the Engineer adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Engineer will compare records and either brings them into agreement at the end of each day, or record and attempt to explain any differences.

**(e) Work to Proceed** - In spite of any protest, proceed promptly with the Work ordered by the Engineer.

**(f) Evaluation of Protest** - The Engineer has no responsibility for evaluating a protest that is not timely filed, or for which adequate supporting documentation has not been kept. Provided the procedures above are followed, the Engineer will promptly evaluate all protests and, if the protest is denied, advise the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Engineer will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

**(g) Protest Evaluation by Third Party Neutral** – If the Engineer agrees that the Contractor has fully complied with the requirements described I 00199.20(b), and if the Engineer fully or partially denies, in writing, the Contractor's protest according to 00199.20(f), the Contractor may request that a mutually selected Third Party Neutral review the protest. Procedures for selecting, using, and paying for the cost of the Third Party Neutral will be specified by Change Order.

If the Contractor does not accept the Engineer's evaluation of the protest, or either the Contractor or Engineer disagrees with the resolution recommended by the Third Party Neutral, the Contractor may pursue a claim as described in 00199.30.

#### **00199.30 Claims Procedure:**

**(a) General** - If the Contractor believes that additional compensation is due, or a combination of additional compensation and Contract Time, and has pursued and exhausted all the procedures provided in 00199.10 and 00199.20 to resolve a disagreement and protest, the Contractor may file a claim.

The Agency's Contract is with the Contractor. There is no contractual relationship between the Agency and any Subcontractor. It is the Contractor's responsibility to fully analyze any claim before presenting it to the Agency. In addition, when a claim includes Work done or costs incurred by a Subcontractor, Materials supplier, or any Entity other than the Contractor, the Contractor remains solely responsible for presenting the claim to the Agency.

Claims that include Work done or costs incurred by any Entity other than the Contractor will not be considered by the Agency unless the Contractor has:

- Completed and provided its own written analysis and evaluation of the claim; and
- Verified by its own independent review and analysis the amount of compensation sought.

**(b) Claims Requirements** - At any time during the progress of the Work, but not later than 15 Calendar Days following the date of the Second Notification, the Contractor shall submit to the Engineer claims for additional compensation or a combination of additional compensation and Contract Time additional to that specified in the Contract. For a claim not submitted within the 15 Calendar Day limit, that has not met the requirements of 00199.20, or is not filed as provided in

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00199.30, the Contractor waives any claim for additional compensation or for additional compensation and Contract Time, and the Agency may reject the claim.

To be considered, claims for compensation or for additional compensation and Contract Time, shall be completed according to 00199.30 and shall be submitted with the information and in the format below and labeled as required below for each claimed issued:

**(Part 1)** Executive Summary (label page 1.1 through page 1.?) - In the Executive Summary include a detailed, factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim, the dates of when the event arose and when notice was given to the Agency. Also include detailed facts supporting the Contractor's position relative to the Engineer's decision (see 00199.20(f));

**(Part 2)** Copies of the Contract Specifications that support the Contractor's claim (label page 2.1 through page 2.?).;

**(Part 3)** Theory of entitlement supporting the claim (label page 3.1 through page 3.?) - Include a narrative of how or why the specific Contract Specifications support the claim and a statement of the reasons why such Specifications support the claim;

**(Part 4)** Itemized list of claimed amounts (label page 4.1 through page 4.?) - Claimed damages that resulted from the event with a narrative of the theories and documents used to arrive at the value of the damages;

**(Part 5) Additional** Contract Time requests (label page 5.1 through page 5.?) - If the claim is for a combination of additional compensation and Contract Time, submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed:

- Include the specific days and dates under claim;
- Provide detailed facts about the specific acts or omissions of the Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable, and;
- A schedule analysis that accurately describes the impacts of the claimed delay.
- (Also see 00180.80 for additional requirements regarding claims for Contract Time and causes that are eligible and ineligible for consideration.);

**(Part 6)** Copies of actual expense records (label page 6.1 through page 6.?) - Include documents that contain the detailed records and which support the total to the exact amount of additional compensation sought. Include the information and calculations necessary to support that amount. That amount may be calculated on the basis of Section 00197, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials;
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75% of those calculated under the provisions of 00197.20. For each piece of Equipment, the Contractor shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;
- Direct labor;
- Job overhead;

- General and administrative overhead; and
- Other categories as specified by the Contractor or the Agency.

**(Part 7)** Supporting documents (label page 7.1 through page 7.?) – Include copies of, or excerpts from the following:

- Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and
- Any daily reports or diaries related to the event, photographs or media that help explain the issue or event (optional), or all other information the Contractor chooses to provide (optional);

**(Part 8)** Contractor evaluation of a lower tier claim (label page 8.1 through page 8.?) - If the claim includes Work done or costs incurred by a Subcontractor, Materials supplier, or any Entity other than the Contractor, the following are required:

- Data required by the other Subsections of 00199.30(b);
- Copy of the Contractor’s separate analysis and evaluation;
- Copy of the Contractor’s independent review and analysis of the amount of damages sought; and

**(Part 9)** Certification (label page 9.1 through 9.?) – A certified statement by the Contractor, Subcontractor or Materials supplier, as appropriate, as to the validity of facts and costs containing the following language:

*“Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of \$\_\_\_\_\_, exclusive of interest) and is fully documented and supported under the Contract between the Parties.*

Signature:

Date: \_\_\_\_\_, 20\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public

My commission expires \_\_\_\_\_”

A person authorized to execute Change Orders on behalf of the Contractor must countersign this statement.

Claims shall be made in writing, and shall include all information necessary for the Agency to properly and completely analyze the claim. All pages shall have page numbers and be marked with the numbering system shown above. The Agency reserves the right at any time to request additional information related to the claim or the Contract either directly or through Agents working toward resolution of the disputed or claimed events and issues.

**(c) Records Required** – The Contractor shall keep full and complete records of the costs incurred for the submitted claim. These records shall include all worksheets used to prepare the claim establishing the cost components for items of the claim.

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**(d) Access to Records** – The Contractor shall provide the Engineer access to all Contractor records required to determine the facts, contentions, and costs involved in the claim. The Engineer may perform an audit of these records. The Contractor shall retain Contract records for a period of at least three (3) years after Final Acceptance of the Project by the Agency, or until all disputes, including litigation, if any, are resolved (the “record retention period”). The Agency and/or its agents shall be provided full access to all Contract records during the record retention period.

**(e) Compliance Required** - Full compliance by the Contractor with the provisions of this Section is a condition precedent to the commencement of any lawsuit by the Contractor to enforce any claim.

**00199.40 Claim Decision; Review; Exhaustion of Administrative Remedies** – The Agency intends to resolve claims at the lowest possible administrative level. If the Project Manager denies the claim, in full or in part, pursuant to 00199.40(a), the Contractor may request review of the denial. The disputed claim may then be resolved, in full or in part, at any of the three progressive steps of claim review procedure as set forth in (a) through (c) of this Subsection. All of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

If, at any step in the claim decision or review process, the Contractor fails to promptly submit requested information or documentation that the Agency deems necessary to analyze the claim, the Contractor is deemed to have waived its right to further review, and the claim will not be considered properly filed and preserved.

**(a) Decision by the Project Manager** - The Project Manager will, as soon as practicable, consider, investigate, and evaluate a Contractor’s claim for additional compensation, or for additional compensation and Contract Time, if submitted as required by 00199.30.

If the Project Manager determines that additional information or documentation is needed to allow proper analysis of the claim, the Contractor shall meet with the Project Manager within 14 Calendar Days, or as otherwise agreed by the parties, to present the additional information or documentation, or make other arrangements with the Project Manager to supply that material.

The Project Manager will advise the Contractor of the decision to accept or deny the claim, and the reasons for any full or partial denial of the claim, within 30 Calendar Days of receipt of the Contractor’s claim, or the receipt of requested additional information or documentation regarding the claim, whichever is later, unless the Project Manager and Contractor have agreed upon a longer response time. If the Contractor does not accept the Project Manager’s decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Project Manager arrange a review at Step 1 (See (b) below).

**(b) Step 1: County Engineer** - The Contractor shall request a meeting with the County Engineer, to present the claim for final Agency review. The presentation will take place within 21 Calendar Days of the Agency’s receipt of the Contractor’s written request, or as otherwise agreed by the parties.

If the County Engineer determines that the Contractor must furnish additional information or documentation to allow proper analysis of the claim, the County Engineer will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the parties, at which the Contractor shall present the requested information or documentation.

The County Engineer will provide a written decision to the Contractor within 30 Calendar Days of the final Step 1 meeting.

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If the Contractor does not accept the Step 1 Agency decision, the Contractor may proceed to Step 2 (See Section 00199.40 (c) below).

**(b) Step 2: Litigation** - This step applies to:

- All Claims not resolved after exhaustion of all administrative remedies under Section 00199.40 (a) and (b), above;

On all matters that the Agency decides to litigate, the Agency may submit the matter to ODOT and DOJ for evaluation and review. At its discretion, the Agency may involve ODOT and/or DOJ as it deems necessary to assist it in the resolution or litigation of the Claim.

The Contractor must follow each step in order and exhaust all available administrative remedies before resort to litigation. Lawsuits must be properly filed in a court of competent jurisdiction within six (6) months from the date of the final decision that exhausted the Contractor's available administrative remedies under this Section 00199.

In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Contract interpretation.

The Contract shall not be construed against either party regardless of which party drafted it. Other than as modified by the Contract, the applicable rules of contract construction and evidence shall apply. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

Any dispute between the Agency and the Contractor that arises from or relates to this Contract and that is not resolved under the provisions of Section 00199 shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon in the county where the Agency's main office is located; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Subsection be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THE CONTRACT HEREBY CONSENTS TO THE PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

**00199.50 Mediation** - Notwithstanding the formal claims procedure set forth above, the parties may enter into nonbinding mediation by mutual agreement at any time, in which case the parties may also agree to suspend the time requirements in Section 00199 pending the outcome of the mediation process. The rules, time, and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between the Contractor and the Agency. Either party may terminate mediation at any time upon five (5) Calendar Days notice to the other, after which the time the requirements of Section 00199 shall be automatically reinstated.