

PART 00100 - GENERAL REQUIREMENTS

Section 00110 - Organization, Conventions, Abbreviations and Definitions Organization

00110.00 Organization of Standard Specifications - This publication is comprised of Part 00100 "General Requirements," which deals with the solicitation process and contractual relationships, and Parts 00200 and beyond, which contain the detailed technical specifications involved in prosecution of the Work, organized by subject matter. In addition, throughout these Standard Specifications:

- (a) Each Part is divided into Sections and Subsections.
- (b) Reference to a Section includes all applicable requirements of the Section.
- (c) When referring to a Subsection, only the number of the Subsection is used; the word "Subsection" is implied.
- (d) Where Section and Subsection numbers are not consecutive, the interval has been reserved for use in the Special Provisions, Supplemental Specifications (if any), or future expansion of the Standard Specifications.

Conventions

00110.05 Conventions Used Throughout the Specifications Include:

(a) **Grammar** - Part 00100 of the Supplemental Specifications is written in the indicative mood, in which the subject is expressed. Parts 00200 and beyond of the Standard Specifications are generally written in the imperative mood, in which the subject is implied. Therefore, throughout Parts 00200 and beyond, and on the Plans:

- (1) The subject, "the Contractor", is implied.
- (2) "Shall" refers to action required of the Contractor, and is implied.
- (3) "Will" refers to decisions or actions of the City and/or the Engineer.
- (4) The following words, or words of equivalent meaning, refer to the actions of the City and/or the Engineer, unless otherwise stated: "directed", "established", "permitted", "ordered", "designated", "prescribed", "required", "determined".
- (5) The words "approved", "acceptable", "authorized", "satisfactory", "suitable", "considered", and "rejected", "denied", "disapproved", or words of equivalent meaning, mean by or to the City and/or the Engineer.
- (6) The words "as shown", "shown", "as indicated", or "indicated" mean "as indicated on the Plans".

(7) 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 Owner shall pay for only those Pay Items listed in the Schedule of Items.

(b) Capitalization of Terms - Capitalized terms, other than titles, abbreviations, and grammatical usage, indicate that they have been given a defined meaning in the Standard Specifications. Refer to Section 00110.20 "Definitions". Defined terms will always be capitalized in Part 00100; in Parts 00200 and beyond, defined terms will generally not be capitalized, with the notable exception of "the Contractor", "the Owner" and "the Engineer".

(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", "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.

(1) 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.

(2) 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.

(3) 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.

(e) Owner's Representative and Engineer Terms - The specifications uses both the terms "Owner's Representative" and "Engineer." The Contractor is to direct all requests, including requests for an Engineer's decision, to the Owner's Representative who in turn will forward all engineering matters to the appropriate engineer for resolution. This includes questions about whether to follow the manufacture's recommendations for a given product application.

Abbreviations

00110.10 Abbreviations:

AAN	-	American Association of Nurserymen
AAR	-	Association of American Railroads
AASHTO	-	American Association of State Highway and Transportation Officials
ABC	-	Associated Builders and Contractors, Inc.
AC	-	Asphalt Concrete
ACI	-	American Concrete Institute
ACWS	-	Asphalt Concrete Wearing Surface
ADA	-	Americans with Disabilities Act
AGA	-	American Gas Association
AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
AISC	-	American Institute of Steel Construction
AISI	-	American Iron and Steel Institute
ANSI	-	American National Standards Institute
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

BES	-	Bureau of Environmental Services
CABO	-	Council of American Building Officials
CAgT	-	Certified Aggregate Technician
CAT-I	-	Certified Asphalt Technician I
CAT-II	-	Certified Asphalt Technician II
CBM	-	Certified Ballast Manufacturers
CCD	-	Construction Change Directive
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
CPF	-	Composite Pay Factor
CRSI	-	Concrete Reinforced Steel Institute
CPL	-	Construction Products List
CS	-	Commercial Standard, Commodity Standards Division, U.S. Department of Commerce
CSI	-	Construction Standards Institute
CSTT	-	Concrete Strength Testing Technician
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	-	Oregon Department of Environmental Quality
DHS	-	Oregon Department of Human Services
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
FHWA	-	Federal Highway Administration, U.S. Department of Transportation

FSS	-	Federal Specifications and Standards, General Services Administration
GSA	-	General Services Administration
HMAC	-	Hot Mixed Asphalt Concrete
ICEA	-	Insulated Cable Engineers Association (formerly IPCEA)
IES	-	Illuminating Engineering Society
IMSA	-	International Municipal Signal Association
ISO	-	International Standards Organization
ITE	-	Institute of Traffic Engineers
JMF	-	Job Mix Formula
MDFT	-	Mil Dry Film Thickness
MFTP	-	Manual of Field Test Procedures (ODOT)
MIL	-	Military Specifications
MSS	-	Manufacturers Standard Specifications
MSC	-	Minor Structure Concrete
MUTCD	-	Manual of Uniform Traffic Control Devices for Streets and Highways, FHWA, US Department of Transportation
NACE	-	National Association of Corrosion Engineers
NEC	-	National Electrical Code
NEMA	-	National Electrical Manufacturer's Association
NESC	-	National Electrical Safety Code
NFPA	-	National Fire Protection Association
NIST	-	National Institute of Standards and Technology
NLMA	-	National Lumber Manufacturer's Association
NMFS	-	National Marine Fisheries Services, a part of the National Oceanic and Atmospheric Administration
NPDES	-	National Pollutant Discharge Elimination System
NPS	-	Nominal Pipe Size (dimensionless)
NSF	-	National Sanitation Foundation
NUCA	-	National Underground Contractors Association
OAR	-	Oregon Administrative Rules
OD	-	Outside Diameter
ODA	-	Oregon Department of Agriculture
ODFW	-	Oregon Department of Fish and Wildlife
ODF	-	Oregon Department of Forestry

ODOT	-	Oregon Department of Transportation
OR-OSHA	-	Oregon Occupational Safety and Health Administration
ORS	-	Oregon Revised Statutes
OSHA	-	Occupational Safety and Health Administration (Federal)
PCA	-	Portland Cement Association
PCI	-	Precast/Prestressed Concrete Institute
PCP	-	Pollution Control Plan
PDOT	-	Portland Office of Transportation
PF	-	Pay Factor of a constituent
PLS	-	Professional Land Surveyor
PMBB	-	Plant Mixed Bituminous Base
PTI	-	Post-Tensioning Institute
PUC	-	Public Utility Commission
PWB	-	Portland Water Bureau
QA	-	Quality Assurance
QC	-	Quality Control
QCT	-	Quality Control Technician
QL	-	Quality Level
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
SI	-	International System of Units (Système Internationale)
SRCM	-	Soil and Rock Classification Manual (ODOT)
SSPC	-	Steel Structures Painting Council
T	-	Tolerances, AASHTO Test Method
TM	-	Test Method (ODOT)
TV	-	Target Value
UBC	-	Uniform Building Code (as adopted by the State of Oregon)
UFC	-	Uniform Fire Code
UL	-	Underwriters' Laboratories, Inc.
UMC	-	Uniform Mechanical Code
UPC	-	Uniform Plumbing Code (as adopted by the State of Oregon)

USASI	-	United States of America Standards Institute
USC	-	United States Code
WAQTC	-	Western Alliance for Quality Transportation Construction
WCLIB	-	West Coast Lumber Inspection Bureau
WEF	-	Water Environment Foundation
WWPA	-	Western Wood Products Association

Definitions

00110.20 Definitions:

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

Act of God - An Act of God is a phenomenon of nature of catastrophic proportions or intensity, such as an earthquake, flood, cloudburst, tornado, or hurricane.

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

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

Aggregate – Fracture rock, unless otherwise indicated, of specified quality and gradation.

Application for Payment - A written request for payment based on an estimate of work performed that is submitted by the Contractor to the Engineer, accompanied by such supporting documentation as is required by the Contract Documents.

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

Architect's Supplemental Instructions (ASI) - Information provided to the Contractor by the Architect regarding the Project.

As-Built Drawings ("As-Builts") - Drawings showing how the Project has been constructed.

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

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

Award - The decision of the Owner to execute a Contract with a particular Bidder or proposer.

Base - A Course of specified material of specified thickness placed below the Pavement.

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

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

Bid Schedule - The list of Pay Items, their units of measurement, and estimated quantities. (When a Contract is awarded, the Bid Schedule becomes the Schedule of Items.)

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

Bidder - Any person who submits a Bid in response to the Owner's Invitation to Bid.

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

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

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.

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

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

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

Camber - A slight arch or curvature in a surface or Structure to compensate for loading.

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

Certificate of Occupancy/Certificate of Final Inspection - A document provided by a regulatory agency that authorizes partial or full occupancy of a building or structure.

Change Order - A written order issued by the Engineer to the Contractor modifying work required by the Contract and establishing the basis of payment for the modified work.

City - The City of Portland, Oregon, synonymous with Owner.

Claim - A request by a Contractor for additional compensation, Contract Time, or both, that is prepared and submitted to the Engineer in strict conformance with Contract requirements regarding claims and notice of claims.

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

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, which 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.

Coarse Aggregate - Crushed Rock or crushed Gravel retained on a 1/4 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.

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

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

Construction Change Directive - A written statement prepared by the Owner's Representative directing the Contractor to make additions, deletions, or other revisions to the Work to be performed. The directive will be issued when changes to the Work are necessary, but the Owner and Contractor are unable to reach agreement regarding the affect of the changes on the Contract Amount or Contract Time, or both.

Construction Schedule - Schedule provided by Contractor to Owner, as required by the Contract, which shall not exceed the Contract Time, shall relate to the entire Project, and shall provide for the expeditious and practical execution of the Work.

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

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

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

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

Contractor - Any person who has entered into a Contract with the Owner for the Work.

Contractor's Representative - A person designated in writing by the Contractor to sign contract changes, accept payments, and to act upon instructions from the Owner.

Council - The City Council of the City of Portland, Oregon.

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.

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

Current - When used in relationship to a code, edition, manual or version of reference material, it is the document that is available for use as of bid opening.

Day - Calendar Day.

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

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

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.

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

Emulsified Asphalt Concrete - A mixture of Emulsified Asphalt and graded Aggregate.

Emulsified Asphalt - Emulsified asphalt cement.

Engineer - A person holding an engineering license who is also authorized to act as the Owner's Representative. Engineers who may act as Owner's Representatives are the City Engineer, the Traffic Engineer, the Chief Engineer of the [Portland Water Bureau](#), the [Chief Engineer of the Bureau of Environmental Services](#), and any other Engineer authorized by the Contract Documents to act as the Owner's Representative. (See [00110.05\(e\)](#))

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.

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

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

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

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

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 - An item of work not provided for in the Contract as Awarded, but ordered, in writing, by the Engineer as essential to the proper completion of the Contract within its intended scope.

Field Order - A written order issued by the Engineer that does not involve a change in the Contract Amount or Contract Time or the intent of the Contract.

Final Inspection - The inspection conducted by the Owner's Representative to determine that the Project has been completed in accordance with the Contract.

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

Fine Aggregate - Crushed Rock, crushed Gravel, or Sand that passes a 1/4 inch sieve, with allowable oversize.

Force Account Work - Extra work performed by the Contractor at a cost determined by the contract documents that was ordered in writing by the Engineer, when negotiation has not resulted in a price mutually acceptable to the Contractor and the Owner.

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

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.

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

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

Incidental - A term identifying those acts, services, transactions, property, or other items for which the Owner will make no separate or additional payment.

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

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

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

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

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.

Lump Sum - A way of expressing the Contract Amount for the Work, or the price bid for a portion of the Work, stated as a single price for all labor, materials, supplies, Incidental Work, overhead and profit without any breakdown into its component parts.

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

MBE/WBE/ESB ("M/W/ESB") - Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses are those businesses certified as such by the State of Oregon Office of Minority, Women, and Emerging Small Business.

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

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

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.

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 to Proceed - Written Notice issued by the Engineer to the Contractor authorizing the Contractor to proceed with all, or part of, the Work.

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

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.

Owner - The City of Portland.

Owner's Representative - An employee acting on behalf of Owner who has authority to make decisions regarding the Work and the Contract, except to the extent that City Council approval is required by the City's Charter, Code or any specific ordinance. In any particular Contract, the Owner's Representative may be designated as the Engineer, Architect, Project Manager, Construction Manager or other individual. (See 00110.05(e))

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

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.

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

Permit - Written authorization to do specific work issued by City Bureaus or outside agencies having statutory or proprietary jurisdiction over portions of the Work.

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

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

Prequalification - A Process by which Bidders become eligible to submit Bids.

Project Manager - The authorized representative of the Engineer assigned to administer the Contract executed by the Contractor, unless the Contract specifies otherwise.

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

Project - General term encompassing all phases of the work to be performed under the Contract and is synonymous with the terms Improvement and/or Work.

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

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

Publicly-Owned Equipment - Equipment acquired by the Owner primarily for use in its own operations.

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

Purchasing Rules - Those rules adopted by the City of Portland that govern purchasing of goods, services and materials found in Chapter 5.33 and 5.34 of the Code of the City of Portland.

Quality Assurance - All those planned and systematic actions by the Owner necessary to provide confidence that a product or service will satisfy given requirements for quality.

Quality Control - All Contractor or vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements.

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

Regulatory Inspectors - Persons employed by regulatory bodies such as the Bureau of Buildings who have authority to determine whether work performed by the Contractor has been performed according to the regulations and codes applicable to that portion of the Work (e.g., electrical, plumbing, etc.).

Release - When used in regard to environmental regulations, the term “release” has the meaning ascribed to it by Oregon law.

Request for Information (“RFI”) - A form approved for use by the Engineer that the Contractor uses to request information, and upon which the Engineer’s response will be returned.

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

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

Right-of-Way - A general term denoting public land, property, or interest therein, acquired for or devoted to a public street, public access or public use.

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

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

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

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.

Shown - As used herein, the words "shown," or "as shown," shall be understood to refer to work shown, indicated, or described on the Plans in the Contract which can be reasonably inferred as belonging to the item of Work described or indicated and which is required by good practice to provide a complete and satisfactory system or structure.

Silt - Soil passing a No. 200 sieve that is nonplastic 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.

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

Special Provisions or Special Specifications - A portion of the Contract Documents that is typically applicable to a specific Project that may modify the Standard Specifications, impose additional requirements applicable to a specific project, or both.

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 00197.20(l).

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

Specified - As used herein, the word "specified," or "as specified," means as required by the Contract.

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

Standard Specifications/General Conditions - The terms, directions, provisions and requirements set forth in the City of Portland Standard Construction Specifications in effect at the time of the Bid. These provisions are sometimes referred to as the "General Conditions" of the Contract.

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

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

Structures - Bridges, retaining walls, endwalls, cribbing, buildings, culverts, manholes, catch basins, drop inlets, sewers, service pipes, underdrains, foundation drains, 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 - An individual, partnership, firm, corporation, or any combination thereof, with whom the Contractor enters into a subcontract to perform a part of the Work.

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

Substantial Completion - A state of Contract performance that is less than full performance of all the work required by the Contract Documents, but is nonetheless sufficiently complete to permit occupancy or use of the Project for its intended purpose, and where the omissions and deviations from full performance are inadvertent and unintentional, do not impair the Work as a whole, can be easily remedied, and may be paid for by deductions from the Contract Amount.

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.

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

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

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

Ton - The short ton of 2000 pounds avoirdupois.

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.

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

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, stormwater not connected with highway drainage, or any other similar commodity that directly or indirectly services the public. The term "utility" also shall mean the utility company, district, or cooperative, including any wholly owned or controlled subsidiary thereof, which provides utility services.

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

Working Day - Any and every day shown on the calendar, excluding Saturdays, Sundays and City of Portland legal holidays, synonymous with "workday."

Working Drawings - Shop drawings and other submittals as outlined in 00150.35, not furnished by the Owner, that the Contractor is required to submit to the Engineer.

Section 00120 - Bidding Requirements and Procedures

Provisions and Requirements

00120.10 Examination of Contract, Site of Work and Subsurface Data:

(a) The Bidder shall carefully examine the sites (including material sites) of the proposed Work, the Bid, Plans, Special Provisions, Specifications, Addenda, and Contract forms. The submittal of a Bid shall be conclusive evidence that the Bidder has made such examinations and understands all the requirements for the performance of the completed Work.

(b) The Bidder shall determine the methods, materials, labor, and equipment required to perform the completed Work and shall reflect their cost in the Bid prices. Any costs exceeding those anticipated by the Bidder will not entitle it to additional compensation.

(c) If the Owner has made an investigation of the site specifically for the proposed Work, boring log data, soil sample test data, subsurface data, or any historical data accumulated by the Owner's Representative will be made available for inspection by the Bidders at the Owner's office or another location. The Owner is under no obligation to search its records for other data that may or may not be helpful for the Bidder's inspection, and the parties agree that no Claim for additional compensation may be made if such additional test data is not provided. It is mutually recognized and agreed to by all parties that:

(1) When any of this data is included in the Bid Documents, it is for the purpose of disclosing design information and is not a part of the Contract.

(2) The subsurface investigations made by the Owner are for the sole purpose of obtaining data necessary for planning and designing the Project.

(3) The Owner assumes no responsibility whatsoever for the sufficiency or completeness of the data furnished with respect to meeting the needs of the Bidder in planning his work as it was obtained for an entirely different purpose.

(4) The Owner warrants that the data represents with reasonable accuracy the conditions and materials found in the specific borings at the time the borings were made. The Owner does not warrant that the condition, materials, or proportions of materials at any other locations, or between the borings, is identical to what was found.

(5) The Owner makes no representation or warranty expressed or implied that:

a. The Owner's interpretations from the data are correct.

b. Moisture conditions and indicated water tables will not vary substantially from those found at the time the borings were made.

c. The ground at the location of the boring has not been physically disturbed or altered after the boring was made.

(6) The disclosure of subsurface information from the Owner's Representative is solely for the convenience of the Bidder and shall not relieve the Bidder or the Contractor of any risks or of any duty to make his own examinations and investigations as required by this Subsection or any other responsibility under the Contract.

(7) The Bidder acknowledges that it has ascertained the nature and location of the Work, and that it has investigated and assured itself as to the general and local conditions that can affect the Work or its cost. The Bidder also acknowledges that it is satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered so far as this information can be reasonably ascertained from an inspection of the site, including exploratory work done by the Owner, as well as from the Bid Documents and any data that may be provided or made available. Failure of the Bidder to take these actions will not relieve it of responsibility for properly estimating the difficulty and cost of successfully completing the Work, or for proceeding to successfully complete the Work without additional cost to the Owner.

(8) The Owner assumes no responsibility for conclusions or interpretations made by the Bidder based on the information that the Owner makes available. Statements made by Owner representatives at the pre-bid or pre-proposal conference or elsewhere are not binding on the Owner and shall not change the Solicitation Document unless the Owner confirms the statements and changes to all prospective Bidders or proposer by written addendum to the Solicitation Document.

(9) In the event of a conflict between Codes, industry standards and Reference Specifications, the most stringent requirements apply and Bidders shall submit their Bids based on the most stringent requirements. See [00165.00\(b\)](#).

00120.15 Basis of Bid - A Bid shall be based on the requirements of the Contract Documents. The Contractor shall not submit a Bid anticipating that any portion of the Contract Documents will be changed, modified or not enforced. However, if the Contractor believes that any portion of the Contract Documents conflicts with, or is at variance with, any law, it shall immediately notify the Owner in writing of the Project so that the Owner can analyze the situation before Bids are submitted.

00120.20 Interpretation of Quantities in Bid Schedule:

(a) The Owner reserves the right to increase or decrease the amount of any class, item, or portion of the Work and to delete any bid items in their entirety after the Contract is awarded. Those changes shall not be considered as a waiver of any condition of the Contract nor shall such changes invalidate any of the remaining provisions of the Contract Documents.

(b) The estimate of quantities of work to be done under Unit Price Bids is approximate and is given only as a basis of calculation for comparison of Bids and award of the Contract. The Owner does not guarantee that the amount of work to be performed will be the same as the amount estimated in the Bid Documents.

00120.35 Assignment of Claim Relief - The Bidder shall sign a form provided in the Bid Documents assigning to the Owner any Claim for relief that the Contract has or may have in the future by reason of violation of 15 USC §§ 1-15 or ORS 646.725 or ORS 646.730.

Section 00130 - Award and Execution of Contract

Provisions and Requirements

00130.10 Award of Contract - The Owner's Purchasing Rules shall govern the Bidding and Award of any Contract by the Owner.

00130.80 Restrictions on Commencement of Work:

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

(1) Work shall not begin until the Notice has been given.

(2) Before starting Work, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.830(3) unless otherwise exempt. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt.

(b) The Notice to Proceed will not be given until the Contractor provides Owner with all documentation necessary for Contract performance, including, but not limited to, all necessary signatures on Contract Documents, a Performance and Payment Bond, proof of all required insurance. After receipt of all required documentation Owner will review the submitted documentation for conformance with Contract requirements. If the documentation conforms to Contract requirements, Owner will issue the Notice to Proceed within 30 Calendar Days after receipt. If the documentation does not conform, Owner will notify Contractor as soon as possible so that proper documentation can be provided.

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

Section 00140 - Scope of Work

Provisions and Requirements

00140.00 Purpose of Contract:

(a) The Contract Documents govern the Work to be done, set forth the relative responsibilities of the Owner and Contractor, and establish the method by which changes in the Contract are made.

(b) Some details of the Work may be found in only one location in the Contract Documents. Therefore, the Contractor must review all portions of the Contract Documents in order to know the full scope of Work.

(c) The Owner has adopted Standard Specifications and Standard Plans that may be applicable to this Contract. Any reference to a Standard Plan or Standard Specification in this Contract refers to the ones in effect at the time that the Contract was advertised. In case of any confusion, contact the Owner's Representative for an explanation.

00140.30 Owner-Required Changes in the Work:

(a) 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 Project construction. Without impairing the Contract, the Owner reserves the right to require changes it deems necessary or desirable within the scope of the Project.

(b) Changes to the Work may be accomplished by mutual agreement of the Owner and Contractor. When agreement is reached, the parties will execute a written Change Order that sets forth their agreement pursuant to Section 00196.10.

(c) When Extra Work or changed work is necessary, but the Owner and Contractor cannot reach agreement on the terms of a Change Order, the Owner will direct such changes by issuing a Construction Change Directive (CCD), a written statement prepared by the Owner's Representative. The CCD may result in additions, deletions or other revisions to the Work to be performed. Upon receipt of a CCD, the Contractor shall promptly follow the direction given in the CCD and proceed with the change in the Work involved. Payment for work performed pursuant to a CCD shall be made pursuant to Section 00197.

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

(e) If the Contractor believes that following the advice, direction or instruction provided by a Field Order will result in additional costs, require additional compensation or require additional Contract Time, is contrary to the requirements of the Contract Documents or that the Field Order requires the performance of Extra Work the Contractor shall follow the requirements of 00199.30 regarding Claims for additional compensation and requests for additional Contract Time.

00140.40 Differing Site Conditions:

(a) The Contractor shall promptly, and before the conditions are disturbed, give written Notice to the Owner's Representative of:

(1) Pre-existing subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or;

(2) Pre-existing unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract.

(b) After receipt of the Notice, the Owner's Representative will investigate the conditions encountered by the Contractor promptly. If the Representative finds that the conditions are materially different and cause a material increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an Equitable Adjustment to the Contract will be made under this clause and the Contract modified in writing accordingly. If possible, Owner and Contractor shall agree on the adjustment to be made. If they are unable to agree, the Representative will determine the amount of the Equitable Adjustment and adjust the time to perform if appropriate. If the Representative finds that differing site conditions do not exist, that decision is final and binding upon the Contractor.

(c) Contractor has waived its right to bring a Claim for additional compensation or Contract Time for encountering a differing site condition unless the Contractor has given the Notice required by 00140.40(a) above. No request by the Contractor for an Equitable Adjustment to the Contract as a result of a differing site condition will be allowed if the request is made after Final Payment under this Contract.

00140.50 Environmental Pollution Changes - ORS 279C.525 will govern any increases in the scope of the Work required as a result of environmental or natural resources laws enacted after the submission of Bids for the Contract.

00140.60 Extra Work:

(a) Owner may at any time, by written order, require Contractor to perform extra or changed work. It is the Contractor's responsibility to notify the Surety of such order if the cost of the changed or Extra Work exceeds 25% of the total original Contract Amount.

(b) When so ordered in writing, by the Owner's Representative, Contractor shall proceed with the performance of any changed or Extra Work regardless [agreement has been reached on how that performance affects Contract Amount or Contract Time](#). If the Contractor refuses to perform the changed or Extra Work, this is a material breach of Contract and Owner shall have all remedies available to it at law and equity for that breach. Contractor shall have no right to additional Contract Time for delay incurred by Contractor's refusal to perform because the price, time, or both, has not yet been agreed upon. Contractor's remedy is, instead, to proceed as required by [00199.30](#).

(c) When the Owner's Representative is contemplating changed or Extra Work, a Notice of the proposed changed or Extra Work together with a solicitation for a quotation for the performance of the changed or Extra Work [will](#) be issued to the Contractor, in writing, by the Owner's Representative.

(1) The Contractor shall submit a price quotation and Proposal for performing the changed or Extra Work within 10 days unless the Owner agrees upon a longer period of time in writing. The Contractor shall submit data to substantiate both the cost of performing the work and any additional Contract Time that may be requested.

(2) The Contractor's delay in submitting a price quotation and Proposal shall not, in and of itself, extend the Contract Time. If the Contractor is unable to prove that the extra or changed work will cost additional money or is unable to substantiate that it [requires](#) additional Contract Time, Contractor has waived any Claim it might have to either Contract Time or additional money after the decision to proceed with the work has been made by Owner and communicated to Contractor.

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 Owner will not accept 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 Owner, 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 variation caused by the proposed change;

- Pay Items affected by the proposed change including any 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 Owner has accepted the proposal, will be included in the cost of proposed work; and
- A date by which the Engineer must accept the proposal in order to accept the proposed change without impacting the Contract Time or cost reduction amount.

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

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

The Owner 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 Owner reserves the right to require the Contractor to share in the Owner's costs of investigating the proposal. If the Owner exercises this right, the Contractor shall provide written acceptance of the condition to the Engineer. Such acceptance will authorize the Owner 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 Owner'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 Owner's costs 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 Owner has accepted the proposal, will be included in the cost of the Work attributable to cost reduction measures.

If the Owner 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 Owner. The Owner 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.

00140.90 Final Trimming and Cleanup:

(a) Before final payment is issued, 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:

(1) The Contractor shall retrim and reshape earthwork, and shall repair deteriorated portions of the Project Site.

(2) Where the Work has impacted existing facilities or devices, the Contractor shall restore or replace those facilities to their pre-existing condition.

(3) The Contractor shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.

(4) 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.

(5) The Contractor shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials and rubbish.

(6) 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.

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

Section 00150 - Control of Work

Provisions and Requirements

00150.00 Authority of the Owner's Representative:

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

(b) The Owner's Representative's decisions will be final, binding and conclusive on the Contractor on all questions that arise regarding the quantity of materials and work, the quality of materials and work, the acceptability of materials furnished and work performed, the acceptable rate of progress of the work, the interpretation of the Plans and Specifications, the measurement of all quantities, the acceptable fulfillment of the Contract on the part of the Contractor, and payments under the Contract.

(c) Work will not be considered completed until it has passed final inspection by the Owner's Representative and is accepted by the Owner. The authority of the Owner's Representative is such that the Contractor shall at all times carry out and fulfill the instructions and directions of the Owner's Representative in so far as they concern the work to be done under the Contract.

(d) If the Contractor fails to comply with any reasonable order made under the provisions of this Subsection, the Owner's Representative will have the authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any money due or to become due the Contractor.

(e) The Owner's Representative has the authority to suspend work for cause as set forth in 00180.70(a).

(f) Nothing in this Subsection or elsewhere in the Contract shall be construed as requiring the Owner's Representative to direct or advise the Contractor on the method or manner of performing any work under the Contract. No approval or advice as to the method or manner of performing or producing any materials to be furnished shall constitute a representation or warranty by the Owner that the result of such method or manner will conform to the Contract, relieve the Contractor of any of the risks or obligations under the Contract, or create any liability to the Owner because of such approval or advice.

(g) An Architect, Engineer, Designer or other person hired by Owner under a separate Contract is not the Owner's Representative, unless the Contract Documents expressly state otherwise. Contractor will be notified if the Owner's Representative has been changed.

00150.02 Inspectors' Authority and Duties:

(a) The Owner's Representative may assign Inspectors, assistants and other persons to advise the Owner whether the work and materials meet Contract requirements. Such determination may extend to any or all parts of the Work and to the preparation or manufacture of materials to be used.

(b) In the event that assigned personnel discover defective materials or work not being performed safely or in accordance with Contract requirements, the Owner's Representative will have the authority to reject the materials or to suspend the Work.

(c) Assigned personnel, including but not limited to, Inspectors and assistants, are not authorized to approve or accept any portion of the Work, to accept materials, to issue instructions or to give advice that is contrary to the Contract. Work done or material furnished that does not meet Contract requirements shall be at the Contractor's risk, and does not provide a basis for a Claim even if it is asserted that assigned personnel changed Contract requirements.

(d) In the event that assigned personnel or the Owner's Representative fail to observe, call out or note faulty work, defective materials, errors, or the Contractor's failure to comply with Contract requirements, that failure does not constitute acceptance or approval of that particular portion of the Work. If this occurs, the Contractor remains obligated to perform the Work in accordance with the Contract Documents, without additional compensation or Contract Time.

(e) The provisions of 00150.02 do not apply to Regulatory Inspectors.

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

00150.10 Coordination of Specifications and Plans; As-Built Drawings:

(a) The Owner intends the Plans and Specifications to coordinate with each other to provide for a complete Project. Patent conflicts in the Contract Documents, or obvious omissions, are ones that should have been discovered before submission of a Bid to the Owner by a reasonable person in the Contractor's position if all the Documents had been reviewed. In such a situation, the Contractor has a duty to inquire of the Owner before submitting its Bid about the correct interpretation of the Contract. This permits the Owner to clarify by Addendum what is intended by the Contract. That is particularly true for errors in figures, drawings or Specifications.

(b) If the Contractor fails to bring a patent conflict or error to the Owner's attention before it submits a Bid, it has waived its right to additional compensation when the Owner resolves it.

(c) Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, shall be of like effect as if shown or mentioned in both. This does not constitute a conflict, discrepancy or error between the two.

(d) In cases of apparent discrepancies or conflicts between the Plans and the Specifications, the Contractor shall first determine if the matter can be resolved pursuant to the rule stated in 00150.10(c) above. If not, the apparent conflict shall be resolved by designating the portion of the Contract Documents that takes precedence over the others. Therefore, when preparing its Bid, or when beginning any portion of the Work, the Contractor shall use the following order of precedence to resolve any apparent conflict:

- (1) Permits from Outside Agencies required by law
- (2) Change Orders
- (3) Addenda
- (4) Special Provisions
- (5) [Supplemental Specifications](#)
- (6) Plans
- (7) Information furnished by written notes and/or schedules on drawings
- (8) Large Scale Drawings over small scale drawings
- (9) Information provided by lines on drawings
- (10) Standard Plans
- (11) Standard Specifications

(e) Contractor shall bring any real or perceived discrepancy concerning dimensions, quantities or location between the drawings, details or Specifications to the attention of the Owner's Representative before beginning that portion of the Work.

(f) In the event of any inconsistency in the Drawings and Specifications unless otherwise ordered in writing by the Owner's Representative, the Contractor shall provide the better quality of, or the greater quantity of Work or materials. This provision shall apply only to inconsistencies in express requirements of the Drawings and Specifications and not the interpretations by the Owner or Architect.

(g) The Contractor shall check and compare all Plans and Specifications prior to construction and notify the Owner if conflicts, discrepancies, errors or omissions are apparent in order to permit correction at the lowest possible cost to all concerned. A current copy of the Plans and Specifications reflecting all changes that have been made during the Work shall be kept on or near the site of the Work at all times.

(h) The Contractor shall provide all work and materials reasonably required or intended to complete the Work, regardless of whether they are expressly mentioned in the Plans and Specifications.

(i) The Contractor shall verify measurements provided by the Plans and Specifications at the Project site to determine if they are still correct since changes to the Plans, Specifications, and Project site are common and the inherent changing nature of construction work may require adjustments to such measurements. Similarly, the Contractor is not entitled to rely on measurements deduced or scaled from, but not explicitly provided by, the Plans.

(j) The Owner reserves the right to issue additional drawings or written instructions if that appears helpful or necessary to complete the Work. If so, the Contractor shall perform the Work in accordance with the additional details or instructions.

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

(l) Within 5 working days of submitting a notice of substantial completion, the Contractor shall submit a complete, signed set of plans and specifications showing all As-Built Drawings conditions on the Project.

00150.15 Construction Stakes, Lines and Grades:

(a) The Owner will provide and set construction stakes establishing lines and grades as may be necessary for the Work. The Contractor shall notify the Owner's Representative not less than 3 working days in advance of when survey services are required in connection with the layout of any portion of the Work.

(b) Unless otherwise indicated in the Special Provisions, the Owner will furnish and set construction stakes establishing lines and grades as indicated below:

(1) **Temporary easements** - Temporary easement limits painted and/or staked every 25 feet and at corners with stakes and/or paint marks clearly identifying the character of the line, i.e., "Temp Easement Boundary".

(2) **Manholes** - Stake offset to sewer manholes, cleanouts, inlets, and proposed lines at 50-foot intervals with cuts/fills to invert elevation.

(3) **Curbs, Medians, Sidewalks** - Stake curbs, medians, and sidewalks with offsets to face of curb at 25-foot intervals and at the beginning and end of all curves with 1/4 points on larger curves. Stakes will be marked with cuts/fills to finish grade.

(4) **Curb Ramps** - Stake curb at ramps with offsets to grade break points.

(5) **Street Staking:**

a. **Offset Stakes** - Set offset stakes, outside the area of construction, at 50-foot intervals and grade breaks referencing cuts/fills to subgrade at centerline and gutter line.

b. **Subgrade Stakes** - Subgrade blue-tops at 50-foot intervals and grade breaks on the 1/4 and center points.

c. Aggregate Stakes - Top of base aggregate at 50-foot intervals and grade breaks on the 1/4 and center points.

d. Asphalt Concrete Pavement Stakes - Top of asphalt concrete pavement, after base lift has been placed, at 25-foot intervals and grade breaks on the 1/4 and center points.

(6) Traffic Signal and Street Lighting Staking:

a. Poles - Signal and Light poles with 2 points each with cut/fill to sidewalk finish grade.

b. Controllers - Offsets to control cabinets with cut/fill to sidewalk finish grade.

(7) Structure Staking:

a. Piling - Set stakes with offsets to locate center of each pile.

b. Abutments/Pier Caps - Set stakes and benchmark to locate centerline of abutments or pile caps.

c. Retaining Walls - Set stakes and benchmark to locate wall control line.

d. Bridge Decks - Calculate and provide finish deck grades.

(8) Water line and appurtenances shall be staked.

The Contractor shall be responsible for supplementing as needed and/or transferring the lines and grades to the work from the offset stakes established by the Engineer. The Owner will provide one set of construction stakes. The cost to replace damaged or lost stakes shall be borne by the Contractor. If the Contractor desires additional construction staking beyond those listed above or in the Special Provisions, the cost thereof shall be borne by the Contractor on a time and materials basis.

(c) Work performed by the Contractor without lines and grades having been established by the Owner's Representative and work performed beyond the lines and grades is prohibited. The Contractor shall remove, replace or correct such work at its own expense if directed to do so by the Owner's Representative.

(d) The Contractor shall coordinate all requests for survey staking with the Owner's Inspector and submit all requests in writing. The Owner will initiate the staking of each request within three (3) City business days of the Survey department's receipt of the request. If an area requested is not ready for staking within the three (3) City business days, the Contractor shall reinitiate the request. The Owner's Representative will provide the Contractor with sufficient "Request for Survey" forms for their use.

(e) All elevations shown on the Plans are City of Portland datum. This datum plane has its zero elevation set equivalent to a minus 1.375 feet below mean sea level as set by the U.S. Coast and Geodetic Survey 1947 adjustment.

00150.20 Inspection:

(a) Inspection by the Owner - The Owner's Representative may test Materials furnished and inspect Work performed by the Contractor to ensure Contract compliance.

If the Contractor performs Work without the Owner's Representative's inspection or uses Materials that the Engineer has not approved, the Owner's Representative may order affected portions of the Work removed at the Contractor's expense. The foregoing sentence shall not apply if the Owner's Representative 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 Owner's Representative'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 Owner's Representative rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Owner's Representative, the Contractor shall bear all costs of uncovering and restoring the Work. If the Owner's Representative accepts the uncovered Work, and the Contractor performed the Work only after providing the Owner's Representative with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Owner as Extra Work.

(b) Inspection Facilities - The Contractor shall furnish walkways, railings, ladders, tunnels, platforms and other facilities necessary to permit the Owner's Representative 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 Owner's Representative.

(c) Sampling - The Contractor shall furnish the Owner's Representative with samples of Materials that the Owner's Representative 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 Owner's Representative and shall provide safe inspection access.

00150.30 Delivery of Notices - Whenever written notices are required or permitted to be given by the Contract Documents, they shall be delivered via first class mail, or in person to the current office address as shown in the records of the Owner. Notices delivered via first class mail shall be deemed delivered five business days following the postmarked date.

00150.35 Working Drawings and Other Submittals:

(a) For purposes of this subsection the following definitions apply:

(1) Shop Drawings - Shop drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor, a Subcontractor at any tier, manufacturer, supplier or distributor to illustrate some portion of the Work.

(2) Product Data - Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

(3) Samples - Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

(4) Submittals - Submittals are documents required by the Contract to be submitted to the Owner for review. However, they are not part of the terms and conditions of the Contract. They may include shop drawings, product data, samples, or a schedule of construction events.

(b) Shop Drawings, Product Data, Samples and other Submittals are not part of the Contract. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required, the way the Contractor proposes to conform to the requirements of the Contract and the design concept expressed in the Contract.

(c) The Contractor shall review, approve and submit to the Owner all Shop Drawings, Product Data, Samples and other Submittals required by the Contract regardless of whether the document originated with the Contractor or with some other Subcontractor or supplier. They shall be submitted at the time required by the Contract, or, if no time is specified, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the Contractor that are not required by the Contract may be returned without action or may not be returned at all.

(d) Informational Submittals that do not require the Owner to take responsive action may be so identified in the Contract.

(e) The Contractor shall provide six (6) copies of any Submittal required by the Contract or when requested by the Owner's Representative. In addition, the Contract may also require the Contractor to provide information about the products and materials it proposes to incorporate into the Work and to provide samples of such products and materials for inspection or testing. The Contractor shall be responsible for all Submittals presented to the Owner for review, no matter what their point of origin may have been.

(f) The Contractor shall not perform a portion of the Work that requires the Owner to review a Submittal until the respective Submittal has been reviewed by the Owner as outlined below. Such work shall be performed in accordance with Submittals that conform to the Contract Documents.

(g) When tendering a Submittal to the Owner for review, the Contractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained with such Submittals with the requirements of the Work and of the Contract. The Contractor shall expressly note where any submittal differs from or varies from the requirements of the Contract, notwithstanding any belief on the part of the Contractor that the variance is obvious.

(h) The Owner's review of any Submittal does not relieve the Contractor from its responsibility to follow the requirements of the Contract. The Owner is not responsible for ensuring that Submittals are correct. Failure of the Owner to discover that a submittal varies from the requirements of the Contract Documents does not relieve the Contractor of its responsibilities to conform to the Contract nor provide a basis for a Change Order. Nevertheless, the Owner's Representative shall review any Submittals provided in order to make a general determination about whether they appear to meet Contract requirements or the intended design of the Project. The Contractor remains responsible for following the Contract, including, but not limited to:

- (1) Confirming and correlating all dimensions;
- (2) Fabricating and construction techniques;
- (3) Coordinating the work with that of all other trades and Subcontractors;
- (4) Satisfactorily performing the Work in strict accordance with the Contract Documents;
- (5) The means and methods of construction; and
- (6) Conforming to all the requirements of the Contract

(i) The Owner's Representative will have 14 days to review any Submittals, unless a different time is established elsewhere. The Owner's Representative will review the Submittals and return them to the Contractor stamped with one of the following notations:

(1) **"NO EXCEPTIONS TAKEN"** If the Submittal is marked, "NO EXCEPTIONS TAKEN," this means that the Contractor immediately can begin the work encompassed by the Submittal.

(2) **"MAKE CORRECTIONS NOTED"** If the Submittal is marked "MAKE CORRECTIONS NOTED" the Contractor is required to make any revisions suggested by the Owner's Representative and, upon correction, may immediately begin the work indicated by the Submittal or may incorporate the material or equipment covered by the Submittal into the Work.

(3) **"REVISE AND RESUBMIT"** If the Submittal is marked "REVISE AND RESUBMIT," the Contractor is required to revise the Submittal and resubmit it to the Owner's Representative. No work shown on the Submittal, or which is dependent upon approval of the Submittal or material or equipment covered by the Submittal, may be incorporated into the Work until the Contractor has made the necessary revisions, resubmitted the Submittal and received the Submittal back marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."

- (4) “REJECTED”** If the Submittal is marked “REJECTED” it means that the Owner’s Representative has found the Submittal, material or product data to be unacceptable and not in conformance with the Contract. Generally speaking, rejection of a Submittal simply indicates the Owner’s Representative’s belief that the defects in the Submittal are so great that it cannot be revised in order to make it conform to the Contract, as indicated in [00150.35\(i\)\(3\)](#) above. The Contractor may not begin work indicated by the Submittal, nor incorporate material or equipment, nor proceed with Work dependent upon review of the Submittal, into the Work based on any Submittal, product data or material that has been marked “REJECTED.”
- (5) “SUBMIT SPECIFIED ITEM”** If the Submittal is returned marked “SUBMIT SPECIFIED ITEM,” it means that additional information is required to permit a full review. Work may begin on incorporating the material or equipment covered by the Submittal into the Work, only if it is not affected by the item to be submitted. However, if any material or equipment is affected by the item to be submitted, then no work may begin until the Submittal is resubmitted and returned marked either “NO EXCEPTIONS TAKEN” or “MAKE CORRECTIONS NOTED.”
- (j)** The following rules about Contract Time shall apply to Submittals. Contract Time will not be extended if:
- (1)** The Contractor’s delay resulted from the Owner’s use of the full amount of allotted time under the Contract to review the Contractor’s Submittal;
 - (2)** The Contractor’s delay resulted from its own failure to provide a submittal in a timely manner;
 - (3)** The Contractor’s delay resulted from a submittal that properly was marked “Revise and Resubmit,” “Rejected,” “Submit Specified Item,” or
 - (4)** The Contractor did not understand what it was required to submit and failed to inquire about it in a timely manner.
- (k)** If the Contractor disagrees with the Owner’s review of its Submittal and the Owner’s action has the potential of increasing the Contractor’s costs, the Contractor shall proceed as required by [00199.30](#).
- (l)** The Contractor shall keep a current schedule of submittals available for the Owner’s Representative to review.
- (m) Working Drawings** - The Contractor shall supplement the Owner-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.

(n) Number and Size of Drawings - The Contractor shall submit seven copies of Working Drawings for steel Structures and six copies of Working Drawings for other Structures to the Engineer. The submitted copies shall be clear and readable. Drawing dimension shall be 8 1/2 inches by 11 inches, 11 inches by 17 inches, or 22 inches by 36 inches in size. One 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.

(o) 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" or "reviewed with comment" 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.

00150.40 Cooperation and Superintendence by the Contractor:

(a) The Contractor, or a representative authorized to act on the Contractor's behalf, shall supervise the progress and coordination of the work and be continually available in the event that the Owner needs to communicate with the Contractor about the Work. Contractor shall have only one authorized representative and shall inform Owner if that representative should change.

(b) If, for some reason, neither the Contractor nor a fully authorized representative is available, and communication is necessary, the Owner may communicate with, or give directions to, any person working for the Contractor. The Contractor shall follow any direction given by the Owner. Such directions will be confirmed in writing at the Contractor's request.

(c) Nothing in this Subsection changes the Contractor's duties as outlined elsewhere in the Contract Documents. For example, the Architect's or Engineer's presence does not relieve the Contractor to perform the Work in accordance with the law, statutes, ordinances, or building Codes nor does it relieve the Contractor from obtaining all required Permits.

00150.50 Utilities:

(a) General Rules regarding Utilities:

(1) The parties agree that:

- a.** A normal and usual occurrence in the construction of underground improvements is the discovery of utilities, service laterals, underground pipes, drains and structures that interfere with the Contractor's work;
- b.** A reasonable number of such occurrences are usual and ordinary on Projects that include underground work;
- c.** Work must sometimes be done in close proximity to these conditions and that such work may be made more difficult than originally thought;
- d.** Such conditions may require a change in the Contractor's operations, such as changing the amount of traffic control, pavement and backfill that is required; and
- e.** The Contractor's Bid to the Owner reflected all costs in dealing with such conditions.

(2) Owner will require a reasonable amount of time to perform design changes necessitated by conflicting utilities. In addition, Utility owners will require a reasonable amount of time to make necessary Utility relocations if such utilities are responsible for relocation.

(b) Owner Responsibilities:

(1) Owner will provide information it has to Contractor regarding the location of existing watercourses, drains, sewer lines and Utility lines for purposes of preparing its Bid. Owner does not always have or receive accurate information about the location of utilities. Therefore, such information must be considered to be approximate, and not guaranteed to be accurate. Contractor is responsible for determining the exact location of utilities and existing improvements when performing its work.

(c) Contractor's Responsibilities:

- (1)** Contractor shall protect the property of utilities, railways and fire control authorities that may be affected by Contractor's work as well as Utility lines, pipelines, and underground tanks.
- (2)** Contractor shall obtain written permission from the PWB before operating any water valve or hydrant. Unauthorized operation is prohibited. Contractor shall pay any fee associated with their operation.
- (3)** Contractor is required to maintain the flow of sewers, drains and water courses that might be interrupted by its work and restore that flow as directed by Owner.
- (4)** The Contractor is responsible for any damage caused to any Utility, whether known or unknown, and whether or not that was disclosed by the Contract Documents.
- (5)** Contractor shall maintain in place all utilities whether or not shown on the Contract Documents. If any Utility needs to be temporarily relocated for the Contractor's convenience or because of the method of construction or as a result of site conditions, Contractor shall bear all costs for that temporary relocation. Contractor shall maintain utilities that are relocated by others in their relocated positions in order to avoid interference with structures that cross the Project Work.
- (6)** Contractor shall not hinder the work of Owner or the owner of a Utility in the event that they relocate any Utility.

(d) Notification:

- (1)** The Contractor shall follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in Oregon Administrative Rules. Copies of these rules may be obtained by contacting the Center. If there are questions about the rules, contact the Center. The parties agree that any Project Plans or Permit issued by Owner **will** be deemed to have this language incorporated by reference.
- (2)** In addition to the notification required by [00150.50\(d\)\(1\)](#) above, Contractor shall also give Notice to Owner of any intended excavation it may have at least 48 hours in advance of the proposed excavation.
- (3)** Contractor shall maintain any markings showing the presence of underground facilities. If Contractor does not maintain such markings, and Owner is required to re-establish them, Contractor shall pay Owner any and all costs associated with that activity.

00150.55 Cooperation with Other Contractors:

- (a)** Owner reserves the right to Award other Contracts, or issue Permits, for work that may require coordination with the Contractor's operations under this Contract.

(b) Contractor shall cooperate with the Owner and other Contractors and provide all reasonable opportunities to them to allow them to perform their separate work, including, but not limited to, the introduction and storage of materials and equipment.

(c) The Contractor promptly shall notify the Owner's Representative if:

(1) The performance of other Contractors hinders, delays, or prevents the Contractor from successfully completing its Work or makes its performance more costly;

(2) The Contractor's operations are interrelated or dependent upon the work of others, separate Contractors and their work has defects that hinders, prevents or otherwise makes unsuitable the successful completion of Contractor's Work.

(d) Failure to provide the Notice stated in [00150.55\(c\)](#) above constitutes Contractor's acceptance of the other Contractor's work and constitutes a conclusive waiver of any later Claim for additional compensation or Contract Time as a result of the other Contractor's work or activities.

(e) Contractor shall defend, hold harmless and indemnify Owner from all Claims and all costs asserted by a separate Contractor who asserts that the Contractor damaged its Work or property, as provided in [00170.72](#) below.

(f) Contractor is responsible for any cutting, fitting and patching that may be required to complete the Work, except as otherwise specifically provided in the Contract Documents. The Contractor shall not endanger any work of any other Contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other Contractor, except as directed by the Owner's Representative.

(g) Contractor agrees that if a dispute arises regarding clean-up costs, the Owner's Representative may apportion such costs to Contractor and other Contractors as the Representative determines is fair and equitable.

(h) Contractor shall not damage any work that the Owner has performed, either with its own forces or through the forces of another Contractor. If the Contractor desires or needs to alter, change, cut or otherwise modify the work of Owner or another Contractor in any way it shall seek the Owner's Representative's written approval. If the Owner seeks the Contractor's approval to alter, change, cut or otherwise modify its work, Owner will notify Contractor of that fact.

00150.60 Construction Equipment Restrictions:

(a) Load and Speed Restrictions for Construction Vehicles and Equipment - The Contractor shall comply with legal weight and speed restrictions when moving Materials or Equipment beyond the limits of the Project Site. The Contractor shall provide a copy to the Engineer of the jurisdiction permit authorizing the overweight load(s).

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:

(1) The Contractor shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on Subgrades and Aggregate Bases.

(2) 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.

(3) The Contractor shall not cross Bridges or other Structures with Equipment or vehicles exceeding the legal load limit without prior written permission of the Owner's Representative. 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, steel plates or other methods to avoid overload of pipes, box culverts, and other items that are covered, or to be covered, by fill or backfill.

(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 or other jurisdiction's permission to cross Bridges and other Structures, according to 00150.60(a) will not relieve the Contractor from responsibility for load-caused damages.

00150.80 Removal of Unacceptable and Unauthorized Work:

(a) Any portion of the Work that does not conform to the requirements of the Contract is unacceptable and defective and shall be removed and corrected by the Contractor, even if it is contended that the Owner's Representative or other assigned personnel knew or should have known of the existence of the unacceptable work.

(b) All portions of the Work that do not conform to the requirements of the Contract Documents shall be corrected within a reasonable time at the Contractor's sole expense and without an extension of Contract Time.

(c) The Owner may replace or correct work within a reasonable time if the Contractor fails to do so and may charge the Contractor with all reasonable costs incurred with performing that work and with the costs of storing any salvageable materials or equipment. If that occurs, the Owner also is entitled to deduct such costs from any sums otherwise due the Contractor.

(1) If salvageable materials, equipment, or both are stored, the Owner will notify the Contractor of the storage and give the Contractor 10 days to remove the materials. If the Contractor fails to remove them by the end of that time, the Owner may sell them in any commercially reasonable manner, whether privately or publicly.

(2) If sale is made, the Owner will keep all proceeds to the extent that the proceeds do not exceed the costs incurred in correcting and replacing the work and in storing the materials and equipment. Contractor still owes Owner for any difference in costs that may remain after the sale. However, if the proceeds exceed the Owner's cost it will forward those sums to the Contractor.

(d) The Contract Documents or regulatory agencies may require that portions of the Work be observed, reviewed or inspected before they are obscured or covered. Similarly, the Owner's Representative is entitled to observe portions of the Work before they are covered or obscured upon request. If the Contractor covers or obscures a portion of the Work that is required or requested to be observed, it shall uncover the Work for observation and bear any cost associated with that activity without a change in Contract Time.

(e) The Owner's Representative may request to see a portion of the Work that has been covered regardless of the requirements of the Contract Documents, regulatory agencies or a prior request. Thereafter the Contractor shall comply with the Owner's request. If, upon inspection by the Owner's Representative, the portion of the Work that is uncovered is found to be in accordance with the Contract Documents, the Owner **will** bear all costs associated with that activity and provide additional Contract Time, if that activity would cause the Contractor to incur liquidated damages. However, if, upon inspection by the Owner's Representation, the portion of the Work that is uncovered is found not to be in accordance with the Contract Documents, the Contractor shall correct the Work and bear any cost associated with that activity without a change in Contract Time.

(f) Replacement and correction of Defective Work prior to the time that the Work is completed and accepted is not limited by any warranty period otherwise established by the Contract.

(g) Owner retains the right to accept portions of the Work that do not conform to the requirements of the Contract Documents. However, such acceptance **will** be in writing and given only by the Owner's Representative. Inspectors, employees and other agents of Owner have no authority to bind the Owner to accept nonconforming portions of the Work. If the Owner's Representative chooses to accept nonconforming portions of the Work, and those portions cost less than what the Contractor would have spent to comply with the Contract Documents, Owner is entitled to a credit for the difference in price, which may be deducted from the Contract Amount.

00150.85 Use of Work During Construction:

(a) The Owner may decide to use part of the Work that has been completed before completion of all of the work required by the Contract. If that occurs, the Owner will notify the Contractor in writing of its intention.

(b) When use of part of the Work by the Owner begins, the Contractor is:

(1) Relieved of the duty of maintaining and protecting that portion of the Work, provided that it has been completed in accordance with the Contract.

(2) Relieved of responsibility for injury or damage to the portion of Work used by the Owner from use by public traffic or from the action of the elements of nature or from any other cause, except injury or damage resulting from the Contractor's own operations or from its negligence.

(3) Relieved of the responsibility of cleaning up that portion of the Work before final acceptance, unless the Contractor's own operations require such cleanup.

(c) Use by the Owner of a part of the Work as described in this Subsection does not constitute final acceptance of the Work as a whole or any part thereof.

00150.86 Furnishing Temporary Services and Facilities - Contractor shall provide temporary light, power, water and other temporary services or facilities complete with connecting, piping, wiring, lamps and similar equipment as required during construction of the Work, including testing and start up, and remove temporary facilities upon completion. Obtaining permits and bearing the costs of temporary services and facilities is included within the Contract Amount.

00150.96 Maintenance Warranties and Guarantees:

(a) The Contractor shall fully warrant all work for at least two (2) full years from Substantial Completion of the Project, regardless of the length of manufacturers' or installers' warranties.

(b) In addition to any other warranties that are required, the Contractor shall make all necessary repairs and replacements to remedy any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of Substantial Completion by the City Council due to faulty or inadequate materials or workmanship. Such repairs and replacements shall conform to the Contract Specifications under which the Contractor originally performed the work.

(c) In the event of a dispute regarding any portion of the Work, the Contractor shall nonetheless provide any warranty service, repairs or replacements as described in [00150.96\(a\)](#) and [00150.96\(b\)](#) above, for that portion of the Work that is not in dispute. In the event that a dispute delays Acceptance of the Work, the warranty for portions of the Work not in dispute shall run from the date of Substantial Completion of the remaining portions of the Work.

(d) The Contractor shall also repair any damage or remedy any disturbance to other publicly owned property or improvements thereon if caused by the Contractor's work and if the damage or remedy occurs during the warranty period.

(e) If the Contractor performs warranty work, the warranty work also shall have a two (2) year warranty period from the date of its completion and acceptance by Owner.

(f) The Owner will provide the Contractor with written Notice of the need to perform warranty work unless it is determined that an emergency exists, that delay would cause serious additional loss or damage, or if any delay in performing the work might cause injury to any member of the public. If the Contractor, after written Notice, fails within ten days to comply with the Owner's request, the Owner has the right to perform the warranty work either by hiring another Contractor or by using its own forces. In that event, the Contractor and its Surety shall be liable to the Owner for the cost of the work performed and any additional damage suffered by the Owner.

(g) The Contractor shall provide a bond during the two-year warranty period to guarantee the Contractor's performance of warranty work. The Contractor shall provide to the Owner a bond in the amount of 20% of the final Contract Amount in one of the following ways:

- | (1) Continuance of the Contract performance **Bond** and **the** Payment Bond;
- | (2) Any new performance **Bond** and **the** Payment Bond, acceptable to Owner, which covers the Contractor's warranty obligations imposed by the Contract Documents.
- (3) Cash deposit to the City Treasury. Proof of the deposit shall be a receipt from the Treasurer.
- (4) Other arrangements proposed by the Contractor that the Owner finds acceptable.

00150.97 Responsibility for Materials and Workmanship:

(a) The successful performance of this Contract will provide a benefit to the citizens, ratepayers, or taxpayers of the City of Portland. Therefore, satisfactory completion of the Project by the Contractor is of paramount importance. The Contractor agrees that by accepting this Contract it is required to perform the Contract in accordance with the Contract Documents and cannot contend that its performance was excused by any action of the Owner, except to the extent that the Contract terms have been modified by a written Change Order executed by both parties.

(b) The Owner is entitled to insist upon completion of the Contract in the manner and to the extent required by the Contract Documents. Therefore, any measurement, estimate or certificate made by the Owner that is incorrect may be corrected by the Owner at any time, regardless of whether that occurs before or after acceptance of the Project. Similarly, if work, equipment, parts, products or materials do not conform to what is required by the Contract Documents, the Owner may require that the work be redone and that materials, parts, products, and equipment be replaced, regardless of prior approval by any agent or employee of the Owner.

| (c) Acceptance of the Work by the Owner **will** not preclude the Owner from:

- (1) Later insisting that the Work be performed in accordance with the Contract Documents.
- (2) Recovering damages for breach of contract or pursuing any other remedies that the law may provide.
- (3) Any other remedy for breach of contract permitted by law.

| (d) No action whatsoever, nor any verbal or written statement whatsoever, made by any employee or agent of the Owner, **will** operate as a waiver or as an estoppel, or otherwise preclude the Owner from insisting upon its rights to performance of the Contract in accordance with the Contract Documents.

Section 00160 - Source of Materials

Provisions and Requirements

00160.05 Construction Products List (CPL) - The CPL is a listing of manufactured products available on the market (shelf items) that BES and PDOT have evaluated and found suitable for specified use in construction. The CPL is published yearly and is available upon request. It may also be viewed on PDOT's web site. The current version of the CPL at the time of Bid Opening 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 CPL, 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.

00160.06 Potable Water System Materials – A Materials List of commercially available products that PWB has evaluated and found suitable for specified use in construction is located on the PWB website. For additional details concerning the PWB Materials Manual, contact the PWB Owner's Representative. The current version of the Materials List at the time of Bid Opening is the version in effect for the Project. A conditionally qualified product, Special Application Only product, or a product qualified for inclusion in a later edition of the Materials List may be used only if the Owner's Representative 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. Unless otherwise specified, 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 Contractor expense.

00160.60 Contractor-Furnished Materials and Sources - Unless otherwise specified in the Contract, the Contractor shall:

- (a) Acquire and furnish, at its own expense, all products and materials required for the Work from suppliers or sources of its own choosing.
- (b) Acquire and furnish, at its own expense, access to and the use of all material sources.
- (c) Acquire and furnish, at its own expense, upon request, any and all Permits from federal, state and local agencies necessary to use any source for materials.

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 Owner's Representative. The Contractor shall incorporate into the Work only manufactured products made of new materials unless otherwise specified in the Contract.

Materials 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.

(a) Materials, parts, products, and equipment shall meet the requirements of the latest printed edition, **as of bid opening**, of any applicable building Codes, Reference Specifications or industry standards stated in the Contract Documents for determining their acceptability in the Contract Documents.

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

00165.01 Rejected Materials - The Engineer may reject any Materials that appear to be defective (00150.80). 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 test results and 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.

(a) As used in this Section, the following definitions are applicable:

Products - refers to purchased items for incorporation into the Work, regardless of whether specifically purchased for the Project or taken from the Contractor's stock of previously purchased products.

Materials - refers to products that must be substantially cut, shaped, worked, mixed, finished, refined or otherwise fabricated, processed, installed or applied to form units of work.

Equipment - refers to products with operational parts, regardless of whether motorized or manually operated, including products with service connections such as wiring or piping.

Parts - refers to portions of products, materials, and equipment.

Certifications - refers to documents that show that materials, products, parts and equipment required by the Contract meet the requirements of a Reference Specification. Certifications shall require no interpretation of test results by Owner's employees to determine whether the requirements of the Reference Specification have been met.

Conformance Documents - refers to documents that show that the material, part, product or equipment meets the requirements of the Contract. Examples of Conformance Documents that may be acceptable include shop drawings, material lists, equipment lists, catalog description sheets and manufacturer's brochures.

(b) The Contractor must establish that the materials, products, parts, and equipment that it proposes to use meet the requirements of the Contract Documents, including the requirements of any Reference Specifications or industry standards, by submitting the Certifications and Conformance Documents required by the Contract.

(c) The Contractor shall bear the cost of providing Certifications and Conformance Documents, including the costs of any sampling and testing that must be performed in order to achieve certification. Materials, products, parts and pieces of equipment shall not be incorporated into the Work without acceptable certifications or Conformance Documents.

(d) Certification shall be provided by the manufacturer or testing agency verifying that Contract requirements have been met. The certification shall identify the testing agency, the representative responsible for the test results, and include a copy of the specified test results (for example, ASTM, AASHTO, UL, etc.).

(e) Conformance Documents shall be sufficient to permit the Owner to determine that the Contractor has provided what is required by the Contract Documents.

(f) Certifications and Conformance Documents shall be clear and understandable to determine whether the material, product, part, or equipment is the one specified by the Contract Documents. Certifications or Conformance documents that are unclear or require analysis in order to determine whether the materials, parts, products or equipment meet the requirements of the Contract are insufficient and will be rejected. The Contractor shall bear all costs of and is responsible for any delay that occurs as a result of unclear certifications or conformance documents.

(g) Certifications and Conformance Documents shall be delivered to the Owner with the shipment of the material, part, product or material to which the certification corresponds, unless other portions of the Contract Documents specify a different procedure.

00165.03 Testing by Owner - When testing Materials, the Owner will conduct the tests in the field, in the Owner's 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 Owner's tests will be made available to the Contractor.

00165.04 Costs of Testing - Contractor shall provide and pay for all quality control testing of materials on PDOT projects, except Permit Engineering, unless otherwise indicated in the Special Provisions. PDOT Permit Engineering, BES and PWB will provide and pay for all quality control testing of Materials on their projects unless otherwise indicated in the Special Provisions. The Owner will pay the cost of the first source-review tests on unprocessed Aggregates when requested by the Contractor. Thereafter, additional source-review tests performed at the Contractor's request shall be paid by the Contractor.

On joint projects, the Contractor shall be responsible for providing and paying for quality control testing of materials as shown in the Special Provisions.

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 SE, Building 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.

(c) A "sample" is a physical example of workmanship, equipment, materials or products that is proposed to be or has been incorporated into the Work by the Contractor.

(d) The Owner retains the right at any time during construction, or at any time during production, fabrication or preparation of the Work, to test samples to determine whether they meet the requirements of the Contract Documents. The Owner may test any sample, regardless of prior certification, and regardless whether any prior certification was required. The Owner may either conduct the test with its own forces or hire other persons to perform this work.

(e) The Contractor shall cooperate with any sampling and testing that is required or requested. The Contractor shall provide samples without charge and provide them in time to permit testing before use.

(f) If a sample is to be tested prior to its incorporation into the Work the Contractor shall not incorporate the material, product, part or equipment into the Work until testing is completed and the Owner gives permission for its use.

(g) The Owner will bear the costs of quality assurance testing unless the tests show that the material, product, part or equipment failed the test and did not conform to the requirements of the Contract, in which case the Contractor shall bear the costs of testing.

(h) If the sample previously was incorporated into the Work and testing shows the sample does not meet the requirements of the Contract Documents, the Contractor shall pay for replacing and repairing any equipment, materials, products or portion of the Work in order to meet the requirements of the Contract Documents.

00165.20 Materials Specifications and Test Method References - References to Materials specifications and test methods of ODOT, WAQTC, AASHTO, ASTM, AWWA other governmental agencies, or other recognized organizations mean those officially adopted and in current use by the Owner or organization on the date of Advertisement. 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:

- ODOT;
- WAQTC;
- AASHTO;
- ASTM;
- AWWA;
- NSF
- Other recognized national organizations, such as ANSI, AWWA, IMSA, and UL; and
- Industry standards in the location where the Work is being performed.

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

- Special Provisions;
- MFTP;
- Supplemental Specifications; and
- Standard Specifications.

00165.30 Field-Tested Materials:

(a) **Contractor's 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 Owner's Representative 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 PDOT are described in the ODOT MFTP.

(c) Acceptance of Field-Tested Materials - The Contractor's test results for field-tested Materials will be verified by the Owner according to the Quality Assurance program outlined in the MFTP. If the Owner'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 Owner's Representative will accept them for incorporation into the Work:

- Statistically, according to 00165.40, to determine "Pay Factors" for produced Aggregate;
- Statistically, according to 00165.40, to determine "Composite Pay Factors" for mixtures; or
- Other methods determined by the Engineer.

If acceptance testing reveals that the Contractor's data is incorrect, the Owner will perform additional testing to determine whether the Materials meet Specifications. If the Materials do not meet Specifications, the Contractor shall reimburse the Owner for the cost of the additional testing, which may be deducted from monies due or to become due the Contractor under the Contract.

00165.35 Nonfield-Tested Materials - The Contractor shall furnish Materials meeting Specifications, along with all 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, AWWA, NSF, UL or other)
- Identify the testing agency and the representative responsible for the test results
- Permit positive determination that Material delivered to the Project 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, AWWA, NSF, UL, or other)
- Permit positive determination that Material delivered to the Project 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 ODOT Form 734-2126 as required 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.

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 will 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 sublots. Sampling of Material for a lot that contains two or fewer sublots shall be increased to obtain at least three sublots. The Engineer has discretion to either accept or reject lots originating with two 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:

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

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

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

$$sd = \sqrt{\frac{\sum X^2 - n\bar{X}^2}{n-1}}$$

Where $\sum X^2$ = 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.

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

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

Table 00165-1

QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD								
P _U or P _L Percent Within Limits For Positive Values of Q _U or Q _L	UPPER QUALITY INDEX Q _U OR LOWER QUALITY INDEX Q _L							
	n = 3	n = 4	n = 5	n = 6	N = 7	n = 8	n = 9	n = 10 to 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
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_U or Q_L, P_U or P_L is equal to 100 minus the table value for P_U or P_L. If the value of Q_U or Q_L does not correspond exactly to a figure in the table, use the next higher figure.

Table 00165-1

QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD							
P _U or P _L PERCENT WITHIN LIMITS FOR POSITIVE VALUES OF Q _U OR Q _L	UPPER QUALITY INDEX Q _U OR LOWER QUALITY INDEX Q _L						
	n = 12 to n = 14	n = 15 To n = 18	n = 19 to n = 25	n = 26 to n = 37	n = 38 to n = 69	n = 70 to n = 200	n = 201 to n = ∞
100	2.83	3.03	3.20	3.38	3.54	3.70	3.83
99	2.09	2.14	2.18	2.22	2.26	2.29	2.31
98	1.91	1.93	1.96	1.99	2.01	2.03	2.05
97	1.77	1.79	1.81	1.83	1.85	1.86	1.87
96	1.67	1.68	1.70	1.71	1.73	1.74	1.75
95	1.58	1.59	1.61	1.62	1.63	1.63	1.64
94	1.50	1.51	1.52	1.53	1.54	1.55	1.55
93	1.44	1.44	1.45	1.46	1.46	1.47	1.47
92	1.37	1.38	1.39	1.39	1.40	1.40	1.40
91	1.32	1.32	1.33	1.33	1.33	1.34	1.34
90	1.26	1.27	1.27	1.27	1.28	1.28	1.28
89	1.21	1.22	1.22	1.22	1.22	1.22	1.23
88	1.17	1.17	1.17	1.17	1.17	1.17	1.17
87	1.12	1.12	1.12	1.12	1.12	1.13	1.13
86	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.04	1.04	1.04	1.04	1.04	1.04	1.04
84	1.00	1.00	1.00	1.00	0.99	0.99	0.99
83	0.96	0.96	0.96	0.96	0.95	0.95	0.95
82	0.92	0.92	0.92	0.92	0.92	0.92	0.92
81	0.88	0.88	0.88	0.88	0.88	0.88	0.88
80	0.85	0.85	0.85	0.84	0.84	0.84	0.84
79	0.81	0.81	0.81	0.81	0.81	0.81	0.81
78	0.78	0.78	0.78	0.78	0.77	0.77	0.77
77	0.75	0.75	0.75	0.74	0.74	0.74	0.74
76	0.71	0.71	0.71	0.71	0.71	0.71	0.71
75	0.68	0.68	0.68	0.68	0.68	0.68	0.67
74	0.65	0.65	0.65	0.65	0.65	0.64	0.64
73	0.62	0.62	0.62	0.62	0.62	0.61	0.61
72	0.59	0.59	0.59	0.59	0.59	0.58	0.58
71	0.56	0.56	0.56	0.56	0.56	0.55	0.55
70	0.53	0.53	0.53	0.53	0.53	0.53	0.52
69	0.50	0.50	0.50	0.50	0.50	0.50	0.50
68	0.48	0.48	0.47	0.47	0.47	0.47	0.47
67	0.45	0.45	0.45	0.44	0.44	0.44	0.44
66	0.42	0.42	0.42	0.42	0.41	0.41	0.41
65	0.39	0.39	0.39	0.39	0.39	0.39	0.39
64	0.37	0.37	0.36	0.36	0.36	0.36	0.36
63	0.34	0.34	0.34	0.34	0.33	0.33	0.33
62	0.31	0.31	0.31	0.31	0.31	0.31	0.31
61	0.29	0.29	0.28	0.28	0.28	0.28	0.28
60	0.26	0.26	0.26	0.26	0.26	0.25	0.25
59	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.21	0.21	0.20	0.20	0.20	0.20	0.20
57	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.15	0.15	0.15	0.15	0.15	0.15	0.15
55	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.08	0.08	0.08	0.08	0.08	0.08	0.08
52	0.05	0.05	0.05	0.05	0.05	0.05	0.05
51	0.03	0.03	0.03	0.03	0.03	0.03	0.02
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: For negative values of Q_U or Q_L, P_U or P_L is equal to 100 minus the table value for P_U or P_L. If the value of Q_U or Q_L does not correspond exactly to a figure in the table, use the next higher figure.

Table 00165-2

REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR								
PAY FACTOR	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 10 to 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
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 00165-2

	REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (N) AND A GIVEN PAY FACTOR						
PAY FACTOR	n = 12 to n = 14	n = 15 to n = 18	n = 19 to n = 25	n = 26 to n = 37	n = 38 to n = 69	n = 70 to n = 200	n = 201 to n = ∞
1.05	100	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
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
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.

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 - Owner's Representative will perform statistical analysis according to 00165.40 for acceptance and to determine a Pay Factor (PF) or Composite Pay Factor (CPF). The Owner's Representative's determination of the PF or CPF shall be controlling.

(b) Pay Adjustments - an incentive to produce quality Materials, the Owner's Representative's acceptance will be based upon the following:

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

(c) Nonspecification Materials:

(1) 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 Owner's Representative has determined that Specification Materials can be produced, and has given approval to resume.

(2) An Entire Lot - Owner's Representative may reject an entire lot of Materials with a CPF between 0.7500 and 1.0000, or may take action in accordance with 00150.80(g).

For a lot of Material with a CPF below 0.7500, the Owner's Representative 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 Owner's Representative. The Owner's Representative 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 Materials Conformance Documents have been submitted to and approved by the Owner's Representative, or the Materials are otherwise found through testing to comply with Specifications.

(c) Contractor's 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 Owner's Representative:

- Determine if the Owner 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 Owner's Representative will provide this information to the Contractor in writing. If the Contractor requests the Owner's Representative, in writing, to proceed, the Owner's Representative 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 pursuant 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 lessor is obtained.

00165.76 Relationship to Submittals - If the Contract requires that a product, material, part or equipment must be submitted to the Owner for review before use in the Work, the Contractor shall follow the requirements of **00150.35** regarding the submittal process.

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 separate 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 Owner. It is impractical, and extremely difficult, to determine the actual additional expenses incurred. Therefore, each time that inspection by Owner personnel is necessary, payment to the Contractor will be reduced by an amount computed at the following rates:

Zone	Place of Fabrication	Reduction in Payment
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
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 Owner's inspector begins travel to begin work at the fabrication site, and continue 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 Owner 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 Owner.

Section 00170 - Legal Relations and Responsibilities

Description

00170.00 **General:**

(a) The Contractor shall comply with all federal, state, and municipal laws in regard to all matters concerning this Contract. This includes, but is not limited to, compliance with the ADA (Americans with Disabilities Act), Title 10 of the City Code regarding Erosion Control, [City business license requirements](#), [EEO certification requirements](#), [Equal Benefits compliance](#), and [CCB licensing and bonding requirements](#). The Contractor also shall comply with the orders, rulings, decrees and decisions of any administrative or judicial officials that in any manner whatsoever affects the Project, the Work, the safety of persons around the construction site, or the manner in which the Work is performed.

(b) If the Contractor observes that any portion of the Work is to be performed in a way that violates any law, Code, or regulation, it shall notify the Owner in writing immediately.

Provisions and Requirements

00170.01 **Other Agencies Affecting Owner Contracts:**

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

(1) Federal Agencies:

- a. Agriculture, Department of:
 - 1. Forest Service
 - 2. [Natural Resources](#) Conservation Service
- b. Army, Department of the:
 - 1. Engineers, Corps of
- c. Commerce, Department of
 - 1. National Oceanic and Atmospheric Administration
 - 2. National Marine Fisheries Service
- d. [Homeland Security, Department of:](#)
 - 1. [US Coast Guard](#)
- e. Interior, Department of:
 - 1. Heritage, Conservation and Recreation Service
 - 2. Indian Affairs, Bureau of
 - 3. Land Management, Bureau of
 - 4. Reclamation, Bureau of
 - 5. Surface Mining, Reclamation and Enforcement, Office of

- f.** US Fish and Wildlife Service
- g.** Labor, Department of:
 - 1.** Occupational Safety and Health Administration
 - 2.** Mine Safety and Health Administration
- h.** Transportation, Department of:
 - 1.** Federal Highway Administration
- (2)** Oregon Tribal Governments:
 - a.** Warm Springs, Confederated Tribes of
- (3)** State of Oregon Agencies:
 - a.** Agriculture, Department of
 - 1.** Natural Resources Division
 - 2.** Soil and Water Conservation Division
 - b.** Consumer and Business Services, Department of
 - 1.** Insurance Division
 - 2.** Oregon Occupational Safety and Health Division
 - c.** Energy, Department of
 - d.** Environmental Quality, Department of
 - e.** Fish and Wildlife, Department of
 - f.** Forestry, Department of
 - g.** Geology and Mineral Industries, Department of
 - h.** Human Resources, Department of
 - i.** Insurance and Finance, Department of
 - j.** Oregon Occupational Safety and Health Division
 - k.** Labor and Industries, Bureau of
 - l.** Land Conservation and Development Department
 - m.** State Lands, Division of
 - n.** Water Resources Department

(4) Local Agencies:

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

00170.02 Permits, Licenses, and Taxes :

(a) The Contractor shall, without additional expense to the Owner, be responsible for obtaining any necessary fees, licenses and Permits, and for complying with any Federal, State, and municipal laws, Codes, and regulations applicable to the performance of the Work, unless expressly provided otherwise in other portions of the Contract Documents. However, the Owner will pay the fee charged by the [Bureau of Development Services](#) commonly known as the “plan check” fee.

(b) The Contractor understands that preliminary approval of the Owner’s Plans and Specifications by regulatory agencies does not prohibit such agencies from requesting changes in order that the Work complies with the provisions of applicable Codes, laws and regulations. Contractor agrees that a reasonable number of changes directed by Regulatory Inspectors [are](#) inherent in the nature of construction work and that [the](#) Bid includes the costs of making them. Contractor shall bear the expense of complying with the requirements of Regulatory Inspectors for a reasonable number of changes even if such requirements require different or [extra](#) work than that originally contemplated by the Contract Documents.

(c) Contractor shall defend, hold harmless and indemnify Owner for all claims brought against the Owner if such claim arose in whole or in part out of Permits and licenses that were the responsibility of the Contractor to obtain as provided in 00170.72.

00170.03 Rights-Of-Way, Easements and Premises:

(a) The Contractor shall confine its construction activities within property lines, rights-of-way, limits of Easements and limits of construction Permits as shown or specified in the Contract Documents unless the Contractor has obtained permission to use other land from the owner(s) of adjacent private property. The Contractor's Bid shall include all costs related to its needs for additional space and property if such is needed by the Contractor's method of operation to perform the Work. In order to protect the City from any claim by an owner of private property, the Contractor shall provide the Owner's Representative with written permission from the property owner prior to the use of the property.

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

Provisions and Requirements

00170.04 Patents, Copyrights, and Trademarks - The Contractor shall acquire and pay for all patents, royalties and license fees required to perform the Work. Contractor shall defend, hold harmless and indemnify Owner for all claims brought against it regarding royalties, license fees and patents as provided in 00170.72.

00170.60 Safety, Health, and Sanitation Provisions:

(a) **General** - The Contractor has complete responsibility for the safety and health of its employees and the employees of its Subcontractors at any tier. The Contractor shall not delegate this responsibility to its Subcontractors other persons or agencies. The Contractor is responsible for ensuring that employees and Subcontractor tiers follow the following safety and health requirements, receive training, and understand the Owner's applicable policies and procedures that affect the Work. The Contractor shall require additional safety measures as may be necessary for a particular project.

(b) Definitions:

(1) **Job Safety Analysis (JSA)** - A detailed study of a job or activity to determine what potential safety and health hazards exist during the various job steps. The JSA focuses on the relationship between the worker, the task, the tools, and the work environment. After identifying any uncontrolled hazards, the JSA should identify ways to eliminate or reduce them.

(2) **Competent Person** - Means one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary corrective measures to eliminate them.

(c) **Contractor Compliance** - The Contractor shall comply with all federal, state, and local safety and health regulations and laws including, but not limited to, the following:

(1) **Oregon Revised Statutes - ORS 654** - The Oregon Safe Employment Act

(2) **Oregon Administrative Rules - OAR 437** - The Oregon Occupational Safety and Health Code

| **(3) Oregon Occupational Safety & Health Administration (OR-OSHA)**

- | a. Division 1 - General Administrative Rules
- | b. Division 2 - General Occupational Safety & Health Rules
- | c. Division 3 - Construction

| **(4) Department of Labor and Industries**

| **(5) Oregon Department of Transportation**

| **(d) Statute Versus Contract Documents** - In the event that the law requires greater safety obligation than those imposed by the Contract Documents, the Contractor shall perform the obligations required by law without additional cost to the Owner.

| **(e) Coordination** - The Contractor shall coordinate the Work with police, fire, emergency service providers, TriMet, and other agencies, school districts and individuals as may be required. Refer to Names, Address, and Phone Numbers found in Notice to Bidders for specific contact information.

| **(f) Site Specific Safety and Health Plan (SSSHP)** - The Contractor shall develop and submit an SSSHP addressing safety issues for all persons working on the Project, regardless of their employer. The SSSHP shall be prepared by a Competent Person and consist of a narrative and supporting plans detailing the methods for dealing with all the known exposures and risks. The SSSHP shall detail the methods for addressing Work hazards identified by the Job Safety Analysis (JSA).

| **(g) Document Control** - The Contractor shall maintain at least one current copy of the SSSHP at the project Site for the Project duration, instruct all employees where this document is available for reference, and inform the Owner's Representative where to find a copy on the project site.

| **(h) Subcontractors** - The Contractor shall develop a plan for distributing information in the SSSHP to all persons working on the Project, regardless of their employer, establish a method for documenting all safety training, and maintain an inventory of personal protective equipment provided to all works.

| **(i) Other Specifications** - SSSHP shall also comply with the requirements of Sections 00220 and 00225.

| **(j) Public Safety** - The Contractor shall ensure the public safety during its performance of the Work and minimize public inconvenience. Prepare a description of the methods for securing the Work area from public access.

| **(k) Competent Persons** - The Contractor shall supply a list of competent persons, together with 24-hour contact number and areas of expertise for each of the applicable following specialties:

| **(1) Confined Space**

| **(2) Excavation and Shoring**

| **(3) Cranes and Rigging**

| **(4) Electrical and Hot Work**

| **(5) Chemicals and Biohazards**

| **(l) Working Procedures** - The SSSHP shall contain detailed information outlining safe working procedures to address any identified hazards and risks when completing the Work, including the following:

| **(1) Confined Space** - Describe entrance and exit procedures from confined spaces. Outline procedures and equipment requirements when working in a confined space. Define the rescue procedure to extract an employee during an emergency. Describe all personal protective equipment provided to employees working in a confined space including gas monitoring equipment use, maintenance, and storage.

| **(2) Excavation and Shoring** - Define the procedures when excavating undisturbed and previously disturbed soils. Describe the requirements when working around existing utilities, manholes, and connections, lateral connections, work within historic trench limits, and entering and existing from trenches.

| **(3) Cranes and Rigging** - Provide requirements for operators and equipment certifications including lift capacity. Identify all lift equipment to be used on the Project, describe the plan(s) for moving, and lifting materials, and define equipment location(s) and position(s) to perform safe lifts.

| **(4) Electrical and Hot Work** - Describe lockout/tagout procedures for electrical equipment, define the procedures for requesting that existing systems be taken out of service, for testing and trouble shooting new equipment and coordinating with any outside utility or agency.

| **(5) Chemical and Biohazards** - Identify all substances, agents and site conditions that present a hazard and recommend actions for their control. Provide and maintain equipment in good working order to test and monitor for hazardous substances.

| **(6) Other Issues** - Describe procedures for addressing any other safety issues other than what has been described above.

| **(m) Project Emergency Procedures** - The Contractor shall develop and implement a Project Emergency Procedures Plan to handle any catastrophic event that could occur on the Project, such as flood, fire, cave-in, slide power outage, sewer gas, chemical spill, and similar emergencies. Some examples of topics the plan could address include safe distance and staging area (safety zones), evacuation routes, emergency medical treatment and first aid, emergency alerting and response procedures, personal protective and emergency equipment.

(n) Submittal Requirements - The Contract shall submit copies of the Project SSHP for review to the Owner's Representative. The Owner's Representative will review to determine if it addresses known exposures and risks in a reasonable manner and reject the submittal if it fails to do so. Nevertheless, the Owner review is not intended to, nor does it, relieve the Contractor of its obligation to be completely responsible for the safety and health of all persons working on the Project nor does it diminish any other contractual or legal obligation of the Contractor.

(o) Review and Acceptance - Construction activity shall not begin until the Owner's Representative has reviewed and accepted the SSSHP. Continued acceptance of the SSSHP will be predicated on demonstrated performance to comply with the plan's requirements. If a work situation poses a safety hazard not covered by the Plan, the Contractor shall take immediate action to correct the safety hazard and modify the SSSHP accordingly.

(p) Secure Construction Site - The Contractor shall provide and maintain all labor, material, and equipment needed to secure the construction site from damage until the Work is complete and accepted by the Owner. This may include labor, lighting, fencing, alarm systems and other miscellaneous materials to maintain security at all sites where the Contractor may be working, staging work and storing materials or equipment. The Contractor also shall assure that only authorized personnel are at the Project Site.

(q) Safety Equipment - The Contractor shall furnish all safety equipment required by the SSSHP.

(r) Cost - The Contractor shall include the cost of development, implementation, and maintenance of the SSSHP in its Bid, and therefore it is included in the Contract Amount. However, this work is incidental to the other items of Work and is not identified as a separate bid item for which payment is made nor should it be included as separate payment item any Contract that uses a schedule of values.

00170.70 Insurance:

(a) General Provisions:

(1) The Contractor shall obtain, at its own expense, the minimum insurance coverage described in 00170.70(c), 00170.70(d), 00170.70(e) and 00170.70(f) below and maintain that coverage until final acceptance of the entire Project. By requiring such minimum insurance, the Owner does not guarantee that the insurance is sufficient to cover all the risks the Contractor may face. Instead, the Contractor should assess its own risks and, if it deems it appropriate and prudent, maintain higher limits, broader coverages, or both, than the coverage required by the Owner. The Contractor is not relieved of any liabilities if it fails to obtain and maintain the minimum insurance required. The insurance carried by the Contractor shall be the primary coverage and non-contributory, and any insurance maintained by the Owner is excess and solely for damages or losses for which the Owner is responsible.

(2) The Contract Amount includes the cost of any insurance required by the Contract Documents. The Contractor is not entitled to additional compensation because it misunderstood what insurance coverage was required. Any confusion regarding what coverage is required should be brought to the Owner's attention prior to submission of a Bid or Proposal.

(3) The Owner may, but is not required to, obtain insurance it deems prudent under the circumstances if it discovers that the insurance required by the Contract Documents has not been obtained or, for whatever reason, is no longer in effect. If so, Owner may recover the cost of obtaining that insurance from the Contractor from any sums due, or will become due, the Contractor on this or any other Contract.

(4) All insurance shall be procured from a company, or companies, lawfully authorized to conduct business in the State of Oregon.

(b) Certificates and Review of Coverage before Contract Execution:

(1) The Contractor shall provide the City Auditor certificates of insurance and additional insured endorsements signed by the insurance carrier showing that the coverage required by the Contract Documents with Insurance Services Office (ISO) form numbers to identify the specific coverage that has been obtained and the effective dates of the insurance policies. This shall be provided within 10 Calendar Days of the announcement of the intent to Award the Contract to the Contractor by the Owner. The certificates shall contain a provision that states substantially the following: "The insurance described in this certificate shall not be canceled or materially altered without giving the City Auditor 30 days written Notice in advance of that action." Failure to comply with the reporting provisions of this Contract shall not affect the coverages provided to the City of Portland, the Owner and their officers, employees and agents.

(2) The City Attorney's Office will review the certificates for approval. The City Attorney's office may reject any proposed certificate if the insurance proposed to be provided is not the same as the coverage required by the Contract Documents, may reject the certificate if it is unclear, or require that the underlying policy be presented for review. If the City Attorney's office determines that the certificates are unclear, the Contractor shall provide revised certificates that clearly show the insurance required by the Contract Documents has been obtained. Review or approval of the City Attorney's office of any insurance certificate does not excuse the Contractor from providing the insurance required by the Contract Documents.

(3) The certificate(s) will identify all of the parties who are Additional Insureds or Loss Payees. In addition, there shall be no cancellation, non-renewal, material change, or potential exhaustion of aggregate limits without 30 days written notice from the Contractor or its insurer(s) to the Owner. The certificates shall reflect these requirements. To the extent certificates of insurance contain words to the effect that Contractor shall "endeavor to send notice of cancellation" or similar language, Contractor shall require its insurer(s) to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate.

(4) Any deductible in excess of \$50,000 shall be disclosed to the Owner in writing prior to Issuance of a Notice to Proceed and is subject to Owner's approval.

(5) If the Contractor fails or refuses to provide the required insurance coverage or certificates in a form satisfactory to Owner within the time required, the Owner is entitled to take any and all of the following actions:

- a. Reject the Contractor's Bid;
- b. Award the Contract to someone other than the Contractor; and
- c. Recover any costs suffered by the Owner as a result of taking the actions above from the Contractor or its Bid Bond.

(c) Workers' Compensation and related Insurance:

(1) The Contractor shall provide, and require all Subcontractors to provide, Workers' Compensation coverage **on a statutory basis** for all persons employed in performing services under the Contract, in accordance with ORS **Chapter 656**, either as:

- a. A carrier-insured employer; or
- b. A self-insured employer.

(2) Proof of such coverage shall be filed with the Owner and maintained for the duration of the Contract. The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident, **a \$500,000 disease "policy" limit, and \$100,000 disease "each employee" limit.**

(3) The Contractor shall require proof of such Workers' Compensation Insurance by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

(4) Where work under this Contract is subject to the Federal Longshoremens' and Harbor Workers' Act or the Federal Jones Act, or any other workers' compensation system, proof of such coverage shall be provided to the Owner for approval and maintained for the duration of the Contract **with similar coverage as that required by (c)(2) above.**

(d) Liability and Property Damage Insurance:

(1) **Commercial General Liability (CGL)** - Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract and as specified below, Commercial General Liability Insurance (CGL) covering bodily injury and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Combined single limit per occurrence shall not be less than \$1,000,000 for each occurrence, \$1,000,000 Personal Injury/Advertising Injury; \$1,000,000 Products/Completed Operations, and; \$1,000,000 General Aggregate.

(2) Coverage Limits - The insurance shall include the following coverage: Premises/Operations, Contingent Liability/Independent Contractor; Broad Form Property Damage; Fire Liability; Contractual Liability; and Explosion, Collapse and Underground Hazard Liability. The policy shall be endorsed to extend the completed operations for two years after Final Completion of the Work.

(3) Contractor's Pollution Liability: The insurance shall include Contractor's Pollution Liability coverage when otherwise required by the Contract Documents. The Owner requires the Contractor to provide completed operations coverage for two years after Final Completion of the Work. When required, such coverage shall include:

a. Bodily injury including death, sickness, disease, mental anguish or shock sustained by any person;

b. Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

c. Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

d. Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims;

e. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (or specify desired number) years beginning from the time that work under this contract is completed;

f. On the Automobile Liability Coverage, endorsements CA9948 and MCS-90 are required if the Contractor is transporting any type of hazardous materials; and

g. This policy must be kept in effect for up to two (2) years after completion of the project.

(4) Insurance Coverage - The insurance coverage obtained by the Contractor:

- a. Shall not be affected by any insurance coverage otherwise existing;
- b. Shall name the Owner, its officers, employees and agents as additional insureds. The "additional insured" requirement shall also apply to Products/Completion Operations coverage. If for any reason Contractor cannot obtain such coverage from its insurer, it shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, including Products/Completed Operations coverage for up to 24 months after Final Completion, naming the City of Portland, its officers, employees and agents as Named Insured with not less than a \$1,000,000 limit per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. This policy must be keep in effect for 24 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to its issuance of a Notice to Proceed;
- c. Shall protect each insured in the same manner as though a separate policy had been issued to each, notwithstanding the naming of any number of additional insureds. However, this requirement is not intended to increase the insurer's liability as set forth in the policy beyond the amount, or amounts, for which the insurer would have been liable if only one person or entity had been named as the insured;
- d. Shall permit partial occupancy or use of the Project by Owner in advance of Substantial Completion without cancellation or discontinuance of coverage. In that event, the Owner and Contractor shall agree upon the time when partial occupancy or use of the Project by the Owner shall occur. If the insurance coverage provided by the Contractor requires consent of the Insurer before such occupancy or use occurs, the insurance policy shall also state that such consent shall not be unreasonably withheld; and
- e. Shall be provided on an "occurrence" basis. If the Owner elects to accept insurance on a "claims made" basis, then "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor will be responsible for furnishing coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Contract. This will be a condition of the final acceptance of Work or services and related warranties.

(e) Builder's Risk Insurance:

(1) Builder's Risk - If this contract involves the construction of a building, an addition to an existing building or extensive renovations to an existing building, the Contractor shall purchase and maintain in force during the term of this Contract, at its own expense, Builder's Risk insurance in an amount equal to the Contract Amount, including any subsequent modifications for the entire project at the site on a replacement cost basis, including covering all costs needed to repair the structure or work (including overhead and profits) based on the value figured at the time of rebuilding or repairing, not at the time of loss. Such coverage shall be maintained, unless otherwise provided in the Contract Documents, or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has insurable interest in the property to be covered, whichever is earlier. The Builder's Risk insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-tier contractors in the project.

(2) Special Covered Cause of Loss Form - Builder's Risk Coverage shall be on a special covered cause of loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of construction, architect's fees and expenses, flood and earthquake coverage, and all below and above ground structures, water and sewer mains. Other coverage may be required if provided in contract documents. Coverage shall be written for 100% of the completed value (replacement cost basis) of the work being performed.

(3) Amendments and Provisions -The Builder's Risk shall also include the following amendments and provisions.

a. Waiver of Subrogation - Waiver of subrogation against all parties named as insured, but only to the extent the loss is covered;

b. Beneficial Occupancy Clause - The policy shall specifically permit partial or beneficial occupancy at or before substantial completion or final acceptance of the entire work. Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance have consented to such partial occupancy or use. The Owner and Contractor shall take reasonable steps to obtain consent of the insurance company or companies and agree to take not action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse or reduction of insurance;

c. Equipment Breakdown Coverage - Equipment breakdown coverage (aka boiler & machinery coverage) shall be provided that specifically covers insured equipment during installation and testing;

d. Interior Damage - Any clause that excludes recovery of damage to the interior of building shall be deleted. The Builder's Risk policy shall provide for recovery for damage to the interior of a building if caused by perils insured against in the Builder's Risk Policy;

e. Design Error - The Builder's Risk policy shall not exclude coverage of damages caused by design error;

f. Settlement, Cracking, Etc - The Builder's Risk policy shall cover settling, cracking, shrinking or expansion (including coverage for loss resulting from settling, cracking, shrinking or expansion) of foundation walls, floors and other parts of the structure; and

g. Deductible - Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The deductible is the responsibility of the Contractor.

(4) Builder's Risk Installation Floater - If Builder's Risk insurance is not required, then the Contractor shall obtain, at the Contractor's expense, and keep in effect during the term of this Contract, a Builder's Risk Installation Floater in the initial Contract Amount, as well as subsequently amended, on a replacement cost basis, including covering all costs needed to repair the structure or Work (including overhead and profit) based on the values figured at the time of rebuilding or repairing, not at the time of loss. Such coverage shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered, whichever is earlier. The Builders' Risk Installation Floater shall include interest of the Owner, Contractor, Subcontractors and sub-tier Contractors in the project.

(5) Special Covered Cause of Loss Form - The Builders' Risk Installation Floater shall be on a Special Covered Cause of Loss Form and shall include theft, vandalism, malicious mischief, faulty workmanship, labor, materials and equipment to be installed. Other coverages may be required if provided in the Contract Documents. The Builders' Risk Installation Floater shall also provide a Waiver of Subrogation against all parties named as insured, but only to the extent the loss is covered. Coverages shall be written for 100% of the completed value (replacement cost basis including labor and materials) of the work being performed or other limit as specified in the Contract Documents.

(6) Insured Loss - A loss insured under the Builder's Risk Insurance or Builder's Risk Installation Floater shall be adjusted in conjunction with the Owner and any payments or settlements shall be made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just share of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors make payments to the Sub-subcontractors in similar manner. The owner shall have power to adjust and settle a loss with insurers. If is expressly agreed that nothing in this section shall be subjected to arbitration and any references to arbitration are expressly deleted.

(7) Deductible - Any deductible shall not exceed \$50,000 for each loss. However, if earthquake and flood perils are both covered by the policy, the deductible shall not exceed 2 percent of each loss of \$50,000, whichever is greater.

(f) Automobile Liability - The Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and hired vehicles. This coverage may be combined with the Commercial General Liability Insurance policy. The combined single limit per occurrence shall not be less than **\$1,000,000**.

(g) Negligence of Owner - Nothing in this section requires the Contractor or its insurer to provide insurance to the Owner for claims arising out of the death or bodily injury to persons or damage to property caused, in whole or in part, by the negligence of the Owner.

(h) Claims of Damage - Contractor shall defend, indemnify and hold the Owner harmless from any and all claims of damage, including attorney fees and costs, resulting from Contractor's activities in regard to notification of utilities and emergency service providers, as more specifically provided in [00170.72](#).

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

00170.72 Indemnity/Hold Harmless:

(a) The Contractor shall indemnify, hold harmless, and defend Owner, its officers, employees and agents from any and all claims, losses, damages, attorney fees, costs and liabilities arising out of accidents, unforeseen difficulties, or the intentional, reckless or negligent acts or omissions of the Contractor, its Subcontractors, suppliers, employees, or agents in the performance of the Work. For purposes of this Subsection, "claims" includes any assertion of a right to money damages or equitable relief or any combination thereof.

(b) Owner shall notify Contractor of any claim of which it is aware that requires Contractor to defend, indemnify and hold Owner harmless. Thereafter, Contractor shall notify Owner in writing within 30 days that it will defend, indemnify and hold Owner harmless. Contractor's failure to provide such notification is a breach of contract. In the event that Contractor fails to give Notice within 30 days, Owner may defend the claim and charge Contractor with any costs associated with that effort.

(c) Owner reserves the right to participate in any claim irrespective of Contractor's obligations to indemnify, hold harmless, defend or notify. However, if Owner elects to participate in any claim after receiving notification from Contractor, Contractor is not obligated to indemnify Owner for the costs associated with that participation, although its other obligations to indemnify, hold harmless and defend remain intact.

(d) Nothing in this section requires the Contractor or its insurer, to indemnify the Owner for any claims or losses arising out of death, or bodily injury to persons or property damage caused, in whole or in part, by the negligence of the Owner.

00170.79 Third Party Beneficiary - The parties agree that the execution of this Contract is not intended to, nor does it create, any third party beneficiary rights in any person.

00170.80 Responsibility for Damage to Work:

(a) The Contractor shall perform the Work as required by the Contract Documents, including, but not limited to, providing all labor, materials, equipment, tools, machines and Incidental Work necessary for its performance. In addition, the Contractor is responsible for the means and methods of construction.

(b) Until the Work is completed and accepted by Owner, the Contractor is responsible for any damage it causes to either permanent or temporary work, utilities, materials, plants and equipment, all of which shall be repaired to the satisfaction of the Owner's Representative at the Contractor's expense. Damage caused by vandals shall be covered by Contractor's insurance. Damage to any portion of the Work that has been completed and accepted by the Owner and which is open for public use is not the responsibility of the Contractor if caused by third persons, such as vandals.

(c) The Contractor shall repair any damage for which it is financially responsible promptly. If the damage is something for which the Contractor is not financially responsible, the Owner's Representative may direct the Contractor to repair the damage with compensation established as follows:

(1) If the Contract was one that had Unit Prices established for performing the work, the Contractor will be compensated at those Unit Prices;

(2) If the Contract, or a portion of the Contract, was one that used Lump Sum pricing, then the Owner and Contractor shall use the Schedule of Values

(d) The Owner reserves the right to have any work performed for which the Contractor is not financially responsible by its own forces or by hiring another Contractor to perform the work.

(e) Contractor shall make sure its Work is in good condition to receive subsequent work that may be performed by another Contractor. See 00150.55.

(f) 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 Owner's Representative 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 Owner's Representative will also include in the interim acceptance the scope and duration of Contractor's relief, if any, from responsibility for protection and maintenance under 00170.80.

(2) Scope of Relief - For the duration of interim acceptance issued by the Owner's Representative, 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.

(g) Vandalism - The Contractor shall provide reasonable protection of the Work from vandalism until Substantial Completion of the Work. If reasonable protection has been provided, the Contractor's responsibility for damage resulting from vandalism will be limited to \$5,000 per occurrence. Requests for reimbursement of amounts in excess of \$5,000 shall be in writing and directed to the Owner's Representative. Upon receipt, the Owner's Representative 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) Property Protection - Contractor shall protect, and take every reasonable precaution to avoid damage to, all public and private property that might be damaged by its operations. See 00170.03, regarding Rights of Way, Easements and construction limits.

(b) Property Repair - If public or private property, or both, is damaged by the Contractor's operations, the Contractor shall either repair the damage, or have the damaged repaired by others at its own expense, without additional compensation from Owner. The repair shall bring the property damaged back to the same condition as it was before the damage occurred. If repair and restoration is not feasible, the Contractor shall pay the Owner of the damaged property for the damage. If the damage has been caused to property of the Owner, the Owner has the right to determine whether the property shall be repaired and restored by the Contractor or not. If Owner elects to have the property repaired with its own forces or by another entity, the Contractor shall pay the Owner all costs associated with that repair and restoration.

(c) Vehicle and Other Removal Notice - Contractor shall give reasonable Notice to owners and occupants of property adjacent to the Work to permit them to remove vehicles, trailers and other possessions as well as salvage or relocate plants, trees, fences sprinkler systems or other improvements in the Easement or Right-of-Way that are designated for removal or which might be destroyed or damaged by the Contractor's operations.

(d) Landscape Protection/Restoration - Contractor shall protect all trees not designated for removal, lawns and planted areas within the Right-of-Way or Easements and restore all disturbed areas, by seeding, mulching and providing erosion control as set forth more specifically in [Section 01030](#). If conditions are such that seeding cannot be done, provide temporary erosion control measures as set forth in [Section 00280](#) or as directed by the Owner's Representative.

(e) Clearing Work Review - Contractor shall review the location, limits and methods to be used with the Owner's Representative prior to performing any clearing work.

(f) Sign Protection - Contractor shall protect all signs, including business signs and tourist-oriented direction signs, from damage whether the signs are to remain in place or are placed on temporary supports until they are reinstalled on permanent supports in the same or similar location. Signs that are damaged shall be repaired at Contractor's expense. Contractor is responsible for any and all damages that result from the displacement of such signs.

(g) Permanent Survey Markers:

(1) Contractor shall notify the Owner's Representative not less than **five (5)** working days prior to starting work in order that the Representative may take necessary measures to ensure the preservation of survey monuments, stakes, lot stakes and bench marks. Contractor shall not disturb permanent survey monuments, stakes, lot stakes or bench marks without the consent of the Owner's Representative, and bear the expense of replacing any that are disturbed.

(2) When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, Contractor shall adjust the monument cover to the new grade at no additional expense to Owner.

(h) Construction and Survey Markers - Contractor shall preserve construction survey stakes and markers for the duration of their usefulness during construction. If survey stakes are lost or disturbed through the Contractor's negligence and therefore need to be replaced, the Contractor shall pay for the cost of the replacement. The amount of that cost may be deducted from any payment due to Contractor.

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 security as provided in 00150.96(g), 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 security, or warranty period.

(b) Warranties - For those Pay Items with Specifications referencing this 00170.85(b) warranty, the Contractor warrants that all Work, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated into the Work, shall meet the technical and performance Specifications required under the Contract, from the date and for the period of time identified in each applicable Specification or elsewhere in the Contract. The Contractor shall be responsible for making good the Work and for all repairs of damage to other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs associated with site cleanup and remediation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship. This warranty provision shall survive expiration or termination of the Contract.

00170.93 Trespass - Contractor is responsible for trespass or encroachment upon or damage to adjacent property and from claims resulting from the Contractor's operations.

00170.94 Use of Explosives - The Contractor shall comply with all Laws regarding the use of explosives. The Contractor shall notify anyone having facilities near the site of the intended use or storage of explosives. The Contractor shall be responsible for all damage resulting from the Contractor's own, its agents' and employees' and its Subcontractors' use of explosives. See 00330.41(e) and Section 00335.

00170.95 Overtime Work:

(a) The Contractor shall obtain approval of the Owner's Representative in order that the work can be appropriately monitored.

(b) The Owner's Representative may refuse the Contractor the right to perform overtime work if the Owner does not have sufficient staff to inspect the work or when the Representative determines that the overtime is not in the public interest.

(c) Work performed during overtime in the absence of the Owner's inspection or other staff must be performed at Contractor's expense unless expressly authorized.

(d) This Subsection does not apply to labor performed in the manufacture or fabrication of any material ordered by the Contractor or manufactured or fabricated in any plant or place other than the place where the main Contract is to be performed.

00170.96 Records:

(a) The Contractor and its Subcontractors shall maintain all fiscal records relating to public Contracts in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document their performance of the work and any Claims for additional compensation or requests for additional Contract Time arising from or relating to their performance under a public Contract. Contractors and Subcontractors shall make all records pertaining to their performance, any Claims or requests under a public Contract accessible to the Owner at reasonable times and places, regardless whether litigation has been filed as to such Claims.

(b) The Owner may, at reasonable times and places, have access to, and an opportunity to inspect, examine, copy and audit the books and records of any person who has submitted cost or pricing data according to the terms of a Contract to the extent that such books and records relate to such cost or pricing data. Any person who receives a Contract, for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of Final Payment under the Contract, unless a shorter period is otherwise authorized in writing.

(c) The Owner and its authorized representatives shall be entitled to inspect, examine, copy and audit the books and records of the Contractor and its Subcontractors and suppliers as provided in 00170.96(a) above. Such books and records shall be maintained by the Contractor and all Subcontractors, and kept accessible and available at reasonable times and places for a minimum period of three years from the date of Final Payment under the public Contract, or until the conclusion of any audit, controversy, litigation, dispute or claim arising out of, or related to, the public Contract.

(d) Contractor shall produce all such records in Portland, Oregon, regardless of whether the records are produced pursuant to this provision of the Contract or as a result of a claim, litigation, arbitration or other proceeding. Contractor may produce the records elsewhere if it fully compensates the Owner for the reasonable costs of travel to and from the place where the records are produced and the reasonable cost of any employee's time in having to travel.

00170.97 Partial Occupancy or Use:

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

(b) The partial occupancy or use may commence before that portion is substantially complete. Before partial occupancy, the Owner's Representative and Contractor shall discuss payments, retainage, if any, security, maintenance, utilities, damage to the Work and insurance, the period of time for correction and completion of the portion of the Work occupied and the commencement date of any applicable warranties and reduce matters of agreement to writing. Disputes about these matters shall be handled as provided by 00199.30.

(c) Before partial occupancy or use, the Owner's Representative and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Thereafter a list shall be prepared recording the items that need correction and completion. This list is not a "punch list" and does not represent that Substantial Completion has occurred. Either the Owner's Representative or Contractor may inspect the portion separately if the other refuses to join in an inspection in a timely fashion.

(d) Partial occupancy or use of a portion or portions of the Work shall not constitute Owner's Acceptance of Work not complying with the requirements of the Contract Documents, nor does it waive rights the Owner has to completion of the Contract in accordance with the requirements of the Contract Documents.

(e) Owner also is entitled to occupy or use all or a portion of the work upon Substantial Completion. Occupancy or use upon Substantial Completion does not constitute Owner's Acceptance of Work not complying with the requirements of the Contract Documents nor does it waive rights the Owner has to completion of the Contract in accordance with the requirements of the Contract Documents.

(f) When the work is substantially complete, regardless of whether Owner takes possession of or occupies all or a portion of the Work, the Contractor and Owner shall prepare a list of items, known as a "punch list," that remain to be completed or corrected. The Contractor remains responsible to complete the work in accordance with the Contract Documents regardless of whether an item is omitted from the punch list.

(1) The Contractor is required to proceed promptly to complete the items on the punch list and any other items that may be discovered to be incomplete or incorrect regardless of whether they are on the punch list or not. If the Contractor fails to complete the punch list within 30 days or such other time as the Owner's Representative may allow, the Owner may terminate any further services of the Contractor under the Contract, complete the punch list items remaining to be completed or corrected with the Owner's own forces or by hiring another Contractor to perform the punch list work, or charge the Contractor \$100 per day in liquidated damages until the Contractor completes the punch list items in accordance with the Contract Documents. Costs of performing the punch list work by Owner shall be deducted from any payments otherwise due the Contractor.

(2) Contractor shall notify Owner when the punch list work is complete and Final Payment shall be made in accordance with 00195.90. After receipt of that Notice, Owner will inspect the work to determine if the punch list is complete as provided in 00195.90(b)

(3) If the work is not complete despite the Contractor's Notice that the punch list items are complete, and Owner has hired an Architect or Engineer to assist it on the Project, Contractor shall pay costs for the Architect or Engineer's services if more than two inspections of the Work are required because the punch list remains incomplete.

(4) Upon Substantial Completion, the Owner will be responsible for utilities, insurance, security, maintenance and damage to work caused by Owner's agents and employees unless otherwise provided in the Certificate of Substantial Completion. Contractor remains responsible for damage to work caused by its Subcontractors, agents and employees during the performance of punch list work

(g) Warranties for products and services provided by the Contractor shall commence upon issuance of the Certificate of Substantial Completion, unless otherwise provided by the Contract Documents or agreed to in writing by the Owner's Representative.

Section 00180 - Prosecution and Progress

00180.15 Owner's Right to Do Work at Contractor's Expense:

(a) If the Contractor refuses or fails to comply with the Contract, the Owner may correct any deficiency or defect or perform work that the Contractor has failed to perform, or take other appropriate action without prejudice to any other remedy the Owner may have under the Contract. Before taking that action, the Owner will provide the Contractor and its sureties with seven days Notice of its intentions, unless an emergency or dangerous condition exists, in which case the action may be taken without Notice. In the event that the Owner performs part of the Contractor's work, corrects deficiencies or is required to take action as a result of an emergency or dangerous condition, the Owner will deduct the cost of that action from any payment then or thereafter due the Contractor. In the event that the cost of the Owner's action exceeds any sums held by Owner and otherwise payable to Contractor, Contractor agrees to reimburse Owner for any excess costs.

(b) The Owner has the right to delete work from this Contract and the parties agree that such action does not constitute a breach of contract. Therefore, Owner may delete work from the Contract and perform it with its own forces or have such work performed by another Contractor. If work is deleted from the Contract, the cost of performing such work will be deducted from the Contract Amount to be paid to the Contractor. Any objections to the change in Contract Amount shall be processed as a Claim as required by 00199.30.

00180.21 Subcontracting:

(a) Contractors are responsible for performing the Work required by the Contract Documents. Use of Subcontractors is permitted. However, the use of Subcontractors, material suppliers, equipment suppliers or others to perform portions of the Work does not release the Contractor from any contractual obligation. The Contract Awarded to the Contractor cannot be assigned or transferred to another person without the Owner's written approval.

(b) The Contractor shall provide in all of its subcontracts that the Subcontractor, material supplier and equipment supplier shall be bound by the terms and conditions of this Contract.

(c) All agreements, subcontracts and purchase orders executed between the Contractor and others for the Project must provide that they are assignable or otherwise transferable to the Owner at the Owner's option, in the event that this agreement is terminated for any reason. If the agreements, subcontracts and purchase orders are not assignable, the Contractor shall be liable for any additional costs incurred by Owner in procuring the same or substitute services, materials, equipment, supplies, or parts.

(d) The Contractor shall provide the Owner with copies of all its subcontracts, purchase orders and supply agreements relating to the Work upon request of the Owner within 3 business days of the request.

(e) Substitution of Subcontractors shall be in accordance with Oregon law. In addition, substitution of M/W/ESB Subcontractors requires notification to the Owner's Representative, approval of the Purchasing Agent and good faith efforts to acquire a new Subcontractor, as more specifically provided in the [Good Faith Effort Specifications, which are hereby incorporated by reference.](#)

00180.30 Materials, Equipment, and Work Force - The Contractor shall remove from the job any laborer, worker, mechanic, foreman, superintendent or other person who is found to be incompetent or who fails or refuses to perform the work properly. In addition, the Contractor shall remove any person who disrupts the Work by being intemperate, troublesome, or disorderly. If the Contractor refuses to take such actions the Owner's Representative may order the person to be removed and those instructions shall be followed. Replacement of that person is at the Contractor's cost.

00180.31 Substitution of Materials and Equipment to be Incorporated into the Work :

(a) Whenever a process is designated, or a manufacturer's name, brand or item designation is given, or whenever a process or material covered by patent is designated or described, it shall be understood that the words "or approved Equal" follows that name, designation or description. The Owner does not know, and cannot guarantee, however, that an "Equal" actually exists. If the Contractor submits a Bid assuming that the Owner will approve an Equal, it does so at its own risk, and remains responsible for providing the item specified in the event the proposed substitution is rejected.

(b) The Contractor may offer to substitute materials, products, parts or equipment of Equal or better quality and performance from those specified after execution of the Contract. To do so, the Contractor shall submit any and all information to the Owner to show that the proposed substitution is Equal to or better than that specified by the Contract, including any and all information regarding changes to, or coordination with, any other portion of the Work, that may be affected by the substitution.

(c) The Owner's Representative has the sole discretion to accept or reject an offer of substitution. If the Owner's Representative accepts the proposed substitution, the Contractor may proceed to use the substituted material, product, part or equipment and incorporate it into the Work. However, acceptance by the Owner's Representative shall not relieve the Contractor from full responsibility for the efficiency, sufficiency, quality and performance of the substitution.

(d) No substitutions can be made without written approval of the Owner's Representative. Any cost differential between what was originally specified and what was substituted and any change in Contract Time resulting from the substitution **will** be reflected in a Change Order executed before the substitution is effective. If no Change Order is executed before the substitution occurs, the parties agree that the substitution had no affect on either the Contract Amount or Contract Time.

(e) If the Owner's Representative rejects the proposed substitution the Contractor shall proceed to follow the Contract Documents as originally drafted, without a change in the Contract Amount or Contract Time. Therefore, the Contractor shall not order materials, products, parts or equipment in anticipation of the substitution prior to the time that the offer of substitution is accepted.

00180.40 Limitation of Operations:

(a) **In General** - The Contractor shall comply with all Contract provisions and shall:

- (1) Conduct the Work at all times so as to cause the least interference with traffic; and
- (2) 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:

- (1) Received Notice to Proceed;
- (2) An approved Project Work schedule;
- (3) An approved Traffic Control Plan;
- (4) An approved Pollution Control Plan;
- (5) An approved Erosion and Sediment Control Plan;
- (6) Met the Owner's Representative at the required preconstruction conference, and provided those documents required by Section 00180.42;
- (7) Assembled all materials, equipment and labor so that Work can proceed according to the Project Work schedule;
- (8) Completed any other task required by the specifications before On-Site Work begins.

00180.41 Project Work Schedules:

(a) An accurate and regularly updated schedule is essential for Owner to monitor progress of the Work. The Contractor shall provide an updated schedule as described in this Subsection.

(b) A preliminary Construction Schedule shall be submitted by the Contractor at the preconstruction conference, unless requested at a different time by the Owner's Representative. The preconstruction conference is a meeting scheduled by Owner between the Owner and Contractor before work begins to discuss the Project.

(c) Within three (3) weeks of receipt of the Notice to Proceed or **before** starting work, which ever is earlier, the Contractor shall submit for Owner's written review a comprehensive Construction Schedule in the form required by the Contract Documents. If during the course of that review the Owner's Representative notices that the schedule conflicts in some way with the Contract Documents, that fact will be brought to Contractor's attention. However, failure to catch errors or inconsistencies in the schedule by Owner's Representative shall not relieve the Contractor from having to comply with the Contract Documents, or from finishing the Work within the Contract Time.

(d) If it is desirable to carry on portions of the Work in more than one location simultaneously, Contractor shall submit a schedule for each location at least two (2) weeks in advance of that activity, or at such other time as requested by the Owner's Representative.

(e) In the event that the Contractor's proposed Construction Schedule does not meet the requirements of the Contract, Contractor shall immediately resubmit a schedule that conforms to the Contract.

(f) Schedules must show the proposed sequence of work, state the time required for completion of major tasks, take into account the passage and handling of traffic with the least practicable interference, and the orderly, timely, and efficient prosecution of work. Owner will use the Contractor's schedule to check on the progress of work, to coordinate related activities such as Utility relocation, to ensure adequate inspection resources, and to plan and coordinate surveying and testing.

(g) Contractor shall prepare and submit a revised schedule whenever requested by the Owner's Representative or when substantial changes in the sequence, timing, or progress of work require it. The Owner's Representative may request a revised schedule at any time and, if so, Contractor shall provide one within seven (7) Calendar Days of the request.

(h) In the event a schedule or revised schedule does not accurately reflect work on the Project or conflicts with requirements of the Contract, the Owner's Representative may direct that the Contractor's work be suspended until satisfactory schedules are provided. The suspension **will** not entitle the Contractor to additional Contract Time or additional compensation. In addition, the Owner's Representative may withhold part or all of a progress payment until proper schedules and revised schedules are submitted.

(i) The Contractor shall meet with the Owner's Representative once a week to discuss the progress of the work. A written schedule for the next two (2) weeks' work will be submitted at that time with particular attention given to the next week's schedule. If the two-week schedule deviates more than one (1) week behind the overall schedule, the Contractor shall resubmit an updated overall schedule that indicates what measures will be taken to get the project completed within the allotted time.

00180.42 Preconstruction Conference:

(a) Before meeting with the Owner's Representative for the pre-construction conference, hold a group utility scheduling meeting with representatives from the utility companies involved with this project. Incorporate the utilities time needs into the Contractor's schedule submitted at the pre-construction conference.

(b) After the contract is awarded, but before any work is performed, meet with the Owner's Representative for a pre-construction conference at a time mutually agreed upon. Submit the following at the pre-construction conference:

(1) The names and telephone numbers of its Project Manager, Superintendent and Office Manager and a list of personnel authorized to sign change orders and receive progress payments;

(2) The name, address and telephone numbers of two or more persons employed by the Contractor who can be reached at any time of the day or night to handle emergency matters;

(3) A list of all subcontractors that will work on the project, a description of work they will perform, and a contact list for each subcontractor with phone numbers and address;

(4) An overall project schedule and a detailed schedule of the first two weeks;

(5) Traffic Control Plan (00225.05);

(6) Erosion and Sediment Control Plan (00280.02, 00280.03);

(7) A list of materials suppliers and products;

(8) A list of all labor classes and equipment (year, make, model) to be used on the project;

(9) A detailed breakdown of all lump sum bid items, except Mobilization and Temporary Protection and Direction of Traffic;

(10) Copies of all subcontracts between the Prime Contractor and Subcontractor;

(11) Site Safety Plan (00170.60(f));

(12) Utility Protection Plan (00405.41(f));

(13) Pollution Control Plan (00290.30(b)); and

(14) Certification for Force Account Invoice for Labor.

(c) The Contractor shall invite a representative from each subcontractor to attend the pre-construction conference.

00180.50 Contract Time to Complete Work:

(a) Contract Time will be expressed in one or more of the following ways:

- (1) By a calendar date on which the Work shall be completed; or
- (2) By a given number of Calendar Days.

(b) When Contract Time is expressed as a given number of Calendar Days, the date on which it will begin is the first Calendar Day following the date of the Notice to Proceed, unless the Notice establishes a different date.

(c) Contractor shall provide the necessary labor, equipment and materials to ensure that work is completed within the Contract Time. If the Contractor does not complete the Work within the Contract Time, Owner is entitled to impose liquidated damages in addition to any other remedies Owner may have under the Contract Documents.

00180.60 Adjustment of Contract Time:

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

(b) The Owner has discretion to decrease the amount of Contract Time if a portion of the Work is eliminated and the amount of remaining work to complete the Project will take less time. The Owner and Contractor shall try to reach an agreement regarding any reduction in Contract Time before the Owner's exercise of discretion.

(c) Contract Time will be increased only if three events all occur: 1) the Contractor must encounter one or more excusable delays, and 2) the excusable delay must be shown to have actually affected the overall completion date of the Project, and 3) the Contractor must give the Owner a request for an increase in Contract Time in the manner specified by [00199.30](#).

(d) An excusable delay is one that arises from unforeseeable causes that are beyond the control and without the fault or negligence of the Contractor, its Subcontractors and suppliers. Excusable delays alone do not justify an extension of Contract Time unless the two other factors noted in [00180.80\(c\)](#) have occurred.

(1) Examples of excusable delays include:

- a. Act of God, which means a singular, unexpected and irregular visitation of a force of nature such as fire or flood;
- b. Act of Public Enemy;
- c. Act of Vandalism;

d. Strikes, labor disputes, or freight embargoes which, despite the Contractor's reasonable efforts to avoid, cause a shutdown of the entire Project or one or more controlling operations. A strike or labor dispute may involve a union bargaining with the Contractor, a Subcontractor, supplier or the Owner;

e. Suspension of the work if by written order of the Owner's Representative and the suspension is not because of Contractor's failure or neglect; or

f. Unusually severe weather. Unusually severe weather is weather that is abnormal compared to past weather at the same location for the same time of year, which actually has an adverse impact on critical work and which could not reasonably have been anticipated by the Contractor. Rain, windstorms, and other natural phenomena for the specific locality of work, which might reasonably have been anticipated from the previous ten years of historical records of the general locality of the work shall not be construed as abnormal or unanticipated. However, it is agreed that rainfall greater than the following cannot be reasonably anticipated:

1. Daily rainfall equal to, or greater than 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent or more; or

2. Daily rainfall equal to, or greater than, 0.75 inch at any time.

g. The office of the Environmental Data Service of the National Oceanic and Atmospheric Administration (NOAA) shall be considered the official agency of record for weather information and the closest reporting station nearest the locality of the Work shall be used to measure rainfall and other typical weather conditions.

h. Unreasonable delays caused by actions of the Owner that delay an item of work on the Project. Such delays might stem from errors, changes or omissions in the Plans, quantities or Specifications, Extra Work, and Right-of-Way and access delays if they meet the conditions stated in [00180.80\(e\)](#) below.

i. The Owner's direction to perform [extra](#) work.

(2) Examples of delays that are not excusable include:

a. Delays by Subcontractors or suppliers at any tier unless it can be shown that the delay was unforeseeable and not caused by any failure or neglect on the part of the Subcontractor or supplier.

b. Delays that affect the Contractor's planned early completion, but do not affect the specified or adjusted Contract Time;

c. Shortages of materials or equipment if the supplies, services, or equipment were obtainable from other sources in sufficient time to permit the Contractor to meet the required schedule.

d. Inadequacy or late delivery of materials and equipment;

- e. Financial difficulties;
- f. Lack of know-how or other inability to perform;
- g. Labor problems other than the examples specified in 1(d) above;
- h. Any requirement that the Contractor use equipment designated by the Owner for the Project ("sole source" equipment);
- i. Time used by the Owner that is permitted by the Contract. Examples include the Owner's use of time to review Contractor requests for substitutions, Contractor requests for Proposals and Contractor submittals.

(e) As noted above, Right-of-Way and access delays may be considered to be excusable delays. Such delays are excusable delays only if the Contractor's work is actually delayed because of the Owner's failure to make available to the Contractor necessary Right-of-Way for performance of the work, or Owner controlled access to or rights of occupancy of buildings and other properties which the Contractor is required to enter or to disturb under Contract requirements.

00180.70 Remedies for Delay:

(a) The parties agree that the occurrence of an excusable delay that delays overall Project completion may not result in additional compensation paid to the Contractor. No additional compensation will be paid to Contractor for excusable delays that are not the fault of either the Contractor or Owner, such as those listed in 00180.60(d)(1)(a) through 00180.60(d)(1)(f). In that situation, the Contractor is only entitled to an adjustment of Contract Time.

(b) No additional compensation will be paid to Contractor for any time period when the overall Project completion date is delayed as a result of concurrent delay. Delays are considered to be concurrent when the Contractor encounters an excusable delay as defined in 00180.60(d)(1)(h) or 00180.60(d)(1)(i), but also has caused its own delay to the Project for the same period of time. In that situation, the Contractor is only entitled to an adjustment of Contract Time for the length of the concurrent delay.

(c) Additional compensation will be paid to the Contractor if unreasonable delays caused by the Owner as described in 00180.60(d)(1)(h) and 00180.60(d)(1)(i) are the sole reason that the overall Project completion date is delayed. No additional compensation is warranted for delay if that delay does not affect the overall Project completion date.

(d) When the Contractor is entitled to additional compensation for delay, the compensation shall be calculated as provided in Section 00197, as if it were force account work, and only to the extent that the Contractor incurred additional costs for labor, equipment and materials as a result of the delay.

(e) All adjustments of Contract Time will be solely for the period of time during which the overall Project completion date was actually delayed.

00180.80 Time is of the Essence:

(a) Time is of the essence of this Contract - The time allowed to complete the Work will be stated in the Proposal and/or Special Provisions and will be known as the "Contract Time." The Contractor agrees to complete the Work within the Contract Time.

(b) Liquidated Damages:

(1) If the Contractor fails to complete the Work within the original or adjusted Contract Time, the parties agree that Owner will be damaged and that the amount of damage to Owner and to the public will be difficult to determine. Therefore, Contractor agrees to pay the amount of liquidated damages stated in the [Special Provisions](#) in the Contract Documents. If no liquidated damages are specified, Contractor shall be liable to Owner for whatever damages Owner may actually establish. Liquidated damages will be measured not only by direct losses to the Owner as a result of delay, but intangible losses to the general public such as loss of use.

(2) Liquidated damages are assessed for each Calendar Day of delay, including holidays and weekends and shall run until the Project is substantially complete, regardless of whether the Contractor or a replacement Contractor achieves Substantial Completion.

(3) Liquidated damages are intended to compensate Owner and the public for Contractor's delay in completion of the Work. The Owner has the right to recover additional damages that are not based solely on delay in addition to liquidated damages, such as the excess costs of reprocurement or completion, the costs of restoring uncompleted work, and costs paid to [other](#) Contractors, or Owner's own employees, [to complete the Work](#).

(4) Permitting Contractor to finish the Work, or any part thereof, after the original or adjusted Contract Time has expired, is not a waiver of Owner's rights under the Contract Documents, including Owner's right to recover liquidated or additional damages.

(5) Owner may retain liquidated damages from any payment or Retainage due to Contractor. Payment or assessment of liquidated damages does not release the Contractor's obligation to fulfill the entire Contract.

00180.85 Suspension of Work:

(a) The Owner has the authority to suspend all, or part of, the work of the Contractor as provided below.

(1) The Owner may suspend all or part of the Contractor's work for its convenience for a period of time that the Owner's Representative determines necessary.

(2) If suspension occurs for Owner convenience or at the direction of the federal government, as a result of the operation of law, such as an injunction issued by the court or a directive from the federal or state government, Contractor shall be provided an adjustment of Contract Time corresponding to the period of the suspension and shall be reimbursed for its direct costs incurred as a result of the delay and **an additional sum based on 10% of the direct costs to compensate for overhead and profit**. However, if performance of work would have stopped as a practical matter for other reasons irrespective of Owner convenience, such as unusually adverse weather conditions or other excusable delays noted in 00180.60(d), then no additional compensation will be provided.

(3) The Contractor is responsible for protecting the work already performed during the period of suspension. It also shall provide temporary protection devices to warn, safeguard, protect and inform traffic and the public during this same time. Costs are recoverable for such measures only if provided in 00180.85(a)(2) above.

(4) The Owner is also entitled, but not required, to suspend work on the Project if the Contractor has failed or neglected to perform work in the manner required by the Contract or if the Contractor has created any unreasonable risk to safety. Contractor is not entitled to any additional compensation or Contract Time if suspension occurs because the Contractor has failed or neglected to carry out any provision of the Contract.

(5) Work shall resume as soon as possible after the Contractor receives written Notice that the Owner has canceled the suspension of work. The Contractor is deemed to have received the Notice if it is mailed or sent by facsimile transmission to it.

00180.90 Termination of Right to Proceed:

(a) Termination for Default:

(1) The Owner has the right to terminate the Contractor's right to proceed with all or any portion of the Work if the Contractor is found to be in default of its obligations under this Contract. Default will occur if:

- a. The Contractor refuses or fails to prosecute the Work or any separate part of the Work, with the diligence that will ensure its completion within the time specified in this Contract including any extension of Contract Time that has been granted;
- b. The Contractor fails to construct the Project in accordance with the Plans and Specifications or fails to follow the directions of the Owner's Representative;
- c. The Contractor is adjudged a bankrupt or has made a general assignment for the benefit of creditors; or
- d. The Contractor fails to comply with other provisions of the Contract Documents or disregards laws and ordinances applicable thereto.

(2) If the Contractor is in default, the Owner will notify the Contractor and all of its sureties of its intention of terminating the Contractor's right to proceed with the Work in writing no less than seven days in advance of the date of the actual termination. The Contractor and the sureties are notified if the Notice is sent to the last known address provided to Owner by the Contractor and its sureties. For purposes of computing time in this subsection, the first day counted will be the day that the Notice is mailed or sent by the Owner.

(3) When termination occurs, the Owner may take over the Work and complete it, and may take possession of any materials, tools, plant and appliances thereon, as well as all other materials whether on the premises or not, for which the Contractor has received whole or partial payment that are necessary to complete the Work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's default, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any costs incurred by the Owner in completing the work that exceeds any remaining Contract balance.

(4) When termination occurs, the Owner may elect to have the Contractor assign any and all subcontracts and material contracts to Owner or to the Owner's designee, which may be another Contractor. Contractor shall execute such assignments within four Calendar Days of their receipt.

(5) Upon termination, Owner will make no further payments to Contractor. Contractor shall receive additional payment for work performed prior to termination only if the cost of completion of the work is less than the Contract balance held by Owner.

(6) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties, including the right to any damages, will be the same as if the termination had been issued for the convenience of the Owner as provided in 00180.90(b) below.

(7) The rights and remedies of the Owner in this Subsection of the Contract are in addition to any other rights and remedies provided by law or under this Contract.

(b) Termination for Public Convenience:

(1) The Owner may terminate performance of work under this Contract in whole, or in part, if the Owner determines that a termination is in the Owner's interest.

(2) The Owner will notify the Contractor and its sureties in writing when it decides to terminate a Contract for convenience no less than seven days in advance of the date of the actual termination. The date of termination, which is the date after which no work shall be performed, shall be stated in the Notice. Notice shall be deemed to have been given if sent to the Contractor's or any Surety's last known address provided to Owner by the Contractor and its sureties. For purposes of computing time in this subsection, the first day counted shall be the day that the Notice is mailed or sent by the Owner.

(3) After Receipt of a Notice of Termination, and except as directed by Owner, the Contractor shall immediately proceed with the following obligations:

- a.** Stop work by the date as specified in the Notice;
- b.** Award no further subcontracts nor place further orders for materials, services, or facilities, except as necessary to complete the continued portion of the Contract, if any;
- c.** Terminate all Subcontractors and orders to the extent that they relate to the work terminated;
- d.** Assign to the Owner, if directed by the Owner's Representative, all right, title and interest of the Contractor under the subcontracts terminated, in which case the Owner will have the right to settle or to pay any termination settlement proposals arising out of those terminations;
- e.** With approval or ratification to the extent required by the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
- f.** As directed by the Owner, transfer title and deliver to the Owner, (a) the fabricated or unfabricated parts, work in process, completed work, supplies and other materials produced or acquired for the work terminated, and (b) the completed or partially completed Plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to the Owner;
- g.** Take any actions that may be necessary, or that the Owner's Representative may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest; and
- h.** Use its best efforts to sell, as directed or authorized by the Owner's Representative, any property of the type referred to in 00180.90(b)(3)(f) above; provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Owner's Representative. The process of any transfer or disposition will be applied to reduce any payments to be made by the Owner under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the Owner's Representative.

(4) Upon termination, the Owner will pay the Contractor the following costs as a result of the termination and no other:

- a.** In regard to the Contract work performed before the effective date of termination, the total (without duplication of any items) of the following costs:
 - 1.** The cost of this work, as determined by the method of payment established by the Contract Documents;

2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if such costs are not included in 00180.90(b)(4)(a)(1) above and if the Owner does not have the contracts assigned for the purpose of settlement;

3. A sum as profit on 00180.90(b)(4)(a)(1) above, not to exceed 10% of that amount, unless it appears that the Contractor would have sustained a loss on the entire Contract had it been completed. However, no profit is permitted on costs compensated under 00180.90(b)(4)(a)(2).

b. The reasonable costs of settlement of the work terminated, including:

1. Accounting, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, except that no Allowance will be made for costs incurred as attorney fees;

2. The termination and settlement of Subcontractors (excluding the amounts of such settlements); and

3. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection or disposition of the termination inventory.

(5) No other costs other than those allowed in 00180.90(b)(4) shall be paid. By way of example only, and not by way of limitation, costs that would not be allowed include anticipated profits on unperformed work, consequential damages, post-termination overhead, Bid or Proposal preparation costs, costs for retraining employees, depreciation on idle equipment, cost of common items reasonably usable on the Contractor's other work and costs unrelated to the work performed prior to the date of termination.

(6) The Owner may deduct from any sums otherwise due the Contractor under 00180.90(b)(4) above, the cost of advance payments made to the Contractor under the terminated portion of this Contract, any Claim which the Owner has against the Contractor whether or not arising from this Contract, and the agreed price of, or proceeds of sale of, materials, supplies or other things acquired by the Contractor or sold under the provision of 00180.90(b)(3)(h) above, and not recovered by or credited to the Owner.

(7) Payment from the Owner is not due until the Contractor has submitted an itemization of its recoverable costs to the Owner in writing, together with supporting documentation. The Contractor shall supply additional supporting documentation upon request by the Owner in order to recover its costs.

(8) The Contractor shall maintain all records and documents relating to the termination until the Owner and the Contractor resolve the amount of costs to be paid by the Owner to the Contractor as a result of this termination. Such records shall be made available to the Owner within 30 days of the request.

00180.95 Subcontractor Termination Claims:

(a) This Subsection establishes the procedure and provides additional details regarding costs allowed by 00180.90(b) when a Contractor must terminate subcontracts when its own Contract has been terminated for convenience. It is not applicable if the Contractor assigns its subcontracts to Owner for the purpose of settling or paying termination settlements to those Subcontractors as provided in 00180.90(b)(3).

(b) The Contractor shall reach a binding agreement with the Subcontractor before the Contractor can recover from the amount of the Subcontractor's Claim from the Owner. That agreement shall be reached before the Contractor presents its Claim to the Owner. Contingent agreements with Subcontractors are prohibited.

(c) The Owner is only liable for reasonable settlement costs between the Contractor and its Subcontractors. Therefore, if the Contractor has agreed to pay an unreasonable amount to a Subcontractor by way of settlement, the Owner is liable only for reasonable costs incurred in that settlement. Reasonable settlement costs do not include the Subcontractor's anticipated profits on unperformed work or consequential damages, or costs similar to those excluded by 00180.90(b)(5).

Section 00190 - Measurement of Pay Quantities

Description

00190.00 Scope - The Owner's Representative 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 Owner's Representative 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 5.
- The final significant digit will be increased by one when the succeeding digit is 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 Owner's Representative's verification. The Owner's Representative's decision about measurement is final.

00190.10 Measurement Guidelines:

(a) Lengths and Dimensions - Lengths and dimensions will be measured horizontally and vertically, at least to the nearest 0.1 foot, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Engineer.

(b) Area - Areas will be determined by measuring width and length to the nearest 0.1 foot and computed to the nearest 0.1 square foot or 0.1 square yard as appropriate unless otherwise specified in the Contract.

(c) Weight - Weight will be determined on Contractor-provided scales as required by 00190.20 unless otherwise allowed by the Specifications. Weight 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, materials that have been lost, wasted for otherwise not incorporated into the Work, or for additional hauling costs resulting from the act of checking weight.

(d) Volume - Volume will be measured at least to the nearest 0.1 cubic yard unless otherwise specified in the Contract.

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 TM321).

(e) 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 gage, 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.

(f) Lump Sum - 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.

If the Owner issues no Change Order, the Owner will make no pay adjustment for quantities based on the Contractor's computations that overrun or underrun the estimated quantities. If the Owner issues Change Orders for changes in the Work, the Owner's Representative will measure such changes according to the standards set by 00195.20 to determine adjustment of payment.

(g) Time - Time will be measured to the nearest 0.5 hour unless otherwise specified.

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 Owner's Representative approval, 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 Owner's Representative 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 Chapter 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

1. Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State;
2. Technically suitable for weighing the Materials;
3. Properly installed and maintained; and
4. Accurate to the required tolerances.

The weight of any Materials weighed by anyone other than the Owner's Representative will be subject to check weighing as the Owner's Representative directs.

(c) Approaches - Vehicle scale approaches shall be:

1. At each end of the scale platform;
2. Straight and in line with the platform; and
3. 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 - 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:

1. Before use if installed at a new site;
2. 60 Calendar Days after initial inspection;
3. Every six months thereafter; and
4. When the Engineer directs additional inspections.

No Materials weighed on scales without current certifications in accordance with this Subsection will be accepted. The Contractor shall provide a copy of all required certifications to the Owner's Representative.

Testing by a scale service company within the State of Oregon shall comply with ORS Chapter 618.

If additional inspections directed by the Engineer confirm that the scale accuracy is within the required tolerances, the Owner 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 Owner 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 Owner's Representative 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 Owner 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 Owner may periodically have a representative at the scales to observe the weighing procedures. In addition, the Owner's Representative 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 in accordance with 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 Owner will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Owner's Representative will resolve discrepancies found by check weighing. Owner employee costs will be paid by the Owner. 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 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 Owner's Representative with the results of the check weighing.

(2) Scale Without Automatic Printer - If the scales require manual entry of gross weight information, the Owner may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Contractor shall inform the Owner's Representative of his intent to use a scale without an automatic printer at least three 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 Owner's Representative 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 in accordance with 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 Owner will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Owner's Representative will resolve discrepancies found by check weighing. Owner employee costs for check weighings will be paid by the Owner. 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 Owner's Representative. The Contractor shall make at least one check weighing on all projects where materials are received from a scale without an automatic printer. The Contractor shall provide the Owner's Representative with the results of the check weighing.

(3) Duties of Weigh Technician - The Contractor's weigh technician shall:

- a. 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;
- b. Furnish daily a listing of the tare weights if 10 or more loads are hauled during that day;
- c. Furnish a note listing the net weight for each consecutive ten loads with the following load;
- d. Furnish a daily listing of the net weights and total weight for each type of Material hauled during that day; and
- e. Furnish a legible, serially numbered weigh memo for each load of Materials to the Owner's Materials receiver at the point of delivery, or as directed by the Owner's Representative. 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) Owner-Provided Weigh Technician - If the Contractor provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, the Owner 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 in accordance with Section 00205 of the current Oregon Standard Specifications for Construction. The Owner's weigh technician will:

1. Determine tare weights;
2. Prepare weigh memos for each load;
3. Compile the weigh records; and
4. Not participate in the production of Materials or the loading of haul vehicles.

00190.30 Plant Scales - The Contractor, with the Owner's Representative 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 in accordance with 00190.20(f).

Except for 00190.20(c) regarding approaches, the Contractor's use of plant scales shall comply with all provisions of 00190.20.

The Owner Representative'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.

Section 00195 - Payment

00195.00	Scope and Limit:	Description
	(a) General:	<p>(1) The Contractor shall be paid the Contract Amount for performing the Work.</p> <p>(2) The Contract Amount for Lump Sum Contracts is the amount bid by the Contractor for performing the Work, as changed by any authorized Change Orders.</p> <p>(3) The Contract Amount for Unit Price Contracts is determined by multiplying the final bid item quantities by the Unit Prices bid by the Contractor, as changed by any authorized Change Orders.</p> <p>(4) The Contract Amount for Contracts using a combination of Unit Prices and Lump Sum prices is determined by adding together the amount bid by the Contractor for the Lump Sum items with the amount determined for the Unit Price items, as noted in 00195.00(a)(3) above, as changed by any authorized Change Orders.</p> <p>(5) The Contract Amount is full compensation for furnishing all materials, Incidental Work, equipment, tools, labor and incidentals necessary to perform the Work in a complete manner in compliance with the Contract Documents, and for risk, loss, damage or expense arising from the nature or prosecution of the Work or from the action of the elements. In addition, the cost of Bonds, insurance and compliance with all legal requirements for the Project are included within the Contract Amount.</p>
00195.20	Changes to Plans or Character of Work:	<p>(a) Unless changes and alterations in the plans, or quantities or details of construction materially change the character of the work to be performed or the unit costs thereof, the Contractor shall accept as payment in full, so far as Contract Pay Items are concerned, payment at the same Unit Prices as are provided under the Contractor for the accepted quantities of work done.</p> <p>(b) In contracts based on Unit Price, changes in quantities do not entitle the Contractor to a change in compensation, unless the final quantities are 125% or more, or 75% or less than the quantities estimated in the bid documents for a major item of work. A "major item of work" is one that, under the original Contract, has a value greater than 5% of the Contract Amount. In that event, the Contractor shall be paid as follows:</p> <p>(1) In the event that the quantities encountered are 125% or more, the Contractor shall be paid at the unit cost bid for all quantities up to 125%. For all additional quantities the Contractor shall be paid a fair and equitable price as determined by the Owner's Representative.</p> <p>(2) In the event that the quantities encountered are 75% or less, the Contractor shall be paid a fair and equitable price as determined by the Owner's Representative.</p>

(c) In the event that the Contractor disagrees with any decision of the Owner's Representative regarding changes to compensation it shall file a claim in the manner required by 00199.30.

00195.50 Progress Payments and Retained Amounts:

(a) The Owner will pay the Contractor the Contract Amount for the Work. See Section 00150 regarding the Owner's Representative's authority.

(1) The Contractor shall submit to the Owner's Representative a Schedule of Values allocating costs to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Representative may require. This Schedule, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's applications for payment.

(2) The Owner's Representative may reject any portion of any Schedule of Values that is reasonably believed to not reflect an accurate estimation of costs and substitute a fair estimate. Rejection of any part of the Schedule of Values does not change any subcontract amount entered into by the Contractor. Failure to object to any portion of the Schedule of Values is not an indication that the Owner's Representative agrees that the costs listed are accurate. Instead, the Schedule is used only for the purpose of making payments.

(b) The Contract Amount shall be full compensation for all work on the Project of whatever nature, including all Incidental Work, such as, but not limited to, formwork, falsework, shoring, and cribbing that is necessary to perform the work. In Unit Price Contracts, no payment will be made for Incidental Work until the work for which the Incidental Work is required is in place or has been completed. If the Contract Amount is based on a Lump Sum and only a portion of the Work for which payment is made has been completed, then only a portion of the cost of the Incidental Work will be paid.

(c) The cost of Bonds and insurance are recoverable as part of the Contractor's Mobilization costs if the Contract Documents or an approved Schedule of Values provide for a separate payment for Mobilization. Otherwise, no separate payment is made for such costs.

(d) The Contractor shall comply with ORS 279C.845 and submit certified payroll forms as required by the Oregon Bureau of Labor and Industries and shall ensure all Subcontractors do the same.

(1) Pursuant to ORS 279C.845(7), the Owner will retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by law. The Owner will pay to the Contractor the amount retained under this section within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements. The Owner is not required to verify the truth of the contents of certified statements filed by the Contractor under this section.

(2) Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by law. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection. Neither the Owner nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier Subcontractor under this section.

(e) The Owner will pay the Contractor two times per month on this Project as set forth below. Because Owner wants to ensure that Subcontractors are paid amounts owed in a timely fashion, Contractor is required to make payments to its Subcontractors twice per month as well. Contractor has no discretion to only accept one payment per month to avoid this obligation.

(1) On the 15th of each month, or on the next work day, the Contractor shall submit a good faith Estimate of the value of the work performed that was not included within the Contractor's previous progress payment, if any. The Estimate shall be calculated in the manner otherwise established by the contract documents, whether that is based on Unit Prices, lump sum amounts, a Schedule of Values, a combination of these methods or otherwise.

(2) The Owner may either approve the Contractor's Estimate or substitute its own Estimate if it believes the Contractor's submission is incorrect. Thereafter, Owner will pay Contractor an advance payment based on the approved estimate. Owner may withhold money from the advance for any of the reasons specified in 00195.50(m) below.

(3) The "mid-month" or advance payment will be taken into account and deducted from any amount otherwise due the Contractor on the next monthly progress payment, or any subsequent advance payment or progress payment.

(4) Because the payment is an advance not otherwise required by law, the Contractor agrees that the only dispute about the amount of the advance payment is whether the Owner substituted an Estimate in good faith. The Contractor acknowledges the advance payment is simply a rough estimate made for the purpose of providing the Contractor and its subcontractors with funds in advance of the progress payment and is not intended to represent the exact amount owed

(5) The Owner's Representative may request additional documentation from the Contractor to verify any Estimate submitted or may instead calculate the Owner's own Estimate. If requested, Contractor shall provide documentation to establish its Estimate within three working days. Failure to provide additional documentation when requested precludes any dispute whether the amount of the Owner's Estimate was calculated in good faith.

(6) Owner has discretion not to make an advance payment if the amount of work performed by the 15th of any month is \$1500 or less, or if there is a chance that the advance payment might exceed the remaining amounts due the Contractor under the Contract.

(7) Owner is not required to pay for any portion of the Work that is disputed or which would otherwise not be eligible for payment pursuant to a monthly progress payment.

(8) Because the payment is an advance on the progress payment, no interest is due on the advance payment until the time when interest would be due under the progress payment.

(9) Within seven Calendar Days from the date that any payment is sent by Owner to Contractor, Contractor shall pay its Subcontractors for work performed during the period covered by the Application for Payment regardless if the Subcontractor agrees to some different schedule. The Contractor is required to take all necessary good faith actions to ensure that it makes payment to its Subcontractors. In the event of a dispute, the Contractor shall pay the portion not in dispute and timely resolve the amount that is in dispute.

(10) Upon request from Owner, Contractor shall inform Owner of the portion of any advance payment owed to any of its Subcontractors.

(11) Nothing in [00195.50\(f\)](#) requires the Contractor to pay its Subcontractors for any portion of the Work that is disputed or which otherwise would not be eligible for payment.

(f) In addition to the advance payment, Contractor shall also receive a monthly progress payment as described in more detail in [00195.50\(g\)](#) through [00195.50\(q\)](#). To receive a monthly progress payment, Contractor first shall estimate the work performed in any calendar month and submit an invoice to the Owner's Representative for approval before the fifth day of the following month based on the estimate. The invoice shall include the value of labor performed and materials incorporated into the project since the work began or the last invoice, whichever is applicable. The estimate may be an approximation of the work, labor and materials provided, but should bear a reasonable relationship to the entire contract amount due once the project is completed.

(g) Where the invoice is filled out incorrectly, or where there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the Owner's Representative **will** so notify the Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the Contractor within seven days of being notified by the Owner, shall not cause a payment to be made later than 30 days after receipt of the original invoice from the Contractor or 15 days after the payment is approved by the Owner's Representative, which is the earlier date.

(h) The Owner's Representative **will** approve of payment to the Contractor depending on how costs are calculated in the contract documents.

- (1) If the Contract Documents establish Unit Prices to accomplish various portions of the Work, the Unit Prices shall be used to determine payment.
- (2) If the contract documents establish a lump sum for the performance of the Work, payment will be made in accordance with any Schedule of Values submitted by the Contractor and approved by the Owner. If no Schedule of Values was submitted, or if a Schedule of Values is submitted by the Contractor that does not fairly reflect the cost of the work to be performed, the Owner's Representative will determine a fair and equitable payment based on the percentage of work performed compared to the entire contract.
- (3) If the contract documents establish a lump sum for a portion of the Work and Unit Prices for other portions of the Work the Owner's Representative will approve of payment utilizing both methods (1) and (2) established above.
- (4) The monthly progress payment invoice shall deduct any payments made by Owner as an advance payment as explained in 00195.50(e) and 00195.50(f) above.
- (i) The Owner's Representative has discretion, but is not required, to approve payments to the Contractor of up to 85% of the total bid item price for materials and equipment that will be incorporated into the Work that are not yet incorporated if the following conditions are met:
- (1) The value of the materials or equipment shall be greater than \$5,000;
 - (2) The Contractor submits bills of sale or other documentation satisfactory to Owner establishing the Contractor's proof of payment and title to the materials or equipment and the materials are free and clear of liens, claims, security interests or other encumbrances. When payments are made, the Contractor guarantees that title to all materials and equipment covered by a progress payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances;
 - (3) The Contractor shall protect the Owner's interest in the materials or equipment, including applicable insurance and transportation to the site. In no event shall payment for such materials require the Owner to pay for replacement materials if the original materials or equipment for which payment was made are damaged or destroyed prior to their incorporation into the Work. By submitting a request for payment, the Contractor accepts full responsibility to continue to protect the stored materials and equipment from the elements and against loss or damage;
 - (4) The materials or equipment meet Contract requirements, proof that the materials or equipment conform to Contract requirements has been provided to Owner, are in a form ready for incorporation into the Project and are clearly marked and identified as being specifically fabricated, produced and reserved for use on the Project; and
 - (5) The Materials shall have been delivered and/or acceptably stored or stockpiled in accordance with the Specifications and as follows:
 - a. At the Project Site;

b. On Owner property;

c. On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Owner to enter upon the property and remove Materials for at least six months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Owner; or

d. 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 Owner's Representative. The permit must allow the Owner to enter upon the property and remove Materials for at least six months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Owner.

(j) The Owner has discretion to withhold amounts from any progress payment otherwise due the Contractor if it receives claims for damages or costs from third parties as a result of the Contractor's operations and the Owner determines such withholding is necessary to protect the Owner's interests. Such withholding may continue until the claim is resolved.

(k) The Owner may retain and hold back up to 5% of amounts otherwise due the Contractor as "Retainage." Retainage will be held and paid to the Contractor as part of the Final Payment of the Contract Amount. [Alternatives to cash retainage, if approved by owner, shall be permitted by ORS 279C.560.](#)

(l) Progress payments on Local Improvement District (LID) Contracts shall be made in accordance with the state law, the Contract Documents and City Code.

(m) The Owner's Representative may disapprove a payment previously made, withhold money from a future progress payment, or disapprove of an invoice submitted by the Contractor in whole or in part, if:

- (1)** The Work has not progressed to the point indicated by the Contractor's submittal;
- (2)** Defective, unsatisfactory or improper work is discovered;
- (3)** The Contractor fails to make payments to employees, Subcontractors and suppliers as required by the Contract;
- (4)** The Contractor violated material terms and conditions of the Contract that remains to be remedied;
- (5)** The Contractor performed unsatisfactory work for which payment was sought;
- (6)** The Owner has a monetary claim against the Contractor that the Contractor has not yet paid;
- (7)** Failure to submit a Construction Schedule or updated schedule required by the Contract;

- (8)** The Contractor was exceeding the limits of Work Specified in [00405.41\(b\)](#) or other work limits specified by the Contract; or
- (9)** The Contractor owes liquidated damages to the Owner.
- (n)** The Contractor is not entitled to interest on money purposely withheld for any of the reasons specified in [00195.50\(m\)](#) above.
- (o)** Progress payments reflect the Owner's Representative's best judgment about payment at the time payment is made. Such payments, however, do not constitute acceptance of the Work.
- (p)** The Contractor shall provide the Auditor's Office with a list of personnel authorized to receive Contract payments. No payment will be released to an unauthorized person. In addition, no payment will be made if the estimate submitted by the Contractor is less than \$1,000, unless approved in advance by the Owner's Representative.
- (q)** If the Contractor fails to make timely advance payments or progress payments to its Subcontractors, the Owner is entitled to take any action permitted by law, including, but not limited to, the following:
- (1)** Withhold all or a part of any progress payment until Contractor makes payment;
 - (2)** Impose liquidated damages in the amount of \$250 per day for each day that the payment is delayed by acts or omissions of the Contractor. Owner is paying Contractor to administer this Contract, to supervise the Work and to ensure that the Work is not hindered by poor relationships between Contractor and its Subcontractors. Owner has found that a failure to promptly pay Subcontractors causes complaints to be registered with Owner, and requires Owner to devote unnecessary time, resources and personnel to such matters. The parties mutually agree that it would be difficult, if not impossible, for Owner to determine the amount of damage caused to it by such actions, and that the amount of liquidated damages noted above is a reasonable amount and not a penalty;
 - (3)** Find the Contractor is a not a "responsible bidder" as that term is used in Oregon law;
 - (4)** Pay the Subcontractor who has not received proper payment directly; and
 - (5)** Terminate the Contract for Default as provided in [00180.90\(a\)](#).

00195.90 Final Payment:

- (a)** The Contractor shall notify the Owner's Representative in writing when it considers that all the work required by the Contract Documents is complete. The Notice must be more than an invoice that requests the balance of the Contract Amount. Instead, the Notice shall plainly call to the Owner's attention the Contractor's belief that all work has been completed in accordance with the Contract. Retainage does not have to be returned to the Contractor until all work required by the Contract is complete.

(b) Within 15 days of receipt of the Notice, the Owner's Representative **will** either preliminarily accept the Work or notify the Contractor of work yet to be performed on the Contract. This work may consist of items on the punch list that have not been completed or corrected, or other items that have come to Owner's attention. If the Work is preliminarily accepted as complete, the Owner **will** notify the Contractor and prepare a Certificate of Completion. If the Owner's Representative does not accept the Work as complete after receipt of the Notice, the Contractor shall complete or correct the items remaining and then again notify the Owner that Work is complete.

(1) The Contractor is required to proceed promptly to complete the items remaining. If the Contractor fails to do so within 30 days or such other time as may be allowed by the Owner's Representative, the Owner may terminate any further services of the Contractor under the Contract, complete the items remaining to be completed or corrected with the Owner's own forces or by hiring another Contractor to perform the punch list work, and charge the Contractor liquidated damages in the sum of \$100 per day. Costs of performing the punch list work shall be deducted from any payments otherwise due the Contractor.

(2) If Owner has hired an Architect or Engineer to assist it on the Project, Contractor shall pay costs for the Architect or Engineer's services if more than one inspection of the work is required because remaining portions of the Work are incomplete.

(c) If the Contractor disagrees with the Owner's conclusion that the Work is not complete, the Contractor nevertheless shall perform the work that the Owner believes is required by the Contract. If the Contractor then believes that the performance of such work entitles it to additional compensation, additional Contract Time, or both, it shall follow the requirements of [00199.30](#). After performing the work that the Owner believes is required by the Contract the Contractor shall then again provide the Notice required by [00195.90\(a\)](#) regarding the completion of work.

(d) Following preparation of the Certificate of Completion, the Owner's Representative **will** send it to the Contractor for the Contractor's signature. After return of the Certificate, the Owner's Representative **will** submit it, together with the estimate of the Final Payment due to the Contractor for ultimate acceptance of the Project. After acceptance, the Contractor shall be paid within 30 days.

(e) Invoices submitted by the Contractor to the Owner during the course of the Project are made to receive progress payments and are not binding on the Owner. In the event that any previous Invoice is discovered to be inaccurate, any resulting overpayment or underpayment to the Contractor may be corrected in the next payment or the Final Payment. Corrections of overpayments or underpayments between the Contractor and any Subcontractor or supplier **are** the sole responsibility of the Contractor.

(f) The Final Payment shall be the difference between the Contract Amount, as adjusted by any authorized Change Orders, and the sums of all payments previously made, plus any Retainage held by the Owner.

(1) The Owner may deduct against any progress payment, including the Final Payment, any amount previously paid to the Contractor in error or any other amount owed to the Owner for any reason resulting from the Contractor's work under the Contract.

(2) If the work under the Contract is designated as one for a Local Improvement District Project (LID) Retainage will not be released until the conclusion of the assessment hearings and the adoption of an assessment ordinance as provided in City Code.

(3) If the Owner declares a default of the Contract and the Contractor's Surety fulfills its responsibility to ensure completion of the Work, then the Contractor agrees that all progress payments not yet made and all Retainage held by the Owner shall be paid to the Surety and not to the Contractor.

(4) The Owner may deduct against the Final Payment, as provided in 00195.50(d), additional retainage in the amount of 25 percent of amounts earned which will be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by law.

(g) Acceptance of the Work will not occur until the Contractor provides the Notice referenced in 00195.90(a) above, prepares and submits the Acknowledgement Form referenced in 00195.90(h) below, the Owner's Representative presents a report recommending acceptance to the Owner and that report is approved. Thereafter, Final Payment will be made within 30 days.

(h) At the conclusion of the Work, and as a condition of Final Payment, the Contractor shall sign an Acknowledgement Form:

(1) Acknowledging payment of sums previously paid to the Contractor except for Final Payment; and

(2) Releasing all monetary Claims against the Owner other than the receipt of Final Payment. However, if the Contractor has submitted a Claim to the Owner pursuant to 00199.30, the Contractor may state that a Claim has been submitted, and not yet resolved. If that occurs, no waiver of the Claims stated on the form will be deemed to have occurred. However, all Claims not specifically referenced on the form will be deemed to have been waived; and

(3) Certifying that:

a. All amounts due for labor, materials and other obligations due to the Contractor's own workers, its Subcontractors and suppliers have been fully paid in accordance with Oregon law, Chapter 279C, except for amounts that might be due upon Final Payment or if a Claim submitted pursuant to 00199.30 that is specifically referenced on the form is later paid by the Owner in whole or in part; and

b. If there are outstanding claims against the Contractor from any person, including the Owner, that are disputed by the Contractor that such claims are payable by its Performance and Payment Bond, its insurance carrier, or by the Contractor itself.

Section 00196 - Payment for Extra Work

00196.00 General:

(a) Compensation may be adjusted if the Contractor performs Extra or changed Work. All adjustments to compensation will occur through a written Change Order. The Change Order may be the result of mutual agreement between the Owner and Contractor or, in the absence of agreement it may be the result of the application of the force account payment provisions found in Section 00197.

(b) Compensation is not adjusted if the Contractor receives a Field Order, as described in 00140.30.

00196.10 Change Orders:

(a) The only authorized method for increasing or changing the amount of compensation, increasing the amount of Contract Time or changing the scope or work to be performed is through the execution of a written Change Order. Change Orders may be executed in advance of when agreement between the Owner and Contractor is reached or they may be executed after the work has been performed when the Owner has authorized work to be performed on a Force Account pursuant to Section 00197.

(b) The Contractor's signature on the Change Order signifies the Contractor's agreement that the additional compensation stated on the Change Order is the total amount of compensation due to the Contractor for all costs, whether labeled as direct, indirect, "impact" or otherwise, and that the total amount of additional Contract Time, if any, is the total amount of additional Contract Time resulting from the changed or Extra Work. When signed by the Contractor, the Change Order represents an accord and satisfaction regarding the changed or Extra Work and precludes the Contractor from seeking any additional compensation or Contract Time.

(c) If the Contractor performs Extra Work and additional compensation is due, but the Contractor and Owner disagree about the amount of compensation that is due or any Contract Time that might be changed, the Owner may issue a unilateral Change Order. A unilateral Change Order is not signed by the Contractor. This permits Owner to pay Contractor what the Owner believes is due, and does not prejudice the right of the Contractor to file a Claim pursuant to 00199.30 for additional compensation or Contract Time. However, if after evaluation of the Contractor's Claim and documentation the Owner believes that it paid an incorrect amount or granted an inappropriate amount of Contract Time, the Owner may readjust the unilateral Change Order, either for or against the Contractor as necessary.

Section 00197 - Payment for Force Account Work

00197.01 **General:**

(a) The materials, equipment, and labor rates agreed upon in this Subsection apply only to extra work ordered by the Owner's Representative to be performed on force account basis. These rates do not apply to any other work performed under the Contract. The rates and markups listed acknowledge the Owner's Representative's authority to control and alter the materials, equipment, and labor used and to determine the time of execution of the ordered extra work.

(b) If extra work is ordered to be done on force account basis, the Owner's Representative will record, on a daily basis, the materials, equipment, labor, and special services used for the force account work during that day. Records will be kept on approved forms. The Contractor and the inspector shall sign the form daily to indicate agreement on the materials, equipment, labor, and special services used for the work involved on that day. The Daily record will include:

| **(1)** Materials actually used in the Work as directed by the Owner's Representative except those furnished and paid under rental rates for use of equipment. See [00197.10](#).

| **(2)** Equipment that the Owner's Representative considers necessary to perform the work. Equipment hours will be recorded to the nearest quarter hour. See [00197.20](#).

| **(3)** Labor, including equipment operators and supervisors in direct charge of the specific operations while engaged directly on the force account work. See [00197.30](#).

| **(4)** Special services performed by a specialist, if the Owner's Representative and Contractor agree that the Contractor's or subcontractor's forces cannot satisfactorily perform an item or service. See [00197.20\(h\)](#).

(c) The Contractor shall supply Owner with all documentation necessary to substantiate any claim for payment. Owner is not required to pay Contractor for any amount that is not supported by documentation sufficient to establish entitlement to payment.

00197.10 **Materials:**

(a) The Contractor will be paid for materials actually used in the extra work, 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 jobsite, from the supplier to the purchaser, whether the purchaser is the Contractor, subcontractor, or other forces. All costs are subject to the provisions of this entire subsection.

(b) If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Owner, even though the discount may not have actually been taken. The Owner will not take any discounts for prompt or early payment, whether or not offered or taken.

(c) If materials cannot be obtained by direct purchase from and direct billing by the supplier, their cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Owner's Representative, but not more than the purchaser paid for the material. No markup other than actual handling costs will be permitted as an actual cost.

(d) 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 contract items or the current wholesale price for the materials delivered to the jobsite, whichever is lower.

00197.20 Equipment:

(a) **Equipment Payment** - Equipment approved by the Owner's Representative to perform the work will be eligible for payment at the established rates only during the hours it is operated or on standby as ordered by the Owner's Representative. Equipment hours will be recorded to the nearest quarter hour. Except as modified by these provisions, equipment use approved by the Owner's Representative will be paid at the rental rates given in the Rental Rate Blue Books for Construction Equipment [as shown in the Special Provisions](#).

(b) **Equipment Billing Form** - On the billing form for equipment costs, list for each piece of equipment and its attachments the information needed by the Owner's Representative to determine the proper rental rate from the Blue Book.

(c) **Rental Rate Formula – The** Rental Rate Formula for Contractor Owned Equipment Without Operators: Rental Rates for equipment without operators will be paid on an hourly basis for the machine and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate} \times \text{Rate Adjustment Factor}}{176 \text{ hours/month}} + \text{Hourly Operating Rate}$$

The terms used above are defined below:

(1) **Monthly Base Rate** - The monthly base rate used above for the machine and for the attachments represents the major costs of equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.

(2) **Rate Adjustment Factor** - The rate adjustment factor used above will be determined as per page iii of each Section of the Rental Rate Blue Books.

(3) **Hourly Operating Rate** - The hourly operating rate used above for the machine 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.

(d) **Attachments** - Some attachments are considered "standard equipment" and are already included in the monthly base rate for the machine. That information can be obtained from [the Blue Book publisher](#). The terms used above are defined below:

(e) Limitations - The “Regional Adjustment Factor,” usually found on page 1 of each Blue Book section, will not apply.

(f) Multiple Attachments - If multiple attachments are included with the rental equipment, only the attachment having the higher rental rate will be eligible for payment, provided that attachment has been approved by the Owner’s Representative as necessary to the force account work.

(g) Small Tool Rental - Rental will not be allowed for small tools that have a daily rate less than \$5 or for unlisted equipment that has a value of \$400 or less.

(h) Equipment Condition - 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 Owner’s Representative or accepted at reduced rates.

(i) Moving Equipment - When necessary to obtain equipment from sources beyond the project limits exclusively for force account work, the actual cost to transfer the equipment to its work site and return it to its original location will be allowed as an additional item of expense.

(1) Move-in and move-out allowances will not be made for equipment brought to the project for force account work if the equipment is also used on contract item or related work. If the move-out destination is not to the original location, the payment for move-out will not exceed the payment for the move-in.

(2) If the move is made by common carrier, the allowance will be the amount paid for the freight. If the equipment is hauled with the Contractor’s own forces, rental will be allowed for the hauling unit plus the hauling unit operator’s wage. If equipment is transferred under its own power, the rental will be 75% of the appropriate hourly rate for the equipment, without attachment, plus the equipment operator’s wage.

(j) Standby Time - If ordered by the Owner’s Representative, standby time will be paid at 40% of the hourly rate established above, 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 8 hours in a 24-hour period or 40 hours in a 1-week period. If a rate has not been established in the Blue Book, the Contractor may use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age, and fuel type if approved by the Owner’s Representative; request [the Blue Book publisher](#) to furnish a written response for a rental rate on the equipment, which shall be presented to the Owner’s Representative for approval; or request the Owner’s Representative to establish a rental rate.

(k) Outside Rental Equipment:

(1) 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 rental rate does not include fuel, lubricants, field repairs, and servicing, an amount equal to the Blue Book hourly operating cost may be added for those items which were excluded. The Owner is only obligated to pay the reasonable rental value of the equipment, even if the actual cost to Contractor exceeds that amount. Therefore, Owner may reduce the payment when the invoice amount plus allowance is higher than the amount that would have resulted as specified in [00197.20\(b\)](#) through [00197.20\(h\)](#).

(2) Equipment not approved by Owner for use in advance of performing the work will be paid by using rates for the least expensive equipment that will accomplish the work or utilizing the applicable Blue Book rates established above.

(3) Equipment having a value of \$400 or less will be considered to be tools or small equipment and no rental will be allowed on those items, unless they are not normally on the work site and must be rented from others. If so, then [00197.20\(b\)](#) above will apply.

(l) Outside Rental Equipment with Operator:

(1) The use of equipment rented with operators will be permitted only if the following requirements are met:

a. The Contractor has submitted a written request accurately describing the service to be provided, its estimated cost and the estimated duration. The request must be approved by the Owner's Representative before the service is provided.

b. The service is limited to:

1. Truck hauling of material; or

2. Performing minor, incidental, short duration work under the direct supervision of the Contractor or subcontractor with equipment not normally owned, leased, or operated by the Contractor, or equipment that is temporarily unavailable to the Contractor.

(2) In addition, the Contractor shall furnish the Owner's Representative with a copy of the rental agreement or purchase order covering the service provided. The Contractor shall make certain that the provider of the approved services submits payrolls as required by law and complies with applicable contractor provisions. The service provider will not be considered as a subcontractor under this Contract. If at any time the Owner's Representative determines that the service provided by rented, operated equipment is not minor, incidental, short duration work, any previous approval will be revoked, and the Contractor shall execute a subcontractor agreement with the service provider and then submit it for approval to the Owner's Representative. Failure to execute a subcontract in such situations will be cause for removal of the service provider from the project.

00197.30 Labor:

(a) For all labor, including equipment operators and supervisors in direct charge of the specific operations while engaged directly on force account work, the Contractor will be paid:

(b) 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. The Owner has no duty to pay rates higher than those stated above.

(c) 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 under statutory law and these specifications. The actual cost of industrial accident insurance is the National Council on Compensation Insurance (NCCI) rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.

(d) The actual amount paid to, or in behalf of, workers by reasons of subsistence and travel allowances, health and welfare benefits, pension funds benefits, or other benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.

(e) The Contractor shall provide the Owner with the names, identification, and classification of all workers, their hourly rate of pay, hours worked, and any other information requested by Owner to determine the proper amount of payment.

00197.80 Percentage Allowances:

(a) To the actual costs given and limited above, amounts equal to a percentage of these costs will be allowed and paid to the Contractor as follows for that portion of the extra work performed by the Contractor's own forces:

Subsection	Percent
00197.10 Material	15
00197.20 Equipment	0
00197.30 Labor	20
00197.20(l) Outside Rental	5

(b) The allowances shown in 00197.80(a) shall also apply to force account work performed by a Subcontractor. When work is performed by a Subcontractor on a force account basis or other basis agreed to by the Owner's Representative, the Owner shall pay an additional five percent allowance for both overhead and profit to the Contractor. Regardless of the number of tiers of Subcontractors, this supplemental markup will be applied only one time.

(c) When changed work includes both additions and reductions to the Work, the allowances provided in [00197.80\(a\)](#) and [00197.80\(b\)](#) shall apply to the net difference between the cost of the added work and the estimated value of the deleted work. However, when the cost of the added work is less than the estimated value of the deleted work, the allowances will not be applied.

(d) The allowances permitted by [00197.80\(a\)](#), [00197.80\(b\)](#), and [00197.80\(c\)](#), when paid to the Contractor, will be complete compensation for overhead, profit, and all other force account work costs that were incurred by the Contractor or by other forces that the Contractor furnished. No other reimbursement, compensation, or payment will be made.

00197.90 Billings:

(a) Billings for Force Account Work by the Contractor shall be submitted for the Owner's Representative's approval on Owner provided forms or on a form approved by the Owner's Representative. Billings for materials (other than incidental items out of the inventory of the Contractor or subcontractors), outside rental equipment, and services, shall be accompanied by copies of invoices for the goods and services. The invoices shall be fully itemized showing dates, quantities, Unit Prices, and complete description of goods and services. Invoices for amounts of \$10 or less per invoice are not required, unless requested by the Owner's Representative.

(b) Contractor and subcontractors shall take advantage of all practicable discounts on bills for materials and supplies and such discounts shall be reflected on all bills and invoices submitted to Owner. Freight will be considered to be part of the cost of materials and supplies and will be paid for as materials and supplies. Materials and supplies will be paid for as agreed in writing prior to their production or use. If there is no prior agreement, the Owner's Representative shall establish a reasonable price for such materials and supplies.

(c) Costs billed shall not be greater than those permitted in [Section 00197](#).

Section 00199 - Disagreements, Protests, and Claims

00199.30 Claims Procedure:

(a) This section outlines the exclusive procedure to be followed if the Contractor believes that it is entitled to additional compensation, additional Contract Time or both. This section applies to all Claims for additional compensation and all requests for additional Contract Time, regardless of whether the basis for the Claim for additional compensation, or request for additional Contract Time, or both, stems from the performance of extra work, changed work, excusable delays of any nature, suspension of Contract work, or any other reason whatsoever.

(b) When the Contractor believes it is entitled to be paid more than the Contract Amount, [the Contractor](#) shall notify the Owner's Representative in writing before beginning any work for which additional compensation is sought. The written Notice shall include

- (1)** A description of the event that requires additional compensation;
- (2)** The estimated amount of the additional cost to the Owner; and
- (3)** Any Contract provision(s) that support the Claim.

(c) When an event occurs that the Contractor believes entitles it to more time to complete the Work than Contract Time permits, the Contractor shall notify the Owner's Representative in writing when the event occurs. The written Notice shall include

- (1)** A description of the event that permits additional Contract Time;
- (2)** An estimate of the delay that the event will cause; and
- (3)** Any Contract provision(s) that support the request for additional Contract Time.

(d) If the Contractor does not provide written Notice of a Claim for additional compensation or additional Contract Time in the time required, any subsequent Claim for additional compensation, additional Contract Time, or both, is waived.

(e) If the Owner agrees with the Contractor's request for additional compensation or Contract Time the parties shall negotiate a Change Order setting [forth](#) their agreement. If the Owner disagrees, the Contractor shall do the following

- (1)** Continue promptly with the work, including any extra work required by the Owner so the Project is not delayed;
- (2)** Keep complete records of its costs in the manner set forth by the Force Account provisions of this Contract. The Owner also may elect to keep such records to eliminate later confusion. The keeping of such records by either Contractor or Owner does not mean that any Claim is valid;
- (3)** Submit documentation supporting the request for additional compensation, additional time or both, as required in [00199.30\(f\)](#) and [00199.30\(g\)](#) below.

(f) The Contractor's request for additional compensation shall be supported by a Claims Package that includes a) all documentation that establishes its right to additional compensation and b) all documentation substantiating the amount of additional compensation to which it is entitled. The documentation shall include the cost records required by 00199.30(e) above and all other relevant documentation, such as payroll records, purchase orders, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers and journals.

(1) The documentation shall be submitted within 45 days following completion of any work for which a Claim of additional compensation has been made.

(2) If the Contractor contends that it will incur costs beyond the 45-day time period that should be included in the Claim, the Contractor shall notify the Owner's Representative of this fact in writing and provide an estimate of that cost. Thereafter the Contractor shall provide the Owner with additional documentation when the remainder of its additional costs is known.

(3) The Owner will rely on the accuracy of the Claims Package to make decisions regarding future expenditures. Failure to submit the Claims Package within 45 days is a conclusive waiver of the Contractor's right to additional compensation.

(4) The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.

(g) Any request for additional Contract Time shall be supported by documentation that includes a) a description of the event on which the request is based, and b) all information, including a schedule analysis, that shows that the event delayed completion of the Project as a whole.

(1) The Contractor shall submit the documentation within 45 days following the completion of the event that caused the delay and for which additional Contract Time is sought.

(2) The Contractor shall provide additional documentation to support its request within 30 days if requested to do so by the Owner. Failure to provide that information is a conclusive waiver of that portion of the Contractor's request to which the additional documentation relates.

(h) Following receipt of all required documentation, and after the Owner's Representative has had sufficient period of time to review it in light of work responsibilities, the Owner's Representative and the Contractor's Project Manager shall meet to attempt to resolve the matter if either requests it. If Owner determines that the Contractor has not provided required documentation, the Owner may still meet with Contractor to discuss any claim without waiver of the Owner's right to later assert that the Contractor's claim has been waived for failure to submit documentation.

- (1)** If the Claim cannot be resolved, it shall be referred to persons with higher authority on the part of the Contractor and the Owner, who also shall have the authority to resolve the dispute. Those persons shall meet for negotiations at a mutually agreed upon time and place after having had a sufficient time to review the Claim.
- (2)** If the Claim is not resolved after this meeting, the Contractor and Owner agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon the Contractor and Owner agree to present the Claim to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation fee shall be borne equally by the Owner and Contractor.
- (3)** If the matter is not resolved by mediation, the Owner and Contractor may mutually agree to resolve the dispute by arbitration. The Owner and Contractor may mutually agree to any arbitration method. In the event that no agreement is reached as to the method of arbitration, the arbitration shall be as set forth in accordance with the Large, Complex Construction Cases procedures of the American Arbitration Association's panels of arbitrators for Large, Complex Construction Cases. The Contractor shall pay the arbitration fee required to initiate the arbitration.
- a.** The Contractor and Owner shall agree upon the appointment of an arbitrator. In the event of disagreement, each party shall appoint one arbitrator within 30 Calendar Days of the disagreement. Those two arbitrators will appoint a third arbitrator to act as the presiding arbitrator.
- b.** The decision of the arbitration panel shall be final, binding and conclusive upon the parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award punitive damages or attorney fees and shall not have the power to rescind this agreement.
- (4)** If the matter is not arbitrated and the dispute remains unresolved, either party may pursue resolution through litigation in accordance with the requirements of these Specifications.
- (5)** The procedures specified in this subsection shall be the sole and exclusive procedures for the resolution for disputes between the Owner and Contractor arising out of or relating to this agreement, except that either may seek preliminary judicial relief or an injunction to avoid irreparable damage. Despite any injunctive relief, the procedures specified in this Contract for the resolution of Claims shall remain applicable.
- (i)** The Owner is not obligated under the Contract to provide additional Contract Time or additional Compensation unless documentation submitted by the Contractor establishes its entitlement to additional compensation, additional Contract Time, or both. The parties agree that it is not a breach of contract to deny a request for additional compensation or request for additional Contract Time if the Contractor fails to submit adequate documentation substantiating its Claim or request for time.
- (j)** If the Contractor is entitled to additional compensation, [the Contractor shall receive compensation based on the Force Account provisions of Section 00197.](#)

00199.40 Litigation:

(a) Any legal proceeding, of any nature whatsoever, brought by the Contractor against the Owner, that asserts a breach of contract, a claim of quantum merit, a declaratory judgment proceeding, or any other legal or equitable claim related to, or arising, from work performed pursuant to the Contract Documents, shall be brought within one year of the date that Final Payment is made to the Contractor, regardless of whether the Contractor is aware of the legal claim it might have during that time. If the legal proceeding is not brought within that one-year period, the Contractor expressly waives any and all claims that are in any way related to the Contract.

(b) For purposes of this Subsection payment is considered made when the City of Portland sends a check to the Contractor that contains the Final Payment. The subsequent payment of minor amounts to the Contractor that constitute less than 2% of the total Contract Amount, or the payment of Claims made pursuant to Subsection 00199.30, shall not affect the date when Final Payment is considered to have been made.

(c) The Contractor agrees that any legal proceeding initiated by the Contractor shall be brought only in the Circuit Court of Multnomah County, Oregon.

(d) The Contractor agrees that, as a result of its willingness to do business with the City of Portland, the Contractor shall resolve any dispute with the Owner in Multnomah County, Oregon. All discovery between the parties undertaken pursuant to federal, state, or local rules shall be conducted within that county, including, but not limited to, the production of documents and the appearance of expert and lay witnesses for deposition, if such depositions are permitted by court rules.

(e) In the event of a dispute, the Contractor and the Owner agree to bear the cost of producing their own employees for deposition in Multnomah County, including but not limited to travel costs, per diem expenses and the cost of employee time. The parties further agree that if court rules or the court itself permits the deposition of expert witnesses, the party seeking the testimony of the expert witness will bear that witness' reasonable costs of travel, reasonable preparation costs and costs for time while in transit.

(f) If litigation has commences or is expected, the Contractor and its representative, including but not limited to the Contractor's attorneys, agree to make any requests for documents, including Public Records Requests, through the City Attorney's Office of the City of Portland.