



## AGENDA

CITY COMMISSION OF THE CITY OF WARRENTON  
REGULAR MEETING  
May 11, 2021– 6:00 P.M.  
Warrenton City Commission Chambers – 225 South Main Avenue  
Warrenton, OR 97146

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Public Meetings will be conducted in the Commission Chambers with a limited seating arrangement. To adhere to social distancing recommendations, meetings will now also be audio and video live streamed. Go to <https://www.ci.warrenton.or.us/administration/page/live-stream-public-meetings> for connection instructions.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. CONSENT CALENDAR

- A. City Commission Meeting Minutes – 4.27.21
- B. Monthly Finance Report – March 2021
- C. Community Center Advisory Board Minutes – 2.25.21

Items on the Consent Calendar have previously been discussed and/or are considered routine. Approval of the Consent Calendar requires a motion, a second, and no discussion, unless requested by a member of the City Commission.

4. COMMISSIONER REPORTS

*Proclamation – National Public Works Week – May 16 – 23, 2021*

5. PUBLIC COMMENT

At this time, anyone wishing to address the City Commission concerning items of interest may do so. The person addressing the Commission must complete a Public Comment Card and submit it to the City Recorder prior to the meeting. All remarks will be addressed to the whole City Commission and limited to 3 minutes per person. Public Comments may also be submitted by email to the City Recorder, at [cityrecorder@ci.warrenton.or.us](mailto:cityrecorder@ci.warrenton.or.us), no later than

5:00 p.m. the day of the meeting. The Commission reserves the right to delay any action, if required, until such time as they are fully informed on a matter.

6. **PUBLIC HEARINGS** – None

7. **BUSINESS ITEMS**

- A. Consideration of the First Reading of Resolution No. 2600; Establishing the Use of Consultants in the Review of Public Works Construction Permits
- B. Consideration of Bid Award - Big River Construction; SW Alder Reconstruction, 2<sup>nd</sup> – 1<sup>st</sup> Street Project
- C. Consideration of Second Reading of Resolution No. 2598; Spring Cleanup Costs
- D. Consideration of Street Vacation No. 155; Resolution No. 2599 - Setting a Public Hearing Date
- E. Consideration of Ordinance No. 1251; Street Vacation No. 147 Amendment
- F. Consideration of Second Reading of Ordinance No. 1248; Homestay Lodging and Vacation Rental Dwellings, and Ordinance No. 1250; Homestay Lodging Standards
- G. Consideration of Second Reading of Ordinance No. 1249; Marijuana Businesses in General Commercial (C-1) and General Industrial (I-1) to Conditional Uses
- H. Consideration of Community Center Capital Reserve Fund and Facilities Maintenance Fund Review

8. **DISCUSSION ITEMS** – None

9. **GOOD OF THE ORDER**

10. **EXECUTIVE SESSION**

11. **ADJOURNMENT**

Warrenton City Hall is accessible to the disabled. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting Dawne Shaw, City Recorder, at 503-861-0823 at least 48 hours in advance of the meeting so appropriate assistance can be provided.

MINUTES  
 Warrenton City Commission  
 April 27, 2021  
 6:00 p.m.  
 Warrenton City Hall - Commission Chambers  
 225 S. Main  
 Warrenton, OR 97146

Mayor Balensifer called the meeting to order at 6:00 p.m. and led the public in the Pledge of Allegiance.

Commissioners Present: Mayor Henry Balensifer, Tom Dyer, Gerald Poe, Mark Baldwin, and Rick Newton

Staff Present: City Manager Linda Engbretson, City Recorder Dawne Shaw, Deputy City Recorder Rebecca Sprengeler, Police Chief Mathew Workman, Public Works Director Collin Stelzig, and Public Works Operations Manager Kyle Sharpsteen

CONSENT CALENDAR

- A. City Commission Work Session Minutes – 4.13.21
- B. City Commission Meeting Minutes – 4.13.21
- C. Warrenton Marinas Advisory Committee Minutes – 3.22.21
- D. Police Department Monthly Statistics – March 2021

**Commissioner Baldwin made the motion to approve the consent calendar as presented. Motion was seconded and passed unanimously.**

**Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye**

COMMISSIONER REPORTS

Commissioner Dyer noted parking problems and sight visibility issues on Juniper. Mayor Balensifer added this to the agenda as discussion item 8.B. There were no objections.

Commissioner Newton noted the drug take back event this past weekend. Police Chief Mathew Workman explained the event and noted 200 pounds of drugs taken back. Commissioner Newton noted attending the Merkley town Hall with Mayor Balensifer; the 15 families at Tongue Point will not be evicted but classes may be cut. At the CREST (Columbia River Estuary Study Taskforce) meeting the Elk DLC (Declaration of Cooperation) was signed. He attended a LOC (League of Oregon Cities) call and asked that people continue to wear masks and get vaccinated.

City Manager Linda Engbretson requested to add Spring Clean-up as a business item. Mayor Balensifer added it to the agenda as item 7.C. There were no objections.

Mayor Balensifer noted a correction to the CREST DLC; it may go under Oregon Solutions. There was brief discussion.

After reading a Proclamation, Mayor Balensifer declared the week of May 2-8, 2021 as Professional Municipal Clerks Week.

Mayor Balensifer noted an additional proclamation declaring the month of May 2021 as Building Safety Month.

PUBLIC COMMENT – None

PUBLIC HEARING

Mayor Balensifer opened the Public Hearing on the amendment to Warrenton Municipal Code (WMC), Title 16 Development Code, Division 2 Land Use Districts to include Homestay Lodging and Vacation Rental Dwellings (Ordinance 1248), and amendments to WMC Title 8.24 Homestay Lodging Standards (Ordinance 1250). Formalities followed and no conflicts of interest or ex parte contacts were reported. Ms. Engbretson reviewed the staff report. She stated the Planning Commission recommends approval. Mayor Balensifer asked for public testimony. No one spoke in favor or in opposition. There being no further discussion, Mayor Balensifer closed the public hearing.

Mayor Balensifer noted for the second reading or before the adoption of Ordinance 1248, he would like to see the standard format of the code changes with the strike thru and bolding of additions for consistency. There was consensus that the current format is fine to move forward.

**Commissioner Dyer made the motion to adopt the findings and recommendations of the Planning Commission under DCR 21-1 and conduct the first reading, by title only, of Ordinance No. 1248. Motion was seconded and passed unanimously.**

**Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye**

Mayor Balensifer conducted the first reading, by title only, of Ordinance No. 1248; Amending Warrenton Municipal Code Title 16, Development Code, Division 1, Chapter 16.12 Definitions; Division 2, Land Use Districts, Chapters: 16.24, 16.28, 16.32, 16.36, 16.40, 16.44, 16.56; and Division 3, Chapter 16.180.

**Commissioner Dyer made the motion to adopt the findings and conclusions of the Planning Commission in relation to DCR 21-1 and conduct the first reading of Ordinance No. 1250 by title only. Motion was seconded and passed unanimously.**

**Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye**

Mayor Balensifer conducted the first reading, by title only, of Ordinance No. 1250; An ordinance amending Warrenton Municipal Code Title 8, Health and Safety, Chapter 24 Homestay Lodging

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Safety Standards.

Mayor Balensifer opened the Public Hearing on the amendment to WMC, Title 16 Development Code to update Marijuana businesses in General Commercial (C-1) and General Industrial (I-1) to Conditional Uses as opposed to Permitted Uses, Ordinance No. 1249. Formalities followed and no conflicts of interest or ex parte contacts were reported. Ms. Engbretson reviewed the staff report. Mayor Balensifer asked for public comment. No one spoke in favor. Mr. George Warren of Skipanon Drive spoke in opposition. Mayor Balensifer noted for the record that it sounds like Mr. Warren is in favor, not opposition and clarified the intent of the change is to add restrictions. Mr. Warren agreed that he is in favor. Ms. Engbretson further clarified. There being no further comments, Mayor Balensifer closed the public hearing.

**Commissioner Newton made the motion to adopt the findings and conclusions of the Planning Commission of DCR 21-2, and conduct the first reading, by title only, of Ordinance No. 1249. Motion was seconded and passed unanimously.**

**Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye**

Mayor Balensifer conducted the first reading, by title only, of Ordinance No. 1249; An Ordinance amending WMC Title 16, Development Code, Division 2, Land Use Districts, Chapter 16.40, General Commercial (C-1), and Chapter 16.60, General Industrial (I-1).

#### BUSINESS ITEMS

Public Works Director Collin Stelzig noted that NW Natural and the Warrenton Middle School are close to completion of the work on Dolphin Avenue. He noted that per City ordinance, the properties adjacent to the new sewer main will be required to connect to it and pay the associated fees for the laterals. Big River was the only respondent. He reviewed the proposed contract with Big River Construction for new sewer laterals on Dolphin Avenue. Commissioner Newton asked if the line is big enough for future expansion. Mr. Stelzig clarified the contract is just for the laterals, not the main line. Commissioner Newton asked for further clarification.

**Commissioner Baldwin made the motion to approve awarding the public improvement contract for new sewer laterals on Dolphin Avenue to Big River Construction, for the amount of \$40,954.00. Motion was seconded and passed unanimously.**

**Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye**

Mayor Balensifer noted for the record he lives behind Alder Creek. He does not stand to gain financially from this but will refrain from voting. Mr. Stelzig presented a public improvement contract with Bergerson Construction for temporary aluminum tide gates located at Alder Creek. Mr. Stelzig discussed the details of the project. Commissioner Newton asked for particulars on the new tide gates. Mr. Stelzig confirmed the City will own the aluminum assembly.

#### MINUTES

**Commissioner Newton made the motion to approve awarding the public improvement contract for the Alder Creek Tide Gate Structure; Tidegates #4.2 and #4.4 repair to Bergerson Construction for \$41,450.00. Motion was seconded and passed by majority.**

**Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – abstain**

Mr. Stelzig discussed the proposal to increase fees for Spring Clean-up costs, as outlined in proposed Resolution No. 2598. Mayor Balensifer asked about the past discussions on changing to a voucher system. Mr. Stelzig clarified. Discussion continued. Commissioner Baldwin noted that he likes the voucher system. Mayor Balensifer noted concerns about lack of communication on the status of the voucher system. He thought it was the Commission's direction to staff to go with vouchers. The Commission gave their thoughts. Mayor Balensifer said he would like to see the vouchers imposed next year.

**Commissioner Dyer made the motion to conduct the first reading of Resolution No. 2598 amending the Spring Clean-up collection policy. Motion was seconded and passed unanimously.**

**Newton – aye; Dyer – aye; Poe – aye; Baldwin – aye; Balensifer – aye**

Mayor Balensifer asked for a staff report or memo update on the voucher system.

#### DISCUSSION ITEMS

North Coast Regional Representative, Lisa Phipps of Department of Land Conservation and Development (DLCD) gave an update on the DLCD grant. The last steering committee meeting decided it would be a good idea to talk with the City Commission and Planning Commission about the EOA (Economic Opportunity Analysis). There was brief discussion. Ms. Phipps noted she will forward a power point to the City Commission. She reviewed the EOA process and outcomes as outlined in her presentation. Ms. Phipps noted that Warrenton is perhaps *the* economic driver in Clatsop County outside of the Port of Astoria and tourism. There have been several steering committee meetings and focus groups in multiple areas of industry. The project team is working with the consultant to get the draft strategies ready for public consumption and feedback. Ms. Phipps discussed the project timeline. There is a firm end date of June 30, 2021 to spend all of the grant funds with no opportunity for extension. The consultant is willing to attend public hearings even if they occur past the deadline. The public involvement process will occur over May and June. There are big conversations coming later this year.

Commissioner Dyer did a site visit due to a call from a constituent. Mayor Balensifer explained the parking and visibility issues near Juniper. He noted the constituent requested striping to block parking. The Mayor and Commissioner Dyer agreed. A radar sign may help with speed enforcement. Mayor Balensifer noted that the brush may need to be cut back. Ms. Engbretson said that it would be looked into. Chief Workman gave details on the radar trailer results near the area. He agreed the shrubbery needs to be trimmed. Discussion followed. Mayor Balensifer stated there would be merit to at least look into what that distance would be or if it's feasible to

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add red striping or block off parking for the first three driveways at the top of the hill. Ms. Engbretson stated we can staff this tomorrow and come up with a plan. Discussion continued.

GOOD OF THE ORDER

Mayor Balensifer asked Chief Workman for the leading color for police cars. Chief Workman noted it is black. Mayor Balensifer noted curiosity about people voting from outside of city limits. Chief Workman noted it is possible there are many out-of-city responses. Discussion followed. The results will be available on Thursday.

Commissioner Newton further discussed the housing issues and class reductions at Tongue Point. The Friends of the Warrenton Library is looking for members. Arnie's Café and Tres Bros are doing well. Mayor Balensifer noted concerns about a call with the governor that himself and other mayors were excluded from. Commissioner Newton noted other updates.

Commissioner Poe noted a Hammond business owner is really happy with the City.

Ms. Engbretson noted there is consideration of three applicants to be interviewed for the Planning position. Mayor Balensifer noted the structure change of pursuing a City Planner instead of Community Development Director. Ms. Engbretson elaborated. Discussion continued.

At 7:12 p.m. Mayor Balensifer announced they will now meet in executive session under authority of ORS 192.660(2)(h); *to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.* He stated the Commission is not expected to return to regular session to take action on any item considered in the executive session.

There being no further business, Mayor Balensifer adjourned the regular meeting at 8:02 p.m.

Respectfully prepared and submitted by Rebecca Sprengeler, Deputy City Recorder.

APPROVED:

ATTEST:

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Henry A. Balensifer III, Mayor

\_\_\_\_\_  
Dawne Shaw, CMC, City Recorder



Volume 14, Issue 9

**Monthly Finance Report**  
**March 2021**

May 11, 2021

**Economic Indicators**

	Current	1 year ago
◆ Interest Rates:		
LGIP :	0.60%	2.08%
Prime Rate:	3.25%	3.25%
◆ CPI-U change:	2.6%	1.5%
◆ Unemployment Rates:		
Clatsop County:	7.1%	3.3%
Oregon:	6.0 %	3.6%
U.S.:	6.0%	4.4%

**Department Statistics**

◆ Utility Bills mailed	3,401
◆ New Service Connections	6
◆ Reminder Letters	430
◆ Door Hangers	145
◆ Water Service Discontinued	28
◆ Counter payments	351
◆ Drop box payments	412
◆ Mail payments	1,279
◆ Auto Pay Customers/pmts	681
◆ Online (Web) payments	1,151
◆ Checks issued	326

**Current and Pending Projects**

- ◆ CRF & ARP Grant Funding
- ◆ 2022-2027 Capital Improvement Program
- ◆ 2021-2022 Budget Preparation
- ◆ Reinstatement of Past Due Process and Setting up Payment Plans

**Financial Narrative as of March 31, 2021**

**Note:** Revenues and expenses should track at 9/12 or 75% of the budget.

**General Fund:** Year to date revenues amount to \$3,424,649, which is 77.4% of the budget, compared to the prior year amount of \$3,309,633, which was 78.9% of the budget and are up by \$115,016. Increases are shown in property taxes, franchise fees, state revenue sharing, planning fees, fire charges and grants and are offset by decreases in transient room tax, municipal court, police charges, parks charges, miscellaneous, interest, and leases.

Expenses year to date amount to \$3,127,262, which is 66.4% of the budget, compared to the prior year amount of \$3,268,589, which was 69.6% of the budget and are down by \$141,327. All departments are tracking under budget. Departments continue to watch spending due to economic uncertainties brought on by the Covid-19 pandemic.

**WBL:** Business license revenue amounts to \$59,500, compared to \$60,230 at this time last year, a difference of \$730. Year to date licenses processed is 690 compared to 691 at this time last year.

**Building Department:** Permit revenues this month amount to \$49,147 and \$264,084 year to date, which is 56.2% of the budgeted amount. Last year to date permit revenue was \$208,132 which was 61.9%, of the budgeted amount.

**State Tax Street:** State gas taxes re-

ceived this month amount to \$30,229 for fuel sold in February and \$257,094 year to date. City fuels taxes received this month amount to \$26,117 for fuel sold in January and are \$208,794 year to date. Total gas taxes received year to date are \$465,888 compared to \$485,150 at this time last year.

**Warrenton Marina:** Total revenues to date are \$551,856, 96.6% of the budgeted amount, compared to the prior year amount of \$555,980, which was 89.1% of the budgeted amount. There is \$10,216 in moorage receivables outstanding.

**Hammond Marina:** Total revenues to date are \$319,325, 136.8% of the budgeted amount, compared to the prior year amount of \$381,210, which was 101.4% of the budgeted amount. There is \$1,975 in moorage receivables outstanding.

Of the total outstanding receivables:

\$770 (6.3%) is current,

\$3,184 (26.1%) is 30-60 days past due,

\$1,196 (9.8%) is 60-90 days past due and

\$7,041 (57.8%) is over 90 days past due.

**Water Fund:** Utility fees charged this month are \$169,755 and \$79,607, and \$1,864,923 and \$1,135,652 year to date for in-city and out-city respectively and totals \$3,000,575 and is 95.8% of the budget. Last year at this time, year to

date fees were \$1,831,043 and \$1,041,484, for in-city and out-city, respectively and totaled \$2,872,527.

**Sewer Fund:** Utility fees charged this month are \$208,444 and \$1,863,365 year to date, which is 87% of the budget. Last year at this time, year to date fees were \$1,824,760. Shoreline Sanitary fees year to date are \$102,290. Septage revenue year to date is \$126,170 and is 126.2% of the budget. Total revenues year to date are \$2,188,409 compared to \$2,153,603 at this time last year.

**Storm Sewer:** Utility fees (20% of sewer fees) this month are \$41,666 and \$372,500 year to date and is 87% of the budget. Last year to date revenues were \$364,762 which was 78.8% of the budget.

**Sanitation Fund:** Service fees charged this month for garbage and recycling were \$97,642 and \$17,510, and \$741,430 and \$155,410, year to date, and are 87.1% and 86.2% of the budget respectively.

**Community Center Fund:** Rental revenue year to date is \$5,950 and represent 45.8% of the budget. Last year at this time rental revenue was \$14,680 and 91.8% of the budget.



## Financial data as of March, 2021

	General Fund				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	1,382,990	1,043,091	600,000	173.85	
Plus: Revenues	308,550	3,424,649	4,425,741	77.38	(see details of revenue, page 4)
Less: Expenditures					
Municipal Court	12,728	92,895	160,306	57.95	
Admin/Comm/Fin(ACF)	113,597	807,861	1,167,282	69.21	
Planning	19,516	157,295	292,992	53.69	
Police	109,186	1,297,480	2,000,654	64.85	
Fire	86,564	624,050	855,386	72.96	
Parks	9,471	77,503	163,557	47.39	
Transfers	-	70,178	70,178	100.00	
Total Expenditures	351,062	3,127,262	4,710,355	66.39	
Ending Fund Balance	1,340,478	1,340,478	315,386	425.03	

	WBL				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	57,021	71,405	78,000	91.54	
Plus: Revenues	1,032	60,114	59,800	100.53	
Less: Expenditures	3,035	76,501	128,346	59.61	
Ending Fund Balance	55,018	55,018	9,454	581.95	

	Building Department				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	871,928	898,004	790,000	113.67	
Plus: Revenues	49,569	270,212	474,000	57.01	
Less: Expenditures	21,646	268,365	384,175	69.85	
Ending Fund Balance	899,851	899,851	879,825	102.28	

	State Tax Street				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	2,405,549	2,561,838	2,300,000	111.38	
Plus: Revenues	60,017	491,249	709,965	69.19	
Less: Expenditures	22,486	610,007	2,674,892	22.80	
Ending Fund Balance	2,443,080	2,443,080	335,073	729.12	

	Warrenton Marina				
	Current Month	Year to Date	Budget	% of Budget	
Beginning Fund Balance	357,253	172,727	145,000	119.12	
Plus: Revenues	26,981	551,856	571,226	96.61	
Less: Expenditures	65,027	405,376	558,797	72.54	
Ending Fund Balance	319,207	319,207	157,429	202.76	



**Financial data as of March 2021, continued**

	Hammond Marina				Water Fund			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	305,735	180,776	160,000	112.99	2,650,566	3,144,980	2,200,000	142.95
Plus: Revenues	3,115	319,325	233,401	136.81	266,462	3,094,073	5,766,500	53.66
Less: Expenditures	20,001	211,252	315,641	66.93	139,638	3,461,663	7,049,683	49.10
Ending Fund Balance	<u>288,849</u>	<u>288,849</u>	<u>77,760</u>	<u>371.46</u>	<u>2,777,390</u>	<u>2,777,390</u>	<u>916,817</u>	<u>302.94</u>

	Sewer Fund				Storm Sewer			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	2,767,403	2,688,213	2,200,000	122.19	1,412,923	1,185,198	1,100,000	107.75
Plus: Revenues	240,917	2,188,409	2,428,800	90.10	42,298	380,232	433,400	87.73
Less: Expenditures	150,265	2,018,567	3,462,167	58.30	16,105	126,314	1,200,861	10.52
Ending Fund Balance	<u>2,858,055</u>	<u>2,858,055</u>	<u>1,166,633</u>	<u>244.98</u>	<u>1,439,116</u>	<u>1,439,116</u>	<u>332,539</u>	<u>432.77</u>

	Sanitation Fund				Community Center			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	467,722	432,697	450,000	96.15	17,553	18,239	16,000	113.99
Plus: Revenues	115,427	902,823	1,037,195	87.04	2,542	10,966	16,560	66.22
Less: Expenditures	147,654	900,025	1,291,501	69.69	1,852	10,962	24,119	45.45
Ending Fund Balance	<u>435,495</u>	<u>435,495</u>	<u>195,694</u>	<u>222.54</u>	<u>18,243</u>	<u>18,243</u>	<u>8,441</u>	<u>216.12</u>

	Library				Warrenton Urban Renewal Agency Capital Projects Fund			
	Current Month	Year to Date	Budget	% of Budget	Current Month	Year to Date	Budget	% of Budget
Beginning Fund Balance	211,430	128,494	111,000	115.76	13,181	19,464	25,288	76.97
Plus: Revenues	4,397	224,793	225,902	99.51	19,209	120,822	6,407,433	1.89
Less: Expenditures	16,251	153,711	232,070	66.23	19,237	127,133	6,432,721	1.98
Ending Fund Balance	<u>199,576</u>	<u>199,576</u>	<u>104,832</u>	<u>190.38</u>	<u>13,153</u>	<u>13,153</u>	<u>-</u>	<u>-</u>



## Financial data as of March 2021, continued

## (\$) Cash Balances as of March 31, 2021

General Fund	1,248,253	Warrenton Marina	339,342	Storm Sewer	1,385,570
WBL	55,098	Hammond Marina	289,712	Sanitation Fund	340,914
Building Department	911,036	Water Fund	2,300,010	Community Center	18,741
State Tax Street	2,466,863	Sewer Fund	2,543,966	Library	201,248

## Warrenton Urban Renewal Agency

Capital Projects	20,573
Debt Service	2,457,569

General Fund Revenues	Collection Frequency	2020-2021 Budget	Actual as	Collections/Accruals		(over) under budget
			% of Current Budget	Year to date		
				March 2021	March 2020	
Property taxes-current	AP	1,077,628	102.92	1,109,146	994,456	(31,518)
Property taxes-prior	AP	30,000	96.46	28,937	24,533	1,063
County land sales	A	-	0.00	-	-	-
Franchise fees	MAQ	598,000	64.33	384,680	374,413	213,320
COW - franchise fees	M	256,281	87.14	223,322	131,463	32,959
Transient room tax	Q	525,212	59.70	313,570	372,027	211,642
Liquor licenses	A	550	90.91	500	550	50
State revenue sharing	MQ	168,891	75.89	128,163	105,078	40,728
Municipal court	M	136,700	54.56	74,580	95,330	62,120
Planning Fees	I	105,000	50.96	53,510	43,071	51,490
Police charges	I	21,000	50.72	10,651	15,407	10,349
Fire charges	SM	103,524	95.05	98,400	70,356	5,124
Park charges	I	-	0.00	425	480	-
Miscellaneous	I	1,200	821.83	9,862	12,954	(8,662)
Interest	M	18,000	32.02	5,764	16,009	12,236
Lease receipts	M	216,473	75.57	163,582	163,983	52,891
Grants	I	-	0.00	11,696	-	(11,696)
<b>Sub-total</b>		<b>3,258,459</b>	<b>80.31</b>	<b>2,616,788</b>	<b>2,420,110</b>	<b>641,671</b>
Transfers from other funds	I	-	0.00	-	-	-
Overhead	M	1,167,282	69.21	807,861	889,523	359,421
<b>Total revenues</b>		<b>4,425,741</b>	<b>77.38</b>	<b>3,424,649</b>	<b>3,309,633</b>	<b>1,001,092</b>

M - monthly

Q - quarterly

SM - Semi-annual in November then monthly

AP - As paid by taxpayer beginning in November

MAQ - Century Link, NW Nat & Charter-quarterly,  
all others monthly

S - semi-annual

I - intermittently

MQ - Monthly, cigarette and liquor and Quarterly, revenue sharing

R - renewals due in July and new licenses intermittently

A - annual

Note: Budget columns do not include contingencies as a separate line item but are included in the ending fund balance. Unless the Commission authorizes the use of contingency, these amounts should roll over to the following year beginning fund balance. For budget details, please refer to the City of Warrenton Adopted Budget for fiscal year ending June 30, 2021. Budget amounts reflect budget adjustments approved by the Commission during the fiscal year. Information and data presented in this report is unaudited.

WARRENTON COMMUNITY CENTER  
Advisory Board Meeting  
February 25, 2021  
4:08 PM

Meeting Date: February 25, 2021

Call to Order: Chairman, Debbie Little, called the regular meeting to order at 4:08 PM. Debbie was not present, she conducted the meeting over her cell phone.

Roll Call: Chairman, Debbie Little; Secretary, Carol Snell, Ken Culp and April Clark, Financial Director for the City of Warrenton. Excused: Penny Morris and Vice Chair, Ronald LeChurch.

Introduction of Guests: None

Public Comment: None

Approval of the regular minutes for January 21, 2021: Ken Culp moved to accept the minutes as written, seconded by Carol Snell. Motion was approved

Financial Report: April reported she had no financial report.

Old Business: It was decided to have Breakfast with the Easter Bunny on March 27, 2021. Set-up will be Friday, March 26<sup>th</sup>. We will conduct the breakfast the same as the Santa Breakfast. The Pig has agreed to provide the pancakes, etc. and the cook. Avery Iverson will be the Easter Bunny. This will be Avery's last year helping us. Carla Iverson will take the money. Lorna has agreed to order the sausages. Carol will do the shopping. She and April will meet on the 18<sup>th</sup> to take inventory for items needed (i.e. food boxes, silverware, etc.). Debbie has paper bags we can put



the food boxes in. Penny is working on the raffle. April will bring the money box on Friday the 26<sup>th</sup>. April has printed flyers. The school will send out e-mails to the students.

New Business: Ken had a series of questions to discuss. (See attached). Items 1 thru 12 were discussed to varying degrees.

Correspondence:

Next Meeting: No meeting on the March 18, 2021.

***Set-up Friday, March 26, 2021 @4 PM***  
***Breakfast, March 27, 2021 at 7 AM***

Our next meeting will be April 15, 2021.

It was moved and seconded to close the meeting at 4:58 PM

  
\_\_\_\_\_  
Debbie Little, Chairman

  
\_\_\_\_\_  
Carol Snell, Secretary

Warrenton Community Center

Feb 24, 2021

1. List of all repairs needed by priority.
2. Would vending machines help.
3. What type of businesses would we like to attract?
4. Do we have to go through the city's Teck department when we could get it less expensive elsewhere, if so, it will be pushed back on our priority list. And with our budget the city is kind of forcing us to fend for ourselves
5. Could we put together a schedule of events so we can schedule other events.
6. What is our capacity after COVID-19 and during?
7. Do we have a COVID-19 capacity plan?
8. Do we have appropriate rate due to the less capacity?
9. Do we have appropriate signage to get to the Warrenton community center?
10. Do we belong to the Chamber of Commerce, and if so, are they pushing to have events here?
11. What would the heating bill be if we kept the heat on full time?
12. Do we have a.c.

## **PROCLAMATION**

### ***National Public Works Week***

**WHEREAS**, the period from May 16<sup>th</sup> through May 23<sup>rd</sup> has been set aside throughout the United States as National Public Works Week; and

**WHEREAS**, the public works professionals focus on infrastructure, facilities, and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life, and well being of the people of Warrenton; and,

**WHEREAS**, these infrastructure, facilities, and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers, and employees at all levels of government and the private sector, who are responsible for rebuilding, improving, and protecting our nation's transportation, water supply, water treatment, and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and,

**WHEREAS**, it is in the public interest for the citizens, civic leaders, and children in Warrenton to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and,

**WHEREAS**, the year 2021 marks the 61<sup>st</sup> annual National Public Works Week sponsored by the American Public Works Association be it now,

**NOW THEREFORE**, I, Henry A. Balensifer III, Mayor of the City of Warrenton, do hereby designate the week May 16-22, 2021 as **National Public Works Week** in the City of Warrenton, Oregon, and I do urge everyone to join in this observance.

**IN WITNESS WHEREOF**, I have here unto set my hand and caused to be affixed the Seal of the City of Warrenton, Oregon to be affixed on this 11<sup>th</sup> day of May, 2021.

---

Henry A. Balensifer III, Mayor

Attest:

---

Dawne Shaw, City Recorder



## AGENDA MEMORANDUM

TO: The Honorable Mayor and Warrenton City Commission  
FROM: R. Collin Stelzig, P.E., Public Works Director  
DATE: May 11<sup>th</sup>, 2021  
SUBJ: Establishing the Use of Consultants in the Review of Public Works  
Construction Permits

### SUMMARY

Rate resolutions are considered over two meetings to give the public the opportunity to comment. This is the first reading.

The City has the need for professional design services beyond the capacity of City staff members in the review of applications for public works construction permits and development application, and the current application fees do not cover the full cost of application processing.

The Public Works Department seeks Commission approval to establish the use of consultants in the review of public works construction permits and development applications, which will provide design services associated with the application and authorizing assigning the consultants cost to the applicant, as reflected in Resolution 2600.

### RECOMMENDATION/SUGGESTED MOTION

*"I move to conduct the first reading of Resolution No 2600; Establishing the Use of Consultants in the Review of Public Works Construction Permits or Development*

*Applications, and to Provide Design Services Associated with Public Works Construction Permits or Development Applications and Authorizing Assigning the Consultants Cost to the Applicant” Establishing May 25, 2021, as the Effective Date, and Repealing any Other Resolution in Conflict. ”*

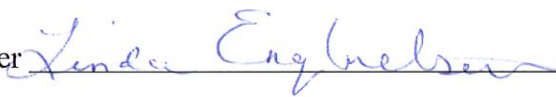
**ALTERNATIVE**

None Recommended.

**FISCAL IMPACT**

This resolution will provide an increase in revenue for the City.

Approved by City Manager

 \_\_\_\_\_

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

Resolution No. 2600

Introduced by All Commissioners

A Resolution Establishing the Use of Consultants in the Review of Public Works Construction Permits or Development Applications, and to Provide Design Services Associated with Public Works Construction Permits or Development Applications and Authorizing Assigning the Consultants Cost to the Applicant

WHEREAS, the City of Warrenton has the need for professional expertise beyond the capacity of City staff in the review of applications for public works construction permits and development applications; and

WHEREAS, the City of Warrenton has the need for professional design services beyond the capacity of City staff to provide design services associated with public works construction permits or development applications; and

WHEREAS, it is the responsibility of the applicant to pay the costs of processing public works construction permits and development applications; and

WHEREAS, the current application fees do not cover the full cost of processing such applications.

NOW, THEREFORE, the City Commission of the City of Warrenton Resolves as follows:

Section 1. In addition to any other application fee, whenever the Public Works Director determines that review of a development application or construction permit application requires the retention by the City of professional consulting services, the applicant shall reimburse the City for the cost of such professional consulting services. Such costs are a debt due and payable to the City prior to issuance of final plan or construction approval. The Director may require the applicant to deposit an amount with the City estimated in the discretion of the Director, to be sufficient to cover anticipated costs of retaining professional consulting services and to ensure reimbursement for such costs. Unless waived or postponed by the Director, execution of a reimbursement agreement and payment of the deposit shall be considered a component of a complete application and application fee. This does not preclude the Director from later requiring execution of a reimbursement agreement and additional deposit if the Director later determines that there is a need for consulting services or additional services. Any amount not expended by the City will be returned to the applicant, without interest.

Section 2. This resolution shall take effect immediately upon adoption.

Adopted by the City Commission of the City of Warrenton, Oregon, this \_\_\_ day of \_\_\_\_\_,  
2021.

First Reading:

Second Reading:

APPROVED:

---

Henry Balensifer III, Mayor

ATTEST:

---

Dawne Shaw, CMC, City Recorder



#### AGENDA MEMORANDUM

TO: The Warrenton City Commission  
FROM: Richard Stelzig, Public Works Director  
DATE: May 11, 2021  
SUBJ: Bid Award – SW Alder Reconstruction 2<sup>nd</sup> – 1<sup>st</sup> Street Project

#### SUMMARY

A public bid opening was held for the SW Alder Reconstruction 2<sup>nd</sup> Street to 1<sup>st</sup> Street Project. One bid was received for this project, Big River Construction provided a bid for the total amount of \$409,846.26. Attached is the bid submitted by Big River Construction and the bidding evaluation summary submitted by A.M. Engineering.

The advertised engineer's estimate was \$350,000 to \$400,000. The City budgeted this project for \$425,000 in the 2020-2021 fiscal year.

#### RECOMMENDATION/SUGGESTED MOTION

Staff recommends the following motions;

"I move to approve awarding the contract for the SW Alder Reconstruction 2<sup>nd</sup> Street to 1<sup>st</sup> Street Project to Big River Construction for the amount of \$409,846.26."

#### ALTERNATIVE

- 1) Other action as deemed appropriate by the City Commission
- 2) None recommended



FISCAL IMPACT

This project has been approved by the City Commission and is included in the City of Warrenton 2020-2021 Adopted Budget.

Approved by City Manager:

A handwritten signature in black ink, appearing to read "Linda Eggenelson", written over a horizontal line.

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.



### POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

**TAMARA A. RINGEISEN**

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

Any and All Bonds

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire April 1st, 2021, unless sooner revoked.

### AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

**RESOLVED:** The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 1st day of July, 2018.

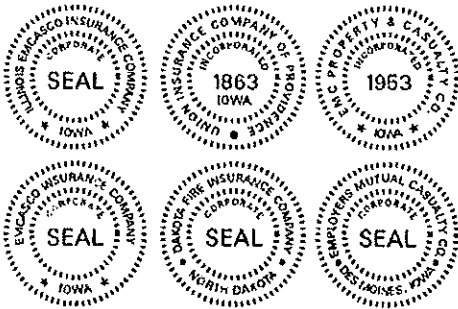
*Bruce G. Kelley*

Bruce G. Kelley, CEO, Chairman of Companies 2, 3, 4, 5 & 6; President of Companies 1, 2 & 6; Treasurer of Companies 1, 2, 3, 4 & 6

*Todd Strother*

Todd Strother  
Vice President

Seals



On this 1st day of July, 2018 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President and Treasurer, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2022.

*Kathy Loveridge*  
Notary Public in and for the State of Iowa



### CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 1st day of July, 2018, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 14 day of April, 2021.

*J. D. Clough*  
Vice President


CERTIFICATION OF NONDISCRIMINATION

SW Alder Avenue 2nd Street to 1st Street

Pursuant to the requirements of ORS 279A.110, I certify that I have not discriminated and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

4/20/21

DATE

  
BIDDER

NOTE: THIS STATEMENT MUST BE RETURNED WITH THE BID



SW Alder Reconstruction 2nd Street to 1st Street (8690812)  
 Owner: City of Warrenton  
 Solicitor: A.M. Engineering  
 04/20/2021 03:20 PM PST

P.O. Box 973  
 Seaside, Oregon 97138  
 (503) 468-8600  
 adam@amengr.com

Section Title	Line Item	Item Code	Item Description	UoM	Quantity	as % of bid total			as % of bid total			Avg % of bid total
						Unit Price	Extension		Unit Price	Extension		
Base bid							\$376,397.90			\$409,847.26		
	1	1	Mobilization	LS	1	\$17,109.00	\$17,109.00	4.55%	\$39,450.00	\$39,450.00	9.63%	9.63%
	2	2	Temporary Work Zone Traffic Control, Complete	LS	1	\$10,265.40	\$10,265.40	2.73%	\$1,500.00	\$1,500.00	0.37%	0.37%
	3	3	Erosion Control	LS	1	\$6,843.60	\$6,843.60	1.82%	\$900.00	\$900.00	0.22%	0.22%
	4	4	Removal of Structures and Obstructions	LS	1	\$45,000.00	\$45,000.00	11.96%	\$12,400.00	\$12,400.00	3.03%	3.03%
	5	5	General Excavation	CY	1090	\$16.50	\$17,985.00	4.78%	\$20.00	\$21,800.00	5.32%	5.32%
	6	6	Removal of Existing Water Services	LS	1	\$225.00	\$225.00	0.06%	\$900.00	\$900.00	0.22%	0.22%
	7	7	Removal of Surfacing, AC and Concrete	SY	1799	\$1.90	\$3,418.10	0.91%	\$2.35	\$4,227.65	1.03%	1.03%
	8	8	Asphalt Pavement and Concrete Saw Cutting	LF	234	\$3.75	\$877.50	0.23%	\$2.50	\$585.00	0.14%	0.14%
	9	9	24" Inch Corrugated HDPE WT Pipe	LF	508	\$60.00	\$30,480.00	8.10%	\$114.75	\$58,293.00	14.22%	14.22%
	10	10	12" Inch Corrugated HDPE WT Pipe	LF	201	\$32.00	\$6,432.00	1.71%	\$79.40	\$15,959.40	3.89%	3.89%
	11	11	Concrete Manholes, Storm 48" Shallow Flat Top	EA	1	\$4,500.00	\$4,500.00	1.20%	\$3,000.00	\$3,000.00	0.73%	0.73%
	12	12	Catch Basins, Curb Opening Type CG-3	EA	8	\$1,570.00	\$12,560.00	3.34%	\$3,000.00	\$24,000.00	5.86%	5.86%
	13	13	Catch Basins, Type 3 With Solid Grate	EA	2	\$2,000.00	\$4,000.00	1.06%	\$3,000.00	\$6,000.00	1.46%	1.46%
	14	14	Concrete Manholes, Storm 48" Shallow Flat Top with Type CG-3 Inlet	EA	2	\$5,000.00	\$10,000.00	2.66%	\$3,000.00	\$6,000.00	1.46%	1.46%
	15	15	Riprap Basins with Geotextile	CY	1	\$175.00	\$175.00	0.05%	\$300.00	\$300.00	0.07%	0.07%
	16	16	Foundation Excavation, As Directed	CY	20	\$32.70	\$654.00	0.17%	\$56.50	\$1,130.00	0.28%	0.28%
	17	17	16" Subgrade Stabilization, As Directed	SY	561	\$10.90	\$6,114.90	1.62%	\$29.50	\$16,549.50	4.04%	4.04%
	18	18	Subgrade or Embankment Geotextile, As Directed	SY	10	\$1.25	\$12.50	0.00%	\$1.00	\$10.00	0.00%	0.00%
	19	19	Aggregate Subbase, 641.10(b) As Directed	CY	20	\$53.00	\$1,060.00	0.28%	\$100.00	\$2,000.00	0.49%	0.49%
	20	20	Aggregate, 6" Thick Shoulders and 3" Thick Driveway	CY	19	\$53.00	\$1,007.00	0.27%	\$100.00	\$1,900.00	0.46%	0.46%
	21	21	Aggregate Base, H/MAC	CY	701	\$53.00	\$37,153.00	9.87%	\$49.00	\$34,349.00	8.38%	8.38%
	22	22	Level 2, 1/2 Inch H/MAC	TN	348	\$160.00	\$55,680.00	14.79%	\$113.00	\$39,324.00	9.59%	9.59%
	23	23	Concrete Curbs, Monolithic Curb and Gutter	LF	921	\$23.00	\$21,183.00	5.63%	\$38.00	\$34,998.00	8.54%	8.54%
	24	24	Concrete Curbs, Standard Curb	LF	80	19	\$1,520.00	0.40%	35	\$2,800.00	0.68%	0.68%
	25	25	Up to 1" Inch Poly Water Service Line	EA	4	\$350.00	\$1,400.00	0.37%	\$1,100.00	\$4,400.00	1.07%	1.07%
	26	26	Concrete Walks, ADA Ramps with Truncated Domes	SF	240	\$32.00	\$7,680.00	2.04%	\$40.00	\$9,600.00	2.34%	2.34%
	27	27	Connection To Existing Structures, As Directed	EA	1	1200	\$1,200.00	0.32%	2500	\$2,500.00	0.61%	0.61%
	28	28	Concrete Walks, Sidewalk, Walkways, and ADA Landings	SF	4604	\$11.70	\$53,866.80	14.31%	\$9.65	\$44,428.60	10.84%	10.84%
	29	29	Concrete Driveways, 6" Thick	SF	507	\$13.00	\$6,591.00	1.75%	\$15.25	\$7,731.75	1.89%	1.89%
	30	30	Pavement Bar, Type B-HS	SF	32	\$19.00	\$608.00	0.16%	\$38.00	\$1,216.00	0.30%	0.30%
	31	31	Signs with post, Standard Sheeting, Extruded Aluminum, sidewalk ends	EA	2	500	\$1,000.00	0.27%	650	\$1,300.00	0.32%	0.32%
	32	32	Remove and Reinstall Existing Signs, stop signs	LS	2	600	1200	0.32%	220	440	0.11%	0.11%
	33	33	Removing and Rebuilding Fence, wooden and cyclone	LF	88	20	\$1,760.00	0.47%	26.22	\$2,307.36	0.56%	0.56%
	34	34	Single Mailbox Supports	EA	4	400	\$1,600.00	0.43%	300	\$1,200.00	0.29%	0.29%
	35	35	Sod Lawn, Planters and Fill Area	SY	529	0.9	\$5,237.10	1.39%	12	\$6,348.00	1.55%	1.55%



SW Alder Reconstruction 2nd Street to 1st Street (R690812)  
 Owner: City of Warrenton  
 Solicitor: A.M. Engineering  
 04/20/2021 03:20 PM PST

P.O. Box 873  
 Seaside, Oregon 97138  
 (503) 488-8600  
 adam@amengr.com

Section Title	Line Item	Item Code	Item Description	UoM	Quantity
Base bid	1	1	Mobilization	LS	1
	2	2	Temporary Work Zone Traffic Control, Complete	LS	1
	3	3	Erosion Control	LS	1
	4	4	Removal of Structures and Obstructions	LS	1
	5	5	General Excavation	CY	1090
	6	6	Removal of Existing Water Services	LS	1
	7	7	Removal of Surfacings, AC and Concrete	SY	1799
	8	8	Asphalt Pavement and Concrete Saw Cutting	LF	234
	9	9	24" Inch Corrugated HDPE WT Pipe	LF	508
	10	10	12" Inch Corrugated HDPE WT Pipe	LF	201
	11	11	Concrete Manholes, Storm 48" Shallow Flat Top	EA	1
	12	12	Catch Basins, Curb Opening Type CG-3	EA	8
	13	13	Catch Basins, Type 3 With Solid Grate	EA	2
	14	14	Concrete Manholes, Storm 48" Shallow Flat Top with Type CG-3 Inlet	EA	2
	15	15	Riprap Basins with Geotextile	CY	1
	16	16	Foundation Excavation, As Directed	CY	20
	17	17	16" Subgrade Stabilization, As Directed	SY	561
	18	18	Subgrade or Embankment Geotextile, As Directed	SY	19
	19	19	Aggregate Subbase, 641.10(8) As Directed	CY	20
	20	20	Aggregate, 6" Thick Shoulders and 3" Thick Driveway	CY	19
	21	21	Aggregate Base, HMA Base	CY	701
	22	22	Level 2, 1/2 Inch HMA	TN	348
	23	23	Concrete Curbs, Monolithic Curb and Gutter	LF	921
	24	24	Concrete Curbs, Standard Curb	LF	80
	25	25	Up to 1" Inch Poly Water Service Line	EA	4
	26	26	Concrete Walks, ADA Ramps with Truncated Domes	SF	240
	27	27	Connection To Existing Structures, As Directed	EA	1
	28	28	Concrete Walks, Sidewalk, Walkways, and ADA Landings	SF	4604
	29	29	Concrete Driveways, 6" Thick	SF	507
	30	30	Pavement Bar, Type B-HS	SF	32
	31	31	Signs with post, Standard Sheetmetal, Extruded Aluminum, sidewalk ends	EA	2
	32	32	Remove and Reinstall Existing Signs, stop signs	LS	2
	33	33	Removing and Rebuilding Fence, wooden and cyclone	LF	88
	34	34	Single Mailbox Supports	EA	4
	35	35	Soil Lawn, Planters and P/B Area	SY	529

BID BOND

For

**SW Alder Avenue 2nd Street to 1st Street**

For

The City of Warrenton

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, Big River Construction, Inc., hereinafter called  
(Name of Contractor)

the PRINCIPAL, as Principal, and Employers Mutual Casualty Company,  
(Name of Surety)

a corporation and existing under and by virtue of the laws of the State of Iowa  
and authorized to transact a surety business in the State of Oregon, hereinafter called the SURETY, as Surety,  
are held and firmly bound unto the City of Warrenton, a Municipal Corporation of the State of Oregon,  
hereinafter called the OBLIGEE, in the penal sum of

Five Percent (5%) of Bid Amount ----- Dollars (\$5% of Bid Amount) for the  
payment of which sum well and truly to be made, the said PRINCIPAL and the said SURETY bind ourselves,  
our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATIONS IS SUCH THAT:

WHEREAS the PRINCIPAL has submitted a Bid Proposal for the SW Alder Avenue 2nd Street to 1st Street

NOW, THEREFORE, if the Bid Proposal submitted by the PRINCIPAL is accepted, and the Contract awarded  
to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Agreement and shall furnish such  
Performance and Payment Bonds as required by the Contract Documents within the time fixed by the  
Documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the proposed Agreement  
and furnish the bonds, the SURETY hereby agrees to pay the OBLIGEE the penal sum as liquidated damages,  
within ten (10) days of such failure.

Signed and sealed this 14 day of April, 2021.

CONTRACTOR AS PRINCIPAL:

SURETY:

(Corp. Seal)

(Corp. Seal)

Company: Big River Construction, Inc.

Company: Employers Mutual Casualty Company

Signature: [Signature]

Signature: [Signature]

Name: Michael J. Sarrin

Name: Tamara A. Ringeisen

Title: President

Title: ATTORNEY-IN-FACT  
(Attach Power of Attorney)

BID FORMS

## SW Alder Avenue 2nd Street to 1st Street

The undersigned, having full knowledge of the quality and quantity of work and material required, hereby proposes to furnish all labor, material and equipment required to complete the work of:

in accordance with the ODOT/APWA 2018 Oregon Standard Specifications for Construction and the Special Provisions, Plans and Specifications hereto, and at the following Bid Schedule prices by the following completion dates:

- Substantial Completion – Monday, August 9, 2021
- Final Completion – Thursday, August 19, 2021

Enclosed herewith is a bid surety deposit in the amount of at least Five Percent (5%) of the bid.

The undersigned bidder hereby represents as follows: That this bid is made without connections with any person, firm or corporation making a bid for same, and is in all respects fair and without collusion or fraud.

Contractor agrees comply with ORS 279C.838 or ORS 279C.840 or 40 USC3141, et seq, if the contract is subject to state or federal prevailing wage laws.

The undersigned is  YES  NO a resident bidder, as defined in ORS 279A.120. (PLEASE CHECK ONE)

Oregon Construction Contractor Board No. 147632

The bidder acknowledges receiving and incorporating changes described in Addenda NO. 1 through 2.

Complete in black ink or by typewriter. If BIDDER is:

**An Individual**

Signature \_\_\_\_\_

(Individual's Name, Typed or Printed) \_\_\_\_\_

doing business as \_\_\_\_\_

Business address \_\_\_\_\_

Phone No. \_\_\_\_\_

**A Partnership**

Firm Name \_\_\_\_\_

Signature \_\_\_\_\_

(Name of Partner, Typed or Printed) \_\_\_\_\_

Business address \_\_\_\_\_

Phone No. \_\_\_\_\_

A Limited Liability Company (LLC)

LLC Name \_\_\_\_\_

By \_\_\_\_\_  
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed) \_\_\_\_\_

Business Address \_\_\_\_\_

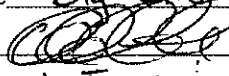
\_\_\_\_\_

State in which company was formed \_\_\_\_\_

Phone No. \_\_\_\_\_

A Corporation

Corporation Name Big River Construction, Inc.

Signature x 

Michael J. Sarin  
(Officer's Name, Typed or Printed)

President  
(Title)

Oregon  
(State of Incorporation)

Attest x   
(Secretary's Signature)

Business address 35064 HWY 101 BUSINESS  
Astoria, OR 97103

Phone No. 503-338-3878

Date of Qualification to do business 04/2001





P.O. Box 973  
Seaside, Oregon 97138  
(503) 468-8600  
adam@amengnr.com

April 20, 2021

Collin Stelzig, PE  
Public Works Director  
City of Warrenton  
45 SW 2nd St.  
Warrenton, OR 97146

**RE: SW Alder Reconstruction 2nd Street to 1st Street – Bidding Evaluation Summary**

Dear Collin,

The SW Alder Reconstruction 2nd Street to 1st Street project bid closing occurred on 4/20/21, at 2:00 P.M.. The following is a summary of the evaluation I performed on the 1 submitted bid.

**Big River Construction Inc.**

- Bid Tabulation Evaluation:
  - o The costs are generally acceptable.
  - o The bid was approximately 9% higher than the estimate, although the data used for the estimate was several years old and apparently not adjusted enough for inflation.
  - o Item 19 does cause a little bit of concern as it is an "As Directed" item. While a good effort was made to estimate quantities, this item is probably the most subject to an increase and the unit cost is large in comparison to other aggregate items.
- Bid Documents Evaluation:
  - o In general the bid documents conform to the requirements.
- **Summary/Recommendation:**
  - o Big River is the sole bidder on this project and I would recommend awarding the project to them.

After you have reviewed the recommendations, if you need any additional information or would like to discuss anything I would be happy to set up a meeting. I will issue the notice to award once you have made your decision.

If there are any questions, please don't hesitate to call me.



P.O. Box 973  
Seaside, Oregon 97138  
(503) 468-8600  
adam@amengnr.com

Sincerely,

Adam Dailey, P.E.  
President

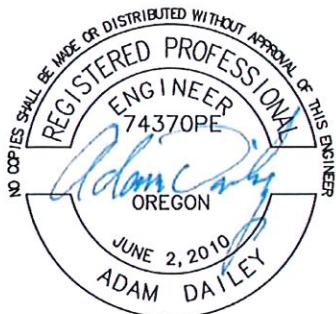
Enclosures: None

Cc: File



SW Alder Avenue 2nd Street to 1st Street

Summer 2021



RENEWAL DATE: DECEMBER 31, 2021



CITY OF WARRENTON

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**City of Warrenton**  
225 S Main Ave  
Warrenton, OR 97146

**CALL FOR BIDS - PUBLIC WORKS IMPROVEMENT**

## SW Alder Avenue 2nd Street to 1st Street

Sealed bids will be received up to the hour of **2:00 PM** local time, on Tuesday, April 20, 2021

Received by:

Adam Dailey  
Engineering Consultant

Received at:

Bids will **ONLY** be received and accepted via the online electronic bid service through QuestCDN.com

Any bids received after the above specified time will not be considered.

Bids will be received for the following work:

### **PROJECT DESCRIPTION**

Portions of SW Alder between N Main Avenue and SW 4th Street have been improved previously to widen the road. The remaining stretch for this project, between 2nd Street and 1st Street will include the reconstruction of the existing roadway as well as the addition of roadway width, landscaping strips on both sides of the road, 4 ADA compliant curb returns, sidewalks on both sides of the road, replacement of the inadequate storm drainage system, and some additional minor utility improvements. All improvements will be constructed to the current City standards.

- Substantial Completion – Monday, August 9, 2021
- Final Completion – Thursday, August 19, 2021

The following is a brief summary of the major elements of Work that are to be provided by the Contractor:

- Traffic Control
- Potholing
- Demolition
- Roadway and Trench Excavation
- Stormwater Infrastructure Construction
- Roadway Reconstruction/Construction
- Walkway and Curb Return Reconstruction/Construction
- Concrete Driveway Construction
- Asphalt Paving
- Pavement Striping
- Landscaping

### **PRE-BID MEETING**

An **OPTIONAL** pre-bid meeting will be held.

2:00 PM Tuesday, April 6, 2021



225 S MAIN AVE. WARRENTON, OR 97146

Bids submitted by bidders who have not attended a MANDATORY pre-bid meeting will not be accepted and will be returned unopened.

Statements made by a City representative at the pre-bid meeting are not binding on City unless confirmed by written addendum. A project site tour will follow as part of the pre-bid meeting.

### **SOLICITATION DOCUMENTS**

The contract documents may be viewed and downloaded by registering with QuestCDN online ([www.questcdn.com](http://www.questcdn.com)) or by calling (952-233-1632). A contractor may view the Contract Documents at no cost on the QuestCDN website prior to deciding to become a Plan-holder. To be considered a Plan-holder for construction bids, a contractor must register on QuestCDN.com and purchase the contract documents, in digital form for downloading, at a cost of \$50.00. Registering as a Plan-holder is recommended for all prime contractors and subcontractors because Plan-holders will receive addendums and other contract document updates via QuestCDN. For this project bids will ONLY be received and accepted via the online electronic bid service through QuestCDN.com. To access the electronic bid form, download the project documents and click the online bidding button at the top of advertisement. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted.

The Quest Project Number for this contract is 6960812

Questions regarding the project during the bid period shall be submitted in writing to:

Adam Dailey, PE  
Design Engineering Consultant  
A.M. Engineering  
PO Box 973 Seaside OR. 97138  
503-468-8600

### **PREQUALIFICATION**

Prequalification of bidders IS NOT required.

When prequalification is required, forms may be obtained from:

N/A

Prequalification applications must be received at the above location no less than seven (7) calendar days prior to bid opening. Required minimum prequalification class(es) of work for the Contractor (or Contractor in combination with proposed subcontractor(s) for this contract are:

N/A

### **BID OPENING**

Prior to submission of its bid, bidder shall be registered with the Oregon Construction Contractor's Board as required by ORS 701.055, and thereafter comply with the requirements of ORS 701.035 to 701.055.

Bidders shall be qualified in accordance with the applicable parts of ORS 279C in order to submit a bid for public works in Oregon.

If the total bid exceeds \$50,000.00 the contract will be subject to Prevailing Wage Statute ORS 279C.800 to 279C.870. The contract is NOT subject to federal prevailing wage rates under the Davis-Bacon Act (40 U.S.C. 3141 et seq).

All bids must be accompanied by a certified check, a cashier's check or bid bond in an amount equal to at least Five Percent (5%) of the total bid.

Bids will be publicly opened at the hour of **2:00 PM** local time, on Tuesday, April 20, 2021

Opened by:

Adam Dailey, PE  
Design Engineer Consultant

Opened at:

City Hall  
225 S. Main Ave. Warrenton, OR. 97138

By: Collin Stelzig, Public Works Director  
City of Warrenton

PUBLICATIONS: Daily Journal of Commerce (DJC): Wednesday, March 31, 2021 and Monday, April 5, 2021  
The Daily Astorian: Tuesday, March 30, 2021 and Tuesday, April 6, 2021

## BIDDER'S CHECKLIST

### FORMS TO EXECUTE FOR SUBMISSION OF BID

The Bidder's attention is especially called to the following forms which must be executed in full before bid is submitted:

- (a) Bid Form: The Bid Form is to be filled in and signed by the bidder and returned with bid.
- (b) Bond Accompanying Bid: All bids shall be accompanied by a guarantee equal to at least Five Percent (5%) of the bid amount. This guarantee may be in the form of a bond, certified check or cashier's check. Bid bonds will be accompanied by a power of attorney bearing the same date as the bond.
- (c) Certification of Nondiscrimination: This form must be signed and submitted with bid.
- (d) If applicable, First-Tier Subcontractor disclosure form, within 2 hours of bid closing.
- (e) Pre-qualification application received at Engineering Division Office at least 7 calendar days prior to bid opening when required.

Facsimile transmissions of bids, bid security or subcontractor disclosure forms will not be accepted.

### FORMS TO EXECUTE AFTER AWARD OF BID

- (a) Contract: The agreement provided in these Solicitation Documents is to be executed by the successful bidder within 14 calendar days of award of the contract.
- (b) Insurance must comply with the General Conditions and Special Provisions of the Contract Documents. Proof of such insurance and additional insured certificate must be delivered to the Agency at the same time the contract is signed.
- (c) The contractor shall furnish a performance bond and a payment bond each in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and for the protection of claimants under ORS 279C.600.



**BID FORMS**

# SW Alder Avenue 2nd Street to 1st Street

The undersigned, having full knowledge of the quality and quantity of work and material required, hereby proposes to furnish all labor, material and equipment required to complete the work of:

in accordance with the ODOT/APWA 2018 Oregon Standard Specifications for Construction and the Special Provisions, Plans and Specifications hereto, and at the following Bid Schedule prices by the following completion dates:

- Substantial Completion – Monday, August 9, 2021
- Final Completion – Thursday, August 19, 2021

Enclosed herewith is a bid surety deposit in the amount of at least Five Percent (5%) of the bid.

The undersigned bidder hereby represents as follows: That this bid is made without connections with any person, firm or corporation making a bid for same, and is in all respects fair and without collusion or fraud.

Contractor agrees comply with ORS 279C.838 or ORS 279C.840 or 40 USC3141, et seq, if the contract is subject to state or federal prevailing wage laws.

The undersigned is  YES  NO a resident bidder, as defined in ORS 279A.120. (PLEASE CHECK ONE)

Oregon Construction Contractor Board No. 147632

The bidder acknowledges receiving and incorporating changes described in Addenda NO. 1 through 2.

**Complete in black ink or by typewriter. If BIDDER is:**

**An Individual**

Signature \_\_\_\_\_

(Individual's Name, Typed or Printed) \_\_\_\_\_

doing business as \_\_\_\_\_

Business address \_\_\_\_\_

Phone No. \_\_\_\_\_

**A Partnership**

Firm Name \_\_\_\_\_

Signature \_\_\_\_\_

(Name of Partner, Typed or Printed) \_\_\_\_\_

Business address \_\_\_\_\_

Phone No. \_\_\_\_\_

A Limited Liability Company (LLC)

LLC Name \_\_\_\_\_

By \_\_\_\_\_  
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed) \_\_\_\_\_

Business Address \_\_\_\_\_

State in which company was formed \_\_\_\_\_

Phone No. \_\_\_\_\_

A Corporation

Corporation Name Big River Construction, Inc.

Signature 

Michael J. Sarin  
(Officer's Name, Typed or Printed)

President  
(Title)

Oregon  
(State of Incorporation)

Attest   
(Secretary's Signature)

Business address 35064 HWY 101 BUSINESS  
Astoria, OR 97103

Phone No. 503-338-3878

Date of Qualification to do business 04/2001

**BID SCHEDULE**

## SW Alder Avenue 2nd Street to 1st Street

Bid Item No.	Description	Quantity	Unit	Unit Price	Bid Amount
1	Mobilization	1	LS		
2	Temporary Work Zone Traffic Control	1	LS		
3	Erosion Control	1	LS		
4	Removal of Structures and Obstructions	1	LS		
5	General Excavation	1090	CY		
6	Removal of <u>Existing Water Services</u>	1	LS		
7	Removal of Surfacings, AC and Concrete	1799	SY		
8	Asphalt Pavement and Concrete Saw Cutting	234	LF		
9	<u>24" Inch Corrugated HDPE WT Pipe</u>	508	LF		
10	<u>12" Inch Corrugated HDPE WT Pipe</u>	201	LF		
11	Concrete Manholes, <u>Storm 48" Shallow Flat Top</u>	1	EA		
12	Catch Basins, <u>Curb Opening Type CG-3</u>	8	EA		
13	Catch Basins, <u>Type 3 With Solid Grate</u>	2	EA		
14	Concrete Manholes, <u>Storm 48" Shallow Flat Top with Type CG-3 Inlet</u>	2	EA		
15	Riprap Basins with Geotextile	1	CY		
16	Foundation Excavation, As Directed	20	CY		
17	<b>16"</b> Subgrade Stabilization, As Directed	561	SY		
18	Subgrade or Embankment Geotextile, As Directed	10	SY		
19	Aggregate Subbase, 641.10(b) As Directed	20	CY		
20	Aggregate, 6" Thick Shoulders and 3" Thick Driveway	19	CY		
21	Aggregate Base, HMAC Base	701	CY		
22	Level 2, 1/2-inch HMAC	348	TN		
23	Concrete Curbs, <u>Monolithic Curb and Gutter</u>	921	LF		
24	Concrete Curbs, <u>Standard Curb</u>	80	LF		
25	<u>Up to 1" Inch Poly Water Service Line</u>	4	EA		
26	Concrete Walks, ADA Ramps with Truncated Domes	240	SF		
27	Connection to Existing Structures, As Directed	1	EA		
28	Concrete Walks, Sidewalk, Walkways, and ADA Landings	4604	SF		
29	Concrete Driveways, 6" Thick	507	SF		
30	Pavement Bar, Type <u>B-HS</u>	32	SF		
31	Signs with post, Standard Sheeting, Extruded Aluminum, sidewalk ends	2	EA		
32	Remove and Reinstall Existing Signs, stop signs	2	LS		
33	Removing and Rebuilding Fence, wooden and cyclone	88	LF		
34	Single Mailbox Supports	4	EA		
35	Sod Lawn, Planters and Fill Area	529	SY		

**Total Bid Amount**



SW Alder Reconstruction 2nd Street to 1st Street (#6960812)  
 Owner: City of Warrenton  
 Solicitor: A.M. Engineering  
 04/20/2021 03:20 PM PST

P.O. Box 973  
 Seaside, Oregon 97138  
 (503) 488-8600  
 adam@amengnr.com

Section Title	Line Item	Item Code	Item Description	UoM	Quantity	as % of bid total			as % of bid total			Avg % of bid total	
						Engineer Estimate	Unit Price	Extension	Big River Construction Inc.	Unit Price	Extension		
Base Bid													
	1	1	Mobilization	LS	1	\$17,309.00	\$17,309.00	4.55%	\$39,450.00	\$39,450.00	9.63%	9.63%	
	2	2	Temporary Work Zone Traffic Control, Complete	LS	1	\$10,265.40	\$10,265.40	2.73%	\$1,500.00	\$1,500.00	0.37%	0.37%	
	3	3	Erosion Control	LS	1	\$6,843.60	\$6,843.60	1.82%	\$900.00	\$900.00	0.22%	0.22%	
	4	4	Removal of Structures and Obstructions	LS	1	\$45,000.00	\$45,000.00	11.98%	\$12,400.00	\$12,400.00	3.03%	3.03%	
	5	5	General Excavation	CY	1090	\$16.50	\$17,985.00	4.78%	\$20.00	\$21,800.00	5.32%	5.32%	
	6	6	Removal of Existing Water Services	LS	1	\$225.00	\$225.00	0.06%	\$900.00	\$900.00	0.22%	0.22%	
	7	7	Removal of Surfacings, AC and Concrete	SY	1799	\$1.90	\$3,418.10	0.91%	\$2.35	\$4,227.65	1.03%	1.03%	
	8	8	Asphalt Pavement and Concrete Saw Cutting	LF	234	\$3.75	\$877.50	0.23%	\$2.50	\$585.00	0.14%	0.14%	
	9	9	24" Inch Corrugated HDPE WT Pipe	LF	508	\$60.00	\$30,480.00	8.10%	\$114.75	\$58,293.00	14.22%	14.22%	
	10	10	12" Inch Corrugated HDPE WT Pipe	LF	201	\$32.00	\$6,432.00	1.71%	\$79.40	\$15,959.40	3.89%	3.89%	
	11	11	Concrete Manholes, Storm 48" Shallow Flat Top	EA	1	\$4,500.00	\$4,500.00	1.20%	\$3,000.00	\$3,000.00	0.73%	0.73%	
	12	12	Catch Basins, Curb Opening Type CG-3	EA	8	\$1,570.00	\$12,560.00	3.34%	\$3,000.00	\$24,000.00	5.86%	5.86%	
	13	13	Catch Basins, Type 3 With Solid Grate	EA	2	\$2,000.00	\$4,000.00	1.06%	\$3,000.00	\$6,000.00	1.46%	1.46%	
	14	14	Concrete Manholes, Storm 48" Shallow Flat Top with Type CG-3 Inlet	EA	2	\$5,000.00	\$10,000.00	2.66%	\$3,000.00	\$6,000.00	1.46%	1.46%	
	15	15	Riprap Basins with Geotextile	CY	1	\$175.00	\$175.00	0.05%	\$300.00	\$300.00	0.07%	0.07%	
	16	16	Foundation Excavation, As Directed	CY	20	\$32.70	\$654.00	0.17%	\$56.50	\$1,130.00	0.28%	0.28%	
	17	17	16" Subgrade Stabilization, As Directed	SY	561	\$10.90	\$6,114.90	1.62%	\$29.50	\$16,549.50	4.04%	4.04%	
	18	18	Subgrade or Embankment Geotextile, As Directed	SY	10	\$1.25	\$12.50	0.00%	\$1.00	\$10.00	0.00%	0.00%	
	19	19	Aggregate Subbase, 641.10(b) As Directed	CY	20	\$53.00	\$1,060.00	0.28%	\$100.00	\$2,000.00	0.49%	0.49%	
	20	20	Aggregate, 6" Thick Shoulders and 3" Thick Driveway	CY	19	\$53.00	\$1,007.00	0.27%	\$100.00	\$1,900.00	0.46%	0.46%	
	21	21	Aggregate Base, HMAC Base	CY	701	\$53.00	\$37,153.00	9.87%	\$49.00	\$34,349.00	8.38%	8.38%	
	22	22	Level 2, 1/2 inch HMAC	TN	348	\$160.00	\$55,680.00	14.79%	\$113.00	\$39,324.00	9.59%	9.59%	
	23	23	Concrete Curbs, Monolithic Curb and Gutter	LF	921	\$23.00	\$21,183.00	5.63%	\$38.00	\$34,998.00	8.54%	8.54%	
	24	24	Concrete Curbs, Standard Curb	LF	80	19	\$1,520.00	0.40%	35	\$2,800.00	0.68%	0.68%	
	25	25	Up to 1" Inch Poly Water Service Line	EA	4	\$350.00	\$1,400.00	0.37%	\$1,100.00	\$4,400.00	1.07%	1.07%	
	26	26	Concrete Walks, ADA Ramps with Truncated Domes	SF	240	\$32.00	\$7,680.00	2.04%	\$40.00	\$9,600.00	2.34%	2.34%	
	27	27	Connection To Existing Structures, As Directed	EA	1	1200	\$1,200.00	0.32%	2500	\$2,500.00	0.61%	0.61%	
	28	28	Concrete Walks, Sidewalk, Walkways, and ADA Landings	SF	4604	\$11.70	\$53,866.80	14.31%	\$9.65	\$44,428.60	10.84%	10.84%	
	29	29	Concrete Driveways, 6" Thick	SF	507	\$13.00	\$6,591.00	1.75%	\$15.25	\$7,731.75	1.89%	1.89%	
	30	30	Pavement Bar, Type B-HS	SF	32	\$19.00	\$608.00	0.16%	\$38.00	\$1,216.00	0.30%	0.30%	
	31	31	Signs with post, Standard Sheeting, Extruded Aluminum, sidewalk ends	EA	2	500	\$1,000.00	0.27%	650	\$1,300.00	0.32%	0.32%	
	32	32	Remove and Reinstall Existing Signs, stop signs	LS	2	600	1200	0.32%	220	440	0.11%	0.11%	
	33	33	Removing and Rebuilding Fence, wooden and cyclone	LF	88	20	\$1,760.00	0.47%	26.22	\$2,307.36	0.56%	0.56%	
	34	34	Single Mailbox Supports	EA	4	400	\$1,600.00	0.43%	300	\$1,200.00	0.29%	0.29%	
	35	35	Sod Lawn, Planters and Fill Area	SY	529	9.9	\$5,237.10	1.39%	12	\$6,348.00	1.55%	1.55%	

## Section 00190 – Measurement of Pay Quantities

### 00190.00 Scope

Section 00190.00 is supplemented with the following:

Measurement and payment for all Work shown or specified herein will be made on a unit or lump sum price basis in accordance with the prices set forth in the Bid Schedule for individual items of Work. Contractor shall make a careful assessment when preparing the Bid.

The items listed below refer to and are the same pay items listed in the Bid Schedule. They constitute all of the pay items for the completion of the Work. No direct or separate payment will be made for providing miscellaneous temporary or accessory services or all other items not specifically named in specific bid item description and needed for the prosecution of the Work, and all other requirement of the Contract Documents. Compensation for all such services, things and materials shall be included in the prices stipulated for the lump sum and unit price pay items listed herein.

The prices stated in the Bid Schedule include overhead and profit and all costs and expenses for bonds, insurance, taxes, labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, together with any and all other costs and expenses for performing and completing the Work, complete and in place, as shown on the Plans and specified herein. The basis of payment for an item at the lump sum or unit price shown in the Bid Schedule shall be in accordance with the description of that item in this Section.

Items listed as ALLOWANCES in the Bid Schedule, if any, are to be used and will be paid for only at the written direction and authorization of the Engineer, if agreed to by the Agency. Measurements and payment will be in accordance with the Contract Documents or the terms of the written authorization for the additional Work and will include but not necessarily be limited to, the furnishing, hauling, placing and installing of materials and the furnishing of such manpower and equipment as required to accomplish the Work as direct in writing by the Engineer.

Lineal Foot payment for Storm Sewer Pipe & Fittings shall exclude distance through manholes and other structures (i.e., payment is measured from outside face of catch basin to outside face of catch basin, or outside face of catch basin to outside face of manhole).

Lineal Foot payment for Sanitary Sewer Pipe & Fittings shall exclude distance through manholes and other structures (i.e., payment is measured from outside face of manhole to outside face of manhole).

Description of Bid Items on Bid Schedule:

- 1 Mobilization (Lump Sum Payment): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to obtain permits and licenses; move equipment and materials onto the site; furnish construction trailers and other construction facilities; prepare the site for Work under Contract; marshal workers, materials and equipment, and those of subcontractors to accomplish Work under Contract; prepare, submit and modify as appropriate to address review comments for material submittals and shop drawings, as-built drawings

showing field changes to the original design and other submittals; remove equipment and extra materials from site upon completion of Work and all other Work not identified in a separate bid item.

- 2 Temporary Work Zone Traffic Control, Complete (Lump Sum Payment): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to provide temporary traffic control measures (TCM), Traffic Control Supervisor (TCS), Flaggers, and furnishing, installing, moving, operating, maintaining, inspecting, and removing traffic control devices (TCD) throughout the Project area according to the Supplemental Drawings, the traffic control plan (TCP) for the Project, these Specifications, or as directed. Payment will be made on a prorated monthly basis based on the percent of the original Contract Amount that is earned from other Contract items.
- 3 Erosion Control (Lump Sum Payment): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to implement and maintain structural and non-structural Best Management Practices (BMP) for the purpose of controlling soil erosion by wind or water and keeping eroded sediments and other construction-generated pollutants from moving off project sites. Minimum requirements for all project construction sites and conditions are described in the DEQ 1200-C Permit and accompanying Erosion and Sediment Control Plan (ESCP) drawings. Additional or revised erosion and sediment control features, not shown on the initial ESCP, may be required depending on the Contractor's methods of operation and schedule. Payment shall include an erosion and control inspector with acceptable certification, training or qualified experience to implement, monitor and report on the erosion control measures in accordance with the DEQ 1200-C Permit requirements. Payment will be made on a prorated monthly basis based on the percent of the original Contract Amount that is earned from other Contract items.
- 4 Removal of Structures and Obstructions (Lump Sum Payment): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to remove and dispose of structures and pipes, regardless of material type and size, indicated to be removed in the Supplemental Drawings, grouting resulting voids in structures when pipe is removed, backfilling and compacting trench with Trench Backfill Material, and CLASS B 3/4" - 0, to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock) or top of trench foundation where applicable. Removal of piping shall be from structure to structure or as indicated in plans. Preserve and protect existing conditions and private property. Separate payment will be made for Sawcutting and Roadway Reconstruction.
- 5 General Excavation (Payment Per Cubic Yard In Place): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to excavate, load, haul, and dispose of all materials within the project disturbance limits to finish subgrade at an average depth of 13 inches. Preserve and protect existing conditions and private property. Coordinate miscellaneous private property relocation with owners. Separate payment will be made for surfacing removal.



- 6 Removal of Existing Water Services (Lump Sum Payment): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to remove and dispose of existing water service including meter box and service piping to corp stop at the main, corp stop to be shut off and plugged with brass plug, coordinate with City for removal of water meter if present, backfill and compact with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock) as shown in the Plans. Preserve and protect existing conditions and private property. Separate payment will be made for Sawcutting.
- 7 Removal of Surfacing (Payment Per Square Yard): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to excavate, load, haul, and dispose of existing asphalt or concrete surfacing such as roadways, walks, driveways and adjacent curbing, to all depths (4" Average Assumed), as indicated to be removed on the Plans. Preserve and protect existing conditions and private property. Separate payment will be made for Sawcutting.
- 8 Asphalt Pavement and Concrete Saw Cutting (Payment Per Linear Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to sawcut existing asphalt or concrete regardless of thickness as shown on the Plans. Unit price payment shall be for each linear foot of material sawcut on each side of the trench or on pavement required for removal, as measured in the field. Payment also includes sawcutting of PCC that is beneath asphaltic concrete paving. Preserve and protect existing conditions and private property. No additional payment will be made for any re-sawcutting required to restore a clean sawcut prior to trench patching or final placement of concrete or asphalt pavement.
- 9 24" Inch Corrugated HDPE WT Pipe (Payment Per Linear Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, bypass pumping, making connections to existing pipes or structures with fittings if required, install embankment geotextile, bedding, storm sewer piping, fittings, tracer wire, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), trench compaction cleaning, video inspection, and acceptance testing as specified and as shown on the Supplemental Drawings. Separate payment will be made for Sawcutting and foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.

- 10 12" Inch Corrugated HDPE WT Pipe (Payment Per Linear Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, bypass pumping, making connections to existing pipes or structures with fittings if required, install embankment geotextile, bedding, storm sewer piping, fittings, tracer wire, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), trench compaction cleaning, video inspection, and acceptance testing as specified and as shown on the Supplemental Drawings. Separate payment will be made for Sawcutting and foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.
- 11 Concrete Manholes, Storm 48" Shallow Flat Top (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, bypass pumping, install embankment geotextile, CLASS B 3/4" - 0 base rock, structure, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), trench compaction, cleaning, and acceptance testing as specified and as shown on the Supplemental Drawings. Separate payment will be made for Sawcutting, foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.
- 12 Catch Basins, Curb Opening Type CG-3 (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, bypass pumping, install embankment geotextile, CLASS B 3/4" - 0 base rock, structure, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), trench compaction, cleaning, and acceptance testing as specified and as shown on the Supplemental Drawings. Separate payment will be made for Sawcutting, foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.
- 13 Catch Basins, Type 3 With Solid Grate (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, bypass pumping, install embankment geotextile, CLASS B 3/4" - 0 base rock, structure, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), trench compaction, cleaning, and acceptance testing

as specified and as shown on the Supplemental Drawings. Separate payment will be made for Sawcutting, foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.

- 14 Concrete Manholes, Storm 48" Shallow Flat Top with Type CG-3 Inlet (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, bypass pumping, install embankment geotextile, CLASS B 3/4" - 0 base rock, structure, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), trench compaction, cleaning, and acceptance testing as specified and as shown on the Supplemental Drawings. Separate payment will be made for Sawcutting, foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.
- 15 Riprap Basins with Geotextile (Payment Per Cubic Yard In Place): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to excavate site, install loose riprap Class 50 rock energy dissipater and Woven Geotextile Type 2, Table 02320-2 Geotextile as shown in the plans. The unit price payment also includes dewatering. Preserve and protect existing conditions and private property.
- 16 Foundation Excavation (Payment Per Cubic Yard In Place): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to remove and dispose of unsuitable trench foundation material encountered during trench excavation, furnish and install embankment geotextile, compact Selected Stone Backfill 6" - 0 material as necessary or as directed to provide a stable foundation. Preserve and protect existing conditions and private property.
- 17 16" Subgrade Stabilization (Payment Per Square Yard): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to remove and dispose of unsuitable subgrade material as directed during road construction Overexcavation. Furnish, install and compact 16" thick "Subbase Aggregate" material, 641.10(b) with subgrade geotextile, to provide subgrade stabilization. Preserve and protect existing conditions and private property.
- 18 Subgrade or Embankment Geotextile (Payment Per Square Yard): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install woven subgrade geotextile as directed. Table 02320-4 Geotextile Property Values for Subgrade Geotextile. Table 02320-5 Geotextile Property Values for Embankment Geotextile. Preserve and protect existing conditions and private property.

- 19 Aggregate Subbase (Payment Per Cubic Yard In Place): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to furnish, install, and compact aggregate subbase material over Subgrade Geotextile, on approved subgrade to provide a stable subbase as directed. Preserve and protect existing conditions and private property.
- 20 Aggregate Shoulders (Payment Per Cubic Yard In Place): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to furnish, install, and compact 6" thick shoulder, CLASS B 3/4" - 0 base rock over Subgrade Geotextile, on approved subgrade to provide suitable sidewalk edge support or as directed. Preserve and protect existing conditions and private property.
- 21 Aggregate Base (Payment Per Cubic Yard In Place): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to furnish, install and compact 12" thick base/level course, CLASS B 3/4" - 0 base rock, over Subgrade Geotextile on approved subgrade to provide a suitable base for asphalt. Preserve and protect existing conditions and private property.
- 22 Level 2, 1/2-inch ACP (Payment Per Ton): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to furnish, install and 3" compacted asphalt concrete pavement, and provide acceptance testing in accordance with specifications and as shown on the Plans. Adjustment to final grade of valve boxes, meter boxes, monument boxes or other similar structures with removable cover in the asphalt concrete paving limits shall be considered incidental to this pay item. Separate payment will be made for Sawcutting. Preserve and protect existing conditions and private property.
- 23 Concrete Curbs, Monolithic Curb and Gutter (Payment Per Linear Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install geotextile, 12" thick CLASS B 3/4" - 0 base rock, and standard concrete curb and gutter as specified and as shown on the Plans. Preserve and protect existing conditions and private property.
- 24 Concrete Curbs, Standard Curb (Payment Per Linear Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install geotextile, 12" thick CLASS B 3/4" - 0 base rock, and standard concrete curb as specified and as shown on the Plans. Preserve and protect existing conditions and private property.

- 25 Up to 1" Inch Poly Water Service Line (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, make connection to existing corp stop at main with fittings if required to change size, install embankment geotextile, bedding, poly piping, meter box, tracer wire, meter box, fittings, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), coordinate with City for relocation or replacement of water meter, and disinfection and acceptance testing as specified and as shown on the Supplemental Drawings. Separate payment will be made for sawcutting and foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.
- 26 Concrete Walks (Payment Per Square Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install geotextile, 2" thick CLASS B 3/4" - 0 leveling course, 4" unreinforced concrete ADA compliant ramps with cast in place Brick Red truncated domes as shown on the Plans. Adjustment to final grade of valve boxes, meter boxes, monument boxes, or other similar structures with removable cover in concrete shall be considered incidental to this pay item. Adjustment of utility service poles, not to include transmission line poles. Preserve and protect existing conditions and private property.
- 27 Connection To Existing Structures (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to pothole and verify utility elevations, trench excavation, trench stabilization, dewatering, bypass pumping, removal and disposal of existing sewer service, install embankment geotextile, bedding, up to 6" D3034 DR35 sewer piping, cleanouts, fittings including connection to existing home service, tracer wire, backfill and compaction with CLASS B 3/4" - 0 Trench Backfill Material to the top of the Roadway Reconstruction Subgrade (at bottom of aggregate base rock), cleaning, and acceptance testing as specified and as shown on the Supplemental Drawings. Separate payment will be made for Sawcutting and foundation excavation (Overexcavation). No additional payment will be made for additional testing, cleaning and video inspection required as a result of correcting unsatisfactory Work. Preserve and protect existing conditions and private property.
- 28 Concrete Walks (Payment Per Square Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install geotextile, 2" thick CLASS B 3/4" - 0 leveling course, 4" unreinforced ADA compliant ADA concrete sidewalks, walkways, and Landings as specified and as shown on the Plans. Adjustment to final grade of valve boxes, meter boxes, monument boxes or other similar structures with removable cover in concrete shall be considered incidental to this pay item. Preserve and protect existing conditions and private property.

- 29 Concrete Driveways (Payment Per Square Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install geotextile, 6" thick CLASS B 3/4" - 0 leveling course/base rock, 6" unreinforced concrete driveways, and wings as specified and as shown on the Plans. Adjustment to final grade of valve boxes, meter boxes, monument boxes or other similar structures with removable cover in concrete shall be considered incidental to this pay item. Preserve and protect existing conditions and private property.
- 30 Pavement Bar, Type B-HS (Payment Per Square Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install 12" wide white pavement bar markings as specified and as shown on the Plans. Removal of conflicting pavement markings shall be considered incidental to this bid item. Preserve and protect existing conditions and private property.
- 31 Signs with post, Standard Sheeting, Extruded Aluminum (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to install 2" O.D. sign post, single sided aluminum "Sidewalk Ends" Sign, 8" diameter full embedment concrete post base. Preserve and protect existing conditions and private property.
- 32 Remove and Reinstall Existing Signs (Lump Sum Payment): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to remove and re-install existing stop signs, including posts, within the project limits as specified and as shown on the Plans. Unit price also includes CLASS B 3/4" - 0 post full depth embedment material 12" around post. Payment will be made on a prorated basis based on the percent of the original Contract Amount that is earned from other Contract Items. Preserve and protect existing conditions and private property.
- 33 Removing and Rebuilding Fence (Payment Per Linear Foot): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to remove and re-install existing fence of varying materials, including posts, within the project limits as specified and as shown on the Plans. Contractor will notify and coordinate with private property owner for this item to preinspect and discuss the work. Unit price also includes cost for replacement of contractor damaged or previously deteriorated components in kind as coordinated with the engineer. Preserve and protect existing conditions and private property.
- 34 Single Mailbox Supports (Payment Per Each): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to remove and re-install existing mailboxes and posts of varying materials, within the project limits as specified and as shown on the Plans. Contractor will notify and coordinate with private property owner for this item to preinspect and discuss the work. Unit price also includes cost for replacement of contractor damaged or previously deteriorated components in kind as coordinated with the engineer. Preserve and protect existing conditions and private property.



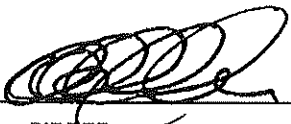
- 35 Sod Lawn (Payment Per Square Yard): The unit price payment for this item includes: furnishing all necessary materials, equipment, labor and incidentals and performing all Work to provide and install landscape sod in landscape and road section fill areas on a scarified subgrade to accommodate 4" of topsoil and sod layer thickness. Sod to be 1" below level of adjacent curbs and walks. Unit price includes onsite borrow material used for subgrade. Preserve and protect existing conditions and private property.

CERTIFICATION OF NONDISCRIMINATION

SW Alder Avenue 2nd Street to 1st Street

Pursuant to the requirements of ORS 279A.110, I certify that I have not discriminated and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

4/20/21  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
BIDDER

NOTE: THIS STATEMENT MUST BE RETURNED WITH THE BID

**FIRST-TIER SUBCONTRACTOR'S DISCLOSURE FORM**

# SW Alder Avenue 2nd Street to 1st Street

**BID CLOSING:** Bidding will be closed at the hour of 2:00 PM local time, on Tuesday, April 20, 2021

This form must be submitted at the location specified in the Call For Bids on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor who will be furnishing labor or materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed.

(ATTACH ADDITIONAL SHEETS IF NEEDED.)

Name	Dollar Value	Category of Work
1) _____	\$ _____	_____
2) _____	\$ _____	_____
3) _____	\$ _____	_____
4) _____	\$ _____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form Submitted by (Bidder Name): \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone no.: \_\_\_\_\_

BID BOND

For

**SW Alder Avenue 2nd Street to 1st Street**

For

The City of Warrenton

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, Big River Construction, Inc., hereinafter called  
(Name of Contractor)

the PRINCIPAL, as Principal, and Employers Mutual Casualty Company  
(Name of Surety)

a corporation and existing under and by virtue of the laws of the State of Iowa  
and authorized to transact a surety business in the State of Oregon, hereinafter called the SURETY, as Surety,  
are held and firmly bound unto the City of Warrenton, a Municipal Corporation of the State of Oregon,  
hereinafter called the OBLIGEE, in the penal sum of

Five Percent (5%) of Bid Amount ----- Dollars (\$5% of Bid Amount) for the  
payment of which sum well and truly to be made, the said PRINCIPAL and the said SURETY bind ourselves,  
our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATIONS IS SUCH THAT:

WHEREAS the PRINCIPAL has submitted a Bid Proposal for the SW Alder Avenue 2nd Street to 1st Street

NOW, THEREFORE, if the Bid Proposal submitted by the PRINCIPAL is accepted, and the Contract awarded  
to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Agreement and shall furnish such  
Performance and Payment Bonds as required by the Contract Documents within the time fixed by the  
Documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the proposed Agreement  
and furnish the bonds, the SURETY hereby agrees to pay the OBLIGEE the penal sum as liquidated damages,  
within ten (10) days of such failure.

Signed and sealed this 14 day of April, 2021.

CONTRACTOR AS PRINCIPAL:

SURETY:

(Corp. Seal)

(Corp. Seal)

Company: Big River Construction, Inc.

Company: Employers Mutual Casualty Company

Signature: [Signature]

Signature: [Signature]

Name: Michael J. Sarrin

Name: Tamara A. Ringeisen

Title: President

Title: ATTORNEY-IN-FACT  
(Attach Power of Attorney)



### POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

**TAMARA A. RINGEISEN**

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

#### Any and All Bonds

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire April 1st, 2021, unless sooner revoked.

### AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

**RESOLVED:** The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 1st day of July, 2018.

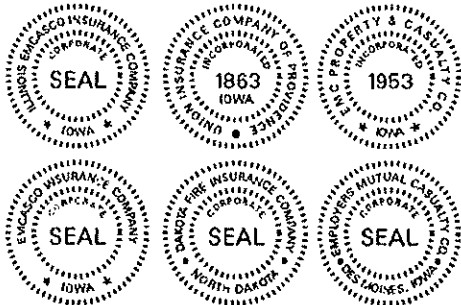
*Bruce G. Kelley*

Bruce G. Kelley, CEO, Chairman of Companies 2, 3, 4, 5 & 6; President of Companies 1, 2 & 6; Treasurer of Companies 1, 2, 3, 4 & 6

*Todd Strother*

Todd Strother  
Vice President

Seals



On this 1st day of July, 2018 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President and Treasurer, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2022.

*Kathy Loveridge*  
Notary Public in and for the State of Iowa



### CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 1st day of July, 2018, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 14 day of April, 2021.

*J. D. Clough*  
Vice President

## AGREEMENT

### 1.00 - GENERAL

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_, hereinafter called "CONTRACTOR" and the City of Warrenton, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

That the said CONTRACTOR and the said CITY, for the consideration hereinafter named agree as follows:

### 2.00 - DESCRIPTION OF WORK

The CONTRACTOR agrees to perform the work of:

## SW Alder Avenue 2nd Street to 1st Street

and do all things required of it as per his Bid, all in accordance with the described Bid, a copy of which is hereto attached and made a part of this Contract.

### 3.00 - COMPLETION OF CONTRACT

The CONTRACTOR agrees that the Work under this Contract shall be completed by the following dates:

- Substantial Completion – Monday, August 9, 2021
- Final Completion – Thursday, August 19, 2021

If said CONTRACTOR has not fully completed this Contract within the time set or any extension thereof, it shall pay liquidated damages in accordance with Section 00180.85 of the General Conditions.

### 4.00 - CONTRACT PRICE

The Contract Price for this project is \$\_\_\_\_\_. Payment will be made in accordance with ORS 279C.560 including progress payments at the end of each month. Retainage will be withheld in accordance with ORS 279C.550 - .565.

### 5.00 - CONTRACT DOCUMENTS

The CONTRACTOR and the CITY agree that the plans, specifications (including the ODOT/APWA 2015 Oregon Standard Specifications for Construction and Contract Documents defined in Section 00110.20 of the Contract Documents General Conditions and all modifications thereto) and bid are, by this reference, incorporated into this Contract and are fully a part of this contract.

### 6.00 - NONDISCRIMINATION

It is the policy of the City of Warrenton that no person shall be denied the benefits of or be subjected to discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity and expression. The City of Warrenton also requires its contractors and grantees to comply with this policy.

### 7.00 - CONTRACTOR IS INDEPENDENT CONTRACTOR

A. CONTRACTOR acknowledges that for all purposes related to this Contract, CONTRACTOR is and shall be deemed to be an independent CONTRACTOR and not an employee of CITY, shall not be entitled to benefits of any kind to which an employee of the CITY is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that CONTRACTOR is found by a court of law or an administrative agency to be an employee of the CITY for any purpose, CITY shall be entitled to repayment of any amounts from CONTRACTOR under the terms of the Contract; to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as result of said finding and



to the full extent of any payments that CITY is required to make (to CONTRACTOR or to a third party) as a result of said finding.

B. The undersigned CONTRACTOR hereby represents that no employee of the City of Warrenton, or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from the CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

**8.00 - SUBCONTRACTS - RELATIONS WITH SUBCONTRACTORS, ASSIGNMENTS AND DELEGATION**

A. Assignment or Transfer Restricted. The CONTRACTOR shall not assign, sell, dispose of, or transfer rights nor delegate duties under the contract, either in whole or in part, without the CITY's prior written consent. Unless otherwise agreed by the CITY in writing, such consent shall not relieve the CONTRACTOR of any obligations under the contract. Any assignee or transferee shall be considered the agent of the CONTRACTOR and be bound to abide by all provisions the contract. If the CITY consents in writing to an assignment, sale, disposal or transfer of the CONTRACTOR's rights or delegation of the CONTRACTOR's duties, the CONTRACTOR and its surety, if any, shall remain liable to the CITY for complete performance of the contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the CITY otherwise agrees in writing.

B. CONTRACTOR may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. If CONTRACTOR violates this prohibition, the CITY will regard the violation as a breach of contract and may either terminate the contract or exercise any other remedy for breach of contract.

**9.00 - NONWAIVER**

The failure of the CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this Contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

**10.00 - LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS AND WITHHOLDING TAXES**

CONTRACTOR shall make payment promptly, as due, to all persons supplying CONTRACTOR labor or material for the prosecution of the work provided for this contract.

CONTRACTOR shall pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR or any subcontractor incurred in the performance of the contract.

CONTRACTOR shall not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished.

CONTRACTOR shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**11.00 - CERTIFICATION OF COMPLIANCE WITH TAX LAWS**

As required by ORS 305.385(6), CONTRACTOR certifies under penalty of perjury that the CONTRACTOR, to the best of CONTRACTOR's knowledge, is not in violation of any of the tax laws described in ORS 305.380(4).

**12.00 - CITY OCCUPATION TAX**

Prior to starting work, CONTRACTOR shall pay the CITY occupation tax and provide the Public Works Department with a copy of occupation tax receipt. CONTRACTOR shall, likewise, require all subcontractors to pay the CITY occupation tax and provide a copy of the receipt to the Public Works Department prior to commencement of work.

CITY OF WARRENTON

a municipal corporation of the State of Oregon

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

BY:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

---

CONTRCATOR:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

PERFORMANCE BOND  
For

# SW Alder Avenue 2nd Street to 1st Street

For  
The City of Warrenton

AMOUNT \$ \_\_\_\_\_

BOND NO. \_\_\_\_\_

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, \_\_\_\_\_, hereinafter called  
(Name of Contractor)

the PRINCIPAL, as Principal, and \_\_\_\_\_,  
(Name of Surety)

a corporation and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to transact a surety business in the State of Oregon, hereinafter called the SURETY, as Surety, are held and firmly bound unto the City of Warrenton, a Municipal Corporation of the State of Oregon, hereinafter called the OBLIGEE, in the

penal sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) for the payment of which sum well and truly to be made, the said PRINCIPAL and the said SURETY bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 the PRINCIPAL entered into a certain contract with the OBLIGEE, a copy of which is hereto attached and made a part hereof for the construction of:

# SW Alder Avenue 2nd Street to 1st Street

City of Warrenton, Oregon

NOW, THEREFORE, if the PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall well and truly perform all matters and things undertaken to be performed under said contract upon the terms proposed therein and shall promptly make payments to all persons supplying labor or material for any prosecution of the work provided for each contract and shall not permit any lien or claim to be filed or prosecute against the OBLIGEE on account of any labor or material furnished, and shall promptly pay all contributions or amounts due the State Accident Insurance Fund and all contributions or amounts due the State Un-employment Compensation Trust Fund incurred in the performance of said contract and shall promptly, as due, make payment to the person, co-partnership, association or corporation entitled thereto of the moneys and sums mentioned in Section 279 of the Oregon Revised Statutes, then this obligation is to be void, otherwise to remain in full force and effect.

This performance bond shall also guarantee the improvement against defects in materials or workmanship for a period of one (1) year from the date of written Substantial Completion acceptance of the subject project by the OBLIGEE.

The total amount of the SURETY's liability under this bond both to the OBLIGEE and to the persons furnishing labor or materials, provisions and goods and to any other person or persons, shall in no event exceed the penalty hereof.

Provided, however, that the conditions of the obligation shall not apply to any money loaned or advanced to the PRINCIPAL or to any subcontractor or other person in the performance of any such work, whether specifically provided for in the contract or not.

This bond is executed for the purpose of complying with Chapter 279 of Title 26, Oregon Revised Statutes, the provisions of which are hereby incorporated herein and made a part hereof.

IN WITNESS WHEREOF, this instrument is executed in three counterparts each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CONTRACTOR AS PRINCIPAL:

SURETY:

(Corp. Seal)

(Corp. Seal)

Company: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**(Attach Power of Attorney)**

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety company executing BOND must be authorized to transact business in the State of Oregon.

PAYMENT BOND

For

# SW Alder Avenue 2nd Street to 1st Street

For

The City of Warrenton

AMOUNT \$ \_\_\_\_\_

BOND NO. \_\_\_\_\_

KNOW ALL PEOPLE BY THESE PRESENTS:

That we, \_\_\_\_\_, hereinafter called  
(Name of Contractor)

the PRINCIPAL, as Principal, and \_\_\_\_\_,  
(Name of Surety)

a corporation and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to transact a surety business in the State of Oregon, hereinafter called the SURETY, as Surety, are held and firmly bound unto THE CITY OF WARRENTON, a Municipal Corporation of the State of Oregon, hereinafter called the OBLIGEE, and unto all persons, firms and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total

aggregate penal sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) for the payment of which sum well and truly to be made, the said PRINCIPAL and the said SURETY bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 the PRINCIPAL entered into a certain contract with the OBLIGEE, a copy of which is hereto attached and made a part hereof for the construction of:

# SW Alder Avenue 2nd Street to 1st Street

City of Warrenton, Oregon

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for, or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for materials consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and

to any mechanic or material man lien holder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL shall have given written notice to any two of the following: the PRINCIPAL, the OBLIGEE, or the SURETY above named within one hundred twenty (120) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OBLIGEE, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date on which PRINCIPAL ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 25 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OBLIGEE and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.



IN WITNESS WHEREOF, this instrument is executed in three counterparts each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CONTRACTOR AS PRINCIPAL:

SURETY:

(Corp. Seal)

(Corp. Seal)

Company: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**(Attach Power of Attorney)**

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety company executing BOND must be authorized to transact business in the State of Oregon.

General Conditions for Construction

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## PART 00100 - GENERAL CONDITIONS

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

#### Organization

**00110.00 Organization of Specifications** - The Specifications are comprised of the following:

- The "General Conditions for Construction for the City of Warrenton (Agency)," published by the Agency, which contain Part 00100 "General Conditions", which deal with the solicitation process and contractual relationships;
- The "2018 Oregon Standard Specifications for Construction," which contain Parts 00200 through 03000, published by the Oregon Department of Transportation which contain the detailed "Technical Specifications" involved in prosecution of the Work, organized by subject matter; and
- The Special Provisions.

In addition, throughout the Specifications:

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

#### Conventions

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

**(a) Grammar** – The "General Conditions for Construction for the City of Warrenton (Agency)", part 00100 "General Conditions", is written in the indicative mood, in which the subject is expressed. The "2015 Oregon Standard Specifications for Construction", published by the Oregon Department of Transportation, which contain parts 00200 through 03000, the detailed "Technical Specifications", are generally written in the imperative mood, in which the subject is implied. Therefore, throughout Parts 00200 through 03000, and on the Plans:

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

**(b) 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 through 03000, defined terms will generally not be capitalized, with the notable exception of "the Contractor", "the Agency", 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.

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

### Abbreviations

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

AAR	- Association of American Railroads
AASHTO	- American Association of State Highway and Transportation Officials
ABC	- Associated Builders and Contractors, Inc.
AC	- Asphalt Concrete
ACI	- American Concrete Institute
ACP	- Asphalt Concrete Pavement
ACWS	- Asphalt Concrete Wearing Surface
AGC	- Associated General Contractors of America
AIA	- American Institute of Architects
AISC	- American Institute of Steel Construction
AISI	- American Iron and Steel Institute
AITC	- American Institute of Timber Construction
ANSI	- American National Standards Institute
APA	- Engineered Wood Association
APWA	- American Public Works Association
AREMA	- American Railway Engineering and Maintenance of Right-of-Way 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 Protection Association
AWS	- American Welding Society
AWWA	- American Water Works Association
CAgT	- Certified Aggregate Technician
CAT-I	- Certified Asphalt Technician I
CAT-II	- Certified Asphalt Technician II
CBM	- Certified Ballast Manufacturers
CCO	- Contract Change Order
CCT	- Concrete Control Technician
CDT	- Certified Density Technician
CEBT	- Certified Embankment and Base Technician
CMDT	- Certified Mixture Design Technician
CPF	- Composite Pay Factor
CRSI	- Concrete Reinforcing Steel Institute
CFR	- Code of Federal Regulations
CS	- Commercial Standard, Commodity Standards Division, U.S. Department of Commerce
D1.1	- Structural Welding Code - Steel, American Welding Society, current edition
D1.5	- Bridge Welding Code, American Welding Society, current edition
DBE	- Disadvantaged Business Enterprise
DEQ	- Department of Environmental Quality, State of Oregon
DOGAMI	- Department of Geology and Mineral Industries, State of Oregon
DSL	- Department 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
ICEA	- Insulated Cable Engineers Association (formerly IPCEA)
IES	- Illuminating Engineering Society
IMSA	- International Municipal Signal Association
ISO	- International Standards Organization
ITE	- Institute of Transportation Engineers
JMF	- Job Mix Formula
MFTP	- Manual of Field Test Procedures (ODOT)
MIL	- Military Specifications
MSC	- Minor Structure Concrete
MUTCD	- Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation
NEC	- National Electrical Code
NEMA	- National Electrical Manufacturer's Association
NESC	- National Electrical Safety Code
NIST	- National Institute of Standards and Technology
NPDES	- National Pollutant Discharge Elimination System
NPS	- Nominal Pipe Size (dimensionless)
OAR	- Oregon Administrative Rules
ODA	- Oregon Department of Agriculture
ODOT	- Oregon Department of Transportation
ORS	- Oregon Revised Statutes
OR-OSHA	- Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services
OSHA	- Occupational Safety and Health Administration, U.S. Department of Labor
PCA	- Portland Cement Association

PCC	- Portland Cement Concrete
PCI	- Precast/Prestressed Concrete Institute
PCP	- Pollution Control Plan
PF	- Pay Factor of a constituent
PLS	- Professional Land Surveyor
PMBB	- Plant Mixed Bituminous Base
PTI	- Post-Tensioning Institute
PUC	- Public Utility Commission, State of Oregon
QA	- Quality Assurance
QC	- Quality Control
QCT	- Quality Control Technician
QL	- Quality Level
QPL	- Qualified Products List
RAP	- Reclaimed Asphalt 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	- Society for Protective Coatings
T	- Tolerances, AASHTO Test Method
TM	- Test Method (ODOT)
TV	- Target Value
UBC	- Uniform Building Code (as adopted by the State of Oregon)
UL	- Underwriters Laboratory, Inc.
UPC	- Uniform Plumbing Code (as adopted by the State of Oregon)
USC	- United States Code
WAQTC	- Western Alliance for Quality Transportation Construction
WCLIB	- West Coast Lumber Inspection Bureau
WWPA	- Western Wood Products Association

### Definitions

**00110.20 Definitions** - Following are definitions of words and phrases used in the Standard Specifications, in the Special Provisions, on the Plans, and in other Contract Documents. Other definitions may be in the individual Sections of the Standard Specifications to which they apply, in the Special Provisions, and in OAR 731-005 and OAR 731-007.

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

**Addendum** - A written or graphic modification, issued before the opening of Bids, which revises, adds to, or deletes information in the Solicitation Documents or previously issued Addenda.

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

**Advertisement** - The public announcement (Call for Bids) inviting Bids for Work to be performed or Materials to be furnished.

**Agency** - The City of Warrenton, a municipal corporation of the State of Oregon, which has entered into a Contract with the Contractor.

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

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

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

**Award** - Written notification to the Bidder that the Bidder has been awarded a Contract.

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

**Bid** - A competitive offer, binding on the Bidder and submitted in response to an invitation to bid.

**Bid Bond** - The Surety bond for Bid guarantee.

**Bid Booklet** - The information included in the Solicitation Documents that contain the information identified in 00120.10.

**Bid Closing** - The date and time after which Bids, Bid modifications, and Bid withdrawals will no longer be accepted.

**Bid Documents** - See under Solicitation Document.

**Bid Opening** - The date and time Bids are opened.

**Bid Schedule** – The lump sum Pay Item; or 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 Section** - The portion of the Bid Booklet containing all pages after the Bidder's checklist and before the appendix.

**Bidder** - An Entity that submits a Bid in response to an 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.

**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.

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

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

**Call for Bids** - The public announcement inviting Bids for Work to be performed or Materials to be provided.

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

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

**Class of Work** - A designation referring to the type of Work in which Bidders must be pre-qualified, if prequalification is required.

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

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

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

**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.

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

**Conduct Disqualification** - A disqualification under ORS 279C.440.

**Construction Contracts Unit** - Agency's office that administers construction contracts.

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

**Contract Administration Engineer** - The Agency representative presiding over Agency-level claims review under 00199.40.

**Contract Amount** - Lump sum Pay Item or the sum of the Pay Item amounts computed by multiplying the Pay Item quantities by the unit prices in the Schedule of Items.

**Contract Day** - A day counted for purposes of charging Contract Time.

**Contract Documents** - Solicitation Documents, Specifications, Standard and Supplementary Drawings, Contract booklet, Change Orders, Force Account Work orders, pay documents issued by the Agency, Materials certifications, Project Work schedules, final estimate, written orders and authorizations issued by the Agency, Material source development and reclamation plans, and permits, orders and authorizations obtained by the Contractor or Agency applicable to the Project, as well as all documents incorporated by reference therein.

**Contract Time** - The amount of time allowed to complete the Work under the Contract.

**Contractor** - The Entity awarded the Contract according to the solicitation.

**Correction Period** - Period from Second Notification to Final Acceptance as per Subsection 00170.85(b).

**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.

**Day** - A Calendar Day including weekdays, weekends, and holidays, unless otherwise specified.

**Defective** - An adjective which when modifying the word "Work" refers to work that: (1) is unsatisfactory, faulty or deficient; (2) does not conform to the Contract Documents; (3) does not meet the requirements of any inspection, test for approval referred to in the Contract Documents; or (4) has been damaged prior to Engineer's issuance of Third Notification (Final Completion).

**Design Engineer** - The individual or entity named in the Special Provisions who designed part or all of the Project and who, by contract, has been assigned duties and responsibilities to assist Agency and Project Manager in administration of the Contract.

**Digital Signature** - A form of electronic signature that is registered with a certification authority, e.g., VeriSign or similar digital signature software company, which requires a password to be entered in order to generate the digital signature upon the electronic document. Once the digital signature is applied, any alteration of the document results in the elimination of the digital signature on the document.

**Disqualification** - The preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with OAR 137-049-0370.

**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.

**Emulsified Asphalt** - Emulsified asphalt cement.

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

**Engineer (Project Manager)** - See Project Manager.

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

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

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

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

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

**Field Order** - A written order issued by the Engineer which requires minor changes in the Work but which may not involve a change in the Contract Amount or the Contract Times.

**Final Acceptance** - Written confirmation by the Agency that the Project has been completed according to the Contract including all corrective work identified by the Agency during the Correction Period, with the exception of latent defects and Warranty obligations, if any, and has been accepted.

**Final Inspection** - The inspection conducted by the Engineer to determine that the Project has been completed according to the Contract.

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

**First Notification** - Written Notice to Proceed issued to the Contractor by the Engineer.

**Foreign Contractor** - A contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 137-049-0480.

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

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

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

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

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

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

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

**Lift** - The compacted thickness of material placed by Equipment in a single Pass.

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

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

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

**Milestone** - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

**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 authorizing the Contractor to begin performance of the Work.

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

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

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

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

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

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

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

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

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

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

**Plans (Drawings)** - Standard and Supplemental Drawings, and reviewed unstamped and stamped Shop Drawings and Deferred Submittals. See 00150.10 and 00150.35.

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

**Project Manager (Engineer)** - The Agency's representative assigned by the Agency to administer the Contract who assumes the responsibilities, duties and authorities of the Project Manager (Engineer) as indicated throughout the Contract Documents.



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

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

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

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

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

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

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

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

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

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

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

**Schedule of Items** - The list of Pay Items, their units of measurement, estimated quantities, and prices.

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

**Second Notification** - Written acknowledgment by the Engineer of the Substantial Completion of a Milestone or of the Work according to 00180.50(g).

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

**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** - Documents which define the procurement of a public improvement Project, including, but not limited to, the Bid Booklet, Agency-provided Plans, Standard Specifications, Special Provisions, Addenda, and which includes all documents incorporated by reference. May also be called Bid Documents.

**Special Provisions** - The special directions, provisions, and requirements specific to a Project that supplement or modify the Standard Specifications. Permits and orders governing the Project that are issued directly to the Agency by a governmental or regulatory authority are considered to be part of the Special Provisions, to the extent and under the conditions stipulated in the Special Provisions.

**Specifications** - The Standard Specifications and Special Provisions, together with all provisions of other documents incorporated therein by reference.

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

**Standard Specifications** - The "General Conditions for Construction for the City of Warrenton" published by the Agency, and the "2018 Oregon Standard Specifications for Construction", Parts 00200 through 03000, "Technical Specifications", published by the Oregon Department of Transportation as amended by the Agency. It provides directions, provisions, and requirements necessary for performing public improvement projects.

**State** - The State of Oregon.

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

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

**Substantial Completion** - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Warranty Bond** - The approved security furnished by the Contractor's, Subcontractor's, Manufacturer's, Installer's or Supplier's Surety as a guaranty of performance of their respective warranty obligations.

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

**Work** - The furnishing of all Materials, Equipment, labor, and Incidentals necessary to successfully complete any individual Pay Item or the entire Contract, and the discharge of duties and obligations imposed by the Contract.

**Work Change Directive** – A written statement to Contractor issued on or after the Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Amount or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Amount or Contract Times.

**Work Day** - Every Calendar day excluding Saturdays, Sundays and legal holidays as listed in ORS187.010.

**Worker** - Any person performing work under the contract, including employees of the Contractor or subcontractor, and persons having full or partial ownership of the Contractor or subcontractor. (This definition is not intended to nor does it alter the definition or meaning of the term "worker" as used in any applicable laws or regulations, including but not limited to for purposes of paying prevailing wage rates.)

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

**Workplace Violence** - Any act of physical, verbal or written aggression by an individual in or related to the work place and/or project sites. This includes, but is not limited to, verbal abuse, threats or intimidation and physical intimidation, assault or battery by a worker or former worker. Work place violence may also include destruction or abuse of property.

## Section 00120 - Bidding Requirements and Procedures

00120.01 Receipt of Bids; Opening – See Special Provisions.

00120.02 Prequalification of Bidders – See Special Provisions.

00120.03 Request for Solicitation Documents – See Special Provisions.

00120.04 Pre-Bid Meeting – See Special Provisions

00120.10 Bid Booklet - The Bid Booklet may include, but is not limited to:

- Call for Bids
- Bidder's Checklist
- Bid Section
- Appendix, which includes required time-sensitive forms, sample forms, and other informational pages

The Call for Bids and Bid Section may include, but is not limited to:

- Description and location of the proposed Project
- Time, date, and location for opening Bids
- Project completion time
- Class of Work
- Bid statement
- Certificate of non-collusion
- Certificate of Nondiscrimination
- Certificate of noninvolvement in any debarment or suspension (for Federal-Aid Projects)
- Certificate regarding lobbying activities (for Federal-Aid Projects)
- Certificate of residency (for State Projects)
- Certificate of compliance with Oregon tax laws
- Bid Schedule
- Identification of Bidder(s) and Sureties
- Bid signature page
- Bid Bond form
- First-tier Subcontractor Disclosure form

Other certificates or statements may be bound within the Bid Section. Plans, Specifications, and other documents referred to in the Bid Section will be considered part of the Bid.

**00120.15 Examination of Work Site and Solicitation Documents; Consideration of Conditions to be Encountered** - Before submitting a Bid, Bidders shall make a careful visual examination of the site of the proposed Work, the Bid Booklet, Plans, and Specifications. Bidders shall also review any subsurface investigation material referenced in 00120.25 that may be available and conduct additional investigation of any unusual condition apparent during the visual site examination. As soon as reasonably practicable after noting any such unusual condition, Bidder shall notify Agency, in writing, of any such unusual condition and the additional investigation undertaken by Bidder. Submission of a Bid will constitute confirmation that the Bidder has examined the Project Site and finds the Plans and Specifications to be sufficiently detailed and accurate to enable Bidder to properly perform the Work, and understands the conditions to be encountered in performing the Work and all requirements of the Contract.

The Bidder is responsible for loss or unanticipated costs suffered by the Bidder because of the Bidder's failure to fully examine the site and become fully informed about all conditions of the Work, or failure to request clarification of Plans and Specifications Bidder believes to be erroneous or incomplete.

Any requests for clarification of or changes to Plans and Specifications by the Bidder shall be requested in writing by email through the Engineer. Notification of erroneous or incomplete Plans or Specifications shall also be submitted to the Engineer. Unless the procurement period is shorter than one week, notifications and requests for changes or clarification shall be submitted at least seven days prior to the date of Bid Closing. The Agency will respond to each request at least 72 hours prior to the date of Bid Closing. If the Procurement period is less than seven days, requests shall be submitted within one day after the Procurement is issued and the Agency will issue its response to each such request at least 24 hours prior to Bid Closing. Failure to timely request clarification or changes shall be deemed acceptance of all of the terms and conditions of the Procurement. Oral explanations or interpretations given before receiving Bids for a Project will not be binding. To be binding, interpretation of the Plans and Specifications by the Agency must be made by written Addendum furnished to all Holders of Bidding Plans according to 00120.30.

**00120.16 Material, Equipment, and Method Substitutions** - When the Contract specifies certain Materials, Equipment, and/or Methods, the Bidder shall include those Materials, Equipment, and/or Methods in the Bid. Substitution after execution of Contract is specified in 00180.31(b), 00180.31(c), and 00180.31(d).

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

(a) **Within Normal Right-of-Way Limits** - If approved by the Engineer, the Contractor may use available property within the normal Right-of-Way limits for the purpose of constructing improvements under the Contract as long as such use does not unduly impede other legitimate users of the Right-of-Way or adjacent properties. Where the Agency owns, or has rights to, other adjacent properties in the Project area, "normal Right-of-Way" is limited to a line drawn across that property connecting the normal Right-of-Way limits on either side of the property.

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

If a Bidder obtains approval before submitting a Bid, use of the property will be at no cost to the Contractor, or at a cost stated by the Engineer upon granting approval, as confirmed by Addendum.

If approval is not obtained before submitting a Bid, and the Contractor proposes to use Agency-owned property outside the normal Right-of-Way limits, then use of the property may be approved by the Engineer, but the Contractor will be assessed fair market value, as determined by the Engineer, for use of the property.

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

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

**00120.20 Interpretation of Quantities in Bid Schedule** - Quantities appearing in the Bid Schedule are approximate and are provided only for comparison of Bids. The Agency does not warrant that the actual individual items, amount of Work, or quantities will correspond to those shown in the Bid Schedule. Payment to the Contractor will be made only for actual quantities of Work performed and accepted or Materials furnished and accepted, as required by the Contract. Quantities of Work to be performed and Materials to be furnished may each be increased, decreased, or omitted as provided in 00120.30 and 00140.30.

**00120.25 Subsurface Investigations** - If the Agency has conducted subsurface or geologic investigations of the proposed Project Site or contiguous to the Project Site, the results of the investigations may be included in written geotechnical data reports. If geotechnical data reports have been prepared, such reports shall be included in the Solicitation Documents (see special provisions) and shall be considered as part of the Contract Documents to the extent

that the Contractor may rely upon the accuracy of the "technical data" contained in such reports. If the Agency has retained subsurface samples, they will also be available for inspection. Bidders and the Contractor may make arrangements for viewing the samples through the Engineer's office.

The availability of subsurface information from the Agency is solely for the convenience of the Bidder and shall not relieve the Bidder or the Contractor of any risk, duty to make examinations and investigations as required by 00120.15, or other responsibility under the Contract Documents. It is mutually agreed to by all parties that:

The subsurface investigations made by the Agency are for the purpose of obtaining data for planning and design of the Project.

The data for individual test boring logs apply only to that particular boring and is not intended to be conclusive as to the character of any material between or around test borings.

If Bidders use this information in preparing a Bid, it is used at their own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from this information.

Contractor may not rely upon or make any claim against Owner, including its Engineer, or Design Engineer, or any of their officers, directors, members, partners, employees, consultants, or subcontractors with respect to any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

**00120.30 Changes to Plans, Specifications, or Quantities before Opening of Bids** - The Agency reserves the right to issue Addenda making changes or corrections to the Plans, Specifications, or quantities. Only holders of Solicitation Documents obtained from the Agency's office who have been identified by the Agency as Holders of Bidding Plans will be notified of these Addenda by mail, delivery service, or email sent to the Bidder's mail, street or email address as it appears in the Agency's files.

The Agency may extend Bid Closing if Agency determines prospective bidders need additional time to review and respond to addenda. Agency will not, except to the extent required by a countervailing public interest, issue Addenda less than 72 hours before Bid closing unless the Addendum also extends Bid Closing.

Bidders shall acknowledge Addenda by listing Addenda on the Bid Form. The Agency will not be responsible for failure of Bidders to receive Addenda sent as described in the preceding paragraph. Bids shall incorporate all Addenda. Bids may be rejected if opened and found by the Agency to not be based on all Addenda issued before Bid Closing.

#### **00120.40 Preparation of Bids:**

##### **(a) General:**

**(1) Bids** - The Bidders shall not alter, in any manner, the documents within the Bid Section. Bidders shall complete the certifications and statements included in the Bid Section of the Bid Booklet according to the instructions. Signature of the Bidder's authorized representative thereon constitutes the Bidder's confirmation of an agreement to all certifications and statements contained in the Bid Booklet. Entries on the documents in the Bid Section shall be in black or blue ink or typed. Signatures and initials shall be in ink.

The Bidder shall properly complete and bind all the documents in the Bid Section, as specified in 00120.10, between the front and back covers of the Bid Booklet, except that the Bid Bond is not required if another permissible type of Bid guaranty is provided. (see 00120.40(d))

##### **(b) Bid Schedule Entries:**

**(1) Bid Schedule Entries** - Using figures, Bidders shall fill in all blank spaces in the Bid Schedule. For each item in the Bid Schedule, Bidders shall enter the unit price and the product of the unit price multiplied by the quantity given. The unit price shall be greater than zero, shall contain no more than two decimal places to the right of the decimal point, and shall be expressed in U.S. dollars and cents (for example, \$150.25 or \$0.37). Unit prices submitted which contain more than two decimal places, will be truncated by the Agency at the second decimal place to determine the product of the unit price and quantity. No rounding will be considered or paid. Bidders Bid shall also enter the total amount of the Bid obtained by adding amounts for all items in the paper Bid Schedule. Corrections or changes of item entries shall be in ink, with incorrect entry lined out and correct entry entered and initialed in ink by the person signing the Bid.

(c) **Bidder's Address and Signature Pages** - Bidders shall include in the Bid the address to which all communications concerning the Bid and Contract should be sent. The Bid must be signed by a duly authorized representative of the Bidder.

d) **Bid Guaranty** - All Bids shall be accompanied by a Bid guaranty in the amount of Five Percent (5%) of the total amount of the Bid.

(1) **Bid Guaranty** The Bid guaranty shall be either a Surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or security in the form of a cashier's check or certified check made payable to the Agency. (see ORS 279C.365(4))

If a Surety bond is submitted, Bidders shall use the Agency's standard Bid Bond form included with the Bid Booklet or an alternative Bid Bond form, including terms of the Agency's standard Bid Bond, acceptable to the Agency. Bidders shall submit the bond with original signatures and the Surety's seal affixed. The Bid guaranty shall be submitted by mail, delivery service, or hand delivered to the offices and addresses, and at the times given in the Bid Booklet.

- Acceptable Surety companies are limited to those authorized to do business in the State of Oregon.
- Forfeiture of Bid guaranties is covered by 00130.60, and return of guaranties is covered by 00130.70.

(e) **Disclosure of First-Tier Subcontractors** - If the Bidder's Bid exceeds \$100,000, or without regard to the amount of a Bidder's Bid, if the Agency's cost estimate for a public improvement project as indicated in the Invitation for Bids exceeds \$100,000, the Bidder shall, within two working hours of the time Bids are due to be submitted, submit to the Agency, on a form provided by the Agency, a disclosure identifying any first-tier Subcontractors that will furnish labor or labor and Materials, and whose contract value is equal to or greater than:

- 5% of the total Project Bid, but at least \$15,000; or
- \$350,000, regardless of the percentage of the total Project Bid.

For each Subcontractor listed, Bidders shall state:

- The name of the Subcontractor;
- The dollar amount of the subcontract; and
- The category of Work that the Subcontractor would be performing.

If no subcontracts subject to the above disclosure requirements are anticipated, a Bidder shall so indicate by entering "NONE" or by filling in the appropriate check box. For each Subcontractor listed, Bidders shall provide all requested information. An incomplete form will be cause for rejection of the Bid.

The Subcontractor Disclosure Form may be submitted for a Bid either:

- By filling out the Subcontractor Disclosure Form included in the Bid Booklet and submitting it together with the Bid at the time and place designated for receipt of Bids;
- By removing it from the Bid Booklet, filling it out and submitting it separately to the Agency at the address given in the Bid Booklet; or
- The Subcontractor Disclosure Form shall be sealed in a separate envelope, addressed to Public Works Director, City of Warrenton, 225 S Main Ave. Warrenton, OR 97146, showing on the outside of the envelope the name of the Bidder and the Contract title preceded by the words "Subcontractor Disclosure Form". **Facsimile submissions of Subcontractor Disclosure Form will not be accepted.**

Subcontractor Disclosure Forms submitted by any method will be considered late if not received by the Agency within two 2 working hours of the time designated for receiving Bids.

**THE AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see OAR 137-049-0360).**

#### **00120.45 Submittal of Bids:**



- (a) **Bids** - Bids may be submitted by mail, parcel delivery service, or hand delivery to the Agency, and at the times given in the Bid Booklet. Bids may not be submitted by FAX or electronic means. Submit Bids in a sealed envelope addressed to Public Works Director, City of Warrenton, 225 S Main Ave. Warrenton, OR 97146 Date of opening and Project title must be plainly marked on the outside of the sealed envelope preceded by the words "Sealed Bid". If a delivery or courier service is used, the Bidder shall place the sealed envelope containing the paper Bid inside the delivery or courier service's envelope.

Bids submitted after the Bid Closing time will not be opened or considered. The Agency assumes no responsibility for the receipt and return of late Bids.

Preparation and submission of Bids is at the sole risk and expense of the Bidder and is not a cost of contract performance.

**00120.60 Modification or Withdrawal of Bids:**

- (a) **Modification** - Bids once submitted may be modified in writing prior to the time and date set for Bid Closing and submitted to the place designated for receipt of Bids. Any modifications shall be prepared on the company letterhead, signed by an authorized representative, and state that the new document supersedes or modifies the prior Bid. The Bid modification shall be delivered in a sealed envelope and shall be marked as follows:

**BID MODIFICATION**  
**Bid Title and Closing Date and Time**

- (b) **Withdrawal** - Bids may be withdrawn by written notification on company letterhead signed by an authorized representative and received prior to the time and date set for Bid Closing and submitted to the place designated for receipt of Bids. Bids also may be withdrawn in person prior to the scheduled Bid Closing upon presentation of appropriate identification.

Requests to withdraw Bids shall be marked as follows

**BID WITHDRAWAL**  
**Bid Title and Closing Date and Time**

No Bid can be withdrawn after having been opened.

**00120.65 Opening and Comparing Bids** - Bids will be opened and the total price for each Bid will be read publicly at the time and place indicated in the Call for Bids. Bidders and other interested parties are invited to be present.

Bids for each Project will be compared on the basis of the total amount of each Bid. The total amount of the Bid will be the total sum computed from quantities listed in the Bid Schedule and unit prices entered by the Bidder.

In case of conflict between the unit price and the corresponding extended amount, the unit price shall govern, and the Agency may make arithmetic corrections on extension amounts.

Error(s) discovered after Bid Opening cannot be corrected by the Bidder, and the contractor will be required to perform work at the unit price if its Bid is accepted.

**00120.70 Rejection of Nonresponsive Bids** - A Bid will be considered irregular and will be rejected if the irregularity is deemed by the Agency to render the Bid non-responsive. Examples of irregularities include without limitation:

- The Bid Section documents provided are not properly used or contain unauthorized alterations.
- The Bid is incomplete or incorrectly completed.
- The Bid contains improper additions, deletions, alternate Bids, or conditions.
- The Bid is submitted on documents not obtained directly from the Agency, or is submitted by a Bidder who has not been identified by the Agency as a Holder of Bidding Plans, as required by 00120.03.
- The Bid or Bid modifications are not signed by a person authorized to submit Bids or modify Bids, as required by 00120.40 and 00120.60.

- A member of a joint venture and the joint venture submit Bids for the same Project. Both Bids may be rejected.
- The Bid has entries not typed or in ink, or has signatures or initials not in ink.
- Each change or correction is not individually initialed.
- White-out tape or white-out liquid is used to correct item entries.
- The price per unit cannot be determined.
- The Bid guaranty is insufficient or improper.
- The original Bid Bond form is not used or is altered.
- The Oregon Construction Contractors Board registration number and expiration date are not shown on the Bid if required in the Solicitation Document. This requirement applies to Agency and State-funded Projects, with the exception of Aggregate production and landscape Projects. (not required on Federal-Aid Projects)
- A disclosure of qualified first-tier Subcontractors, if required under 00120.40(e), is not received within 2 working hours of the time Bids are due to be submitted, or the disclosure form is not complete.
- The Bidder has not complied with the DBE requirements of the solicitation.
- The Bid does not acknowledge all issued Addenda.
- The Bid contains entries that are not greater than zero.
- The Bid entries are not expressed in U.S. dollars and cents.
- The Agency determines that any Pay Item is significantly unbalanced to the potential detriment of the Agency.

In addition, the Agency may reject all Bids and suspend the project in the event all Bids exceed the funds the Agency has appropriated for the project or for good cause upon its finding that it is in the public interest to do so. The Agency may also waive minor informalities or irregularities.

**00120.80 Reciprocal Preference for Oregon Resident Bidders** - This Subsection applies only to Contracts for Projects financed without federal funds.

Bidders shall complete the certificate of residency provided by the Agency in the Bid Booklet. Failure to properly complete the form will be cause to reject the Bid.

As used in the certificate of residency and this Subsection, "Resident Bidder" means a Bidder who has:

- Paid unemployment taxes or income taxes in the State of Oregon during any of the 12 calendar months immediately preceding submission of the Bid;
- A business address in the State of Oregon; and
- Certified in the Bid that the Bidder qualifies as a Resident Bidder.

"Nonresident Bidder" means a Bidder who is not a Resident Bidder as defined above.

In determining the lowest Bid, the Agency will, for the purpose of awarding the Contract, add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides (ORS 279A.120). The percentage preference applied in each state will be published on or before January 1 of each year by the Oregon Department of Administrative Services. The Agency may rely on these percentages without incurring liability to any Bidder (ORS 279A.120).

This increase will only be applied to determine the lowest Bid, and will not cause an increase in payment to the Contractor after Award of the Contract.

**00120.90 Disqualification of Bidders** - The Bid(s) of a disqualified Bidder will be rejected. Any of the following reasons is sufficient to disqualify a Bidder:

- More than one Bid is submitted for the same Work by an Entity under the same or different name(s).
- Evidence of collusion among Bidders. Participants in collusion will be found not responsible, and may be subject to criminal prosecution.
- Any of the grounds for disqualification cited in ORS 279C.440.

A Bidder will be disqualified if the Bidder has:

- Not been prequalified if required by 00120.02;
- Been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860;
- Not been registered (licensed) by the Oregon Construction Contractors Board (CCB) or been licensed by the State Landscape Contractors Board before submitting a Bid (ORS 279C.365(1)(k), ORS 701.021, ORS 701.026, and ORS 671.530). The Bidder's registration number and expiration date shall be shown in the Bid form, if requested. Failure to furnish the registration number, if requested, will render the Bid non-responsive and subject to rejection. (not required on Federal-Aid projects); or
- Been determined by the CCB under ORS 701.227 not to be qualified to hold or participate in a public contract for a public improvement.

**00120.91 Rejection of Bid on Grounds of Nonresponsibility of Bidder** - The Bid of a Bidder who is found to be nonresponsible according to the criteria listed in 00130.10 or ORS 279C.375(3) will be rejected.

## Section 00130 - Award and Execution of Contract

**00130.00 Consideration of Bids** - After opening and reading Bids, the Agency will check them for correct extensions of unit prices and totals. (see 00120.65) The total of extensions, corrected where necessary, will be used by the Agency for Award purposes. Discrepancies between words and figures will be resolved in favor of words. In selecting the lowest responsive Bid that meets the criteria for award, the Agency reserves the right to take into consideration any or all alternatives called for in the Bid Form.

The Agency reserves the right to waive minor informalities and irregularities, and to reject any or all Bids for irregularities under 00120.70 or for good cause after finding that it is in the public interest to do so (ORS 279C.395). An example of good cause for rejection in the public interest is the Agency's determination that any of the unit Bid prices are materially unbalanced to the Agency's potential detriment. A materially unbalanced Bid is defined as, "a Bid which generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced Bid will result in the lowest ultimate cost to the Agency."

The Agency may correct obvious errors, when the correct information can be determined from the face of the document, if it finds that the best interest of the Agency and the public will be served thereby.

Bids will be considered and a Contract awarded, if at all, within 60 Calendar Days from the date of Bid Opening, unless an extension beyond that time is agreed to by both parties and acknowledged in writing by the Bidder.

**00130.10 Award of Contract** - After the Bids are opened and a determination is made that a Contract is to be awarded, the Contract will be awarded to the lowest responsible Bidder. For the purposes of this Section, "lowest responsible Bidder" means the responsible Bidder that submitted the lowest responsive Bid who is not on the list created by the Construction Contractors Board according to ORS 701, and who has:

- Substantially complied with all prescribed public bidding procedures and requirements.
- Available the appropriate financial, Materials, Equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the prospective Bidder to meet all contractual responsibilities.
- A satisfactory record of performance. In evaluating a Bidder's record of performance, the Agency may consider, among other things, whether the Bidder completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of evaluating a Bidder's performance on previous contracts of a similar nature, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the Bidder's control, the Bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner.
- A satisfactory record of integrity. In evaluating a Bidder's record of integrity, the Agency may consider, among other things, whether the Bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Bidder's performance of a contract or subcontract.
- Qualified legally to contract with the Agency.
- Supplied all necessary information in connection with the Agency's inquiry concerning responsibility. If a prospective Bidder fails to promptly supply information requested by the Agency concerning responsibility, the Agency shall base the determination of responsibility upon any available information, or may find the prospective Bidder not to be responsible.
- Not been disqualified by the public contracting agency under ORS 279C.440.

If the Bidder is found not to have a satisfactory record of performance or integrity, the Agency will document the record and the reasons for the unsatisfactory finding.

The Agency will provide the Notice of Intent to Award to the Bidders, and may provide Notice of Intent to Award on the Agency's web site.

The Award will not be final until the later of the following:

- Seven calendar days after the Notice of Intent to Award has been issued; or
- The Agency has provided a written response to each timely protest, denying the protest and affirming the Award.

If the Agency accepts a Bid and awards a Contract, the Agency will send the successful Bidder written notice of acceptance and Award.

Notice of Award and Contract booklets ready for execution will be sent within 60 Calendar Days of the opening of Bids or within the number of Calendar Days specified in the Special Provisions or a written mutual agreement between successful Bidder and Agency.

The Contractor will not automatically be entitled to extra compensation because the commencement of Work is delayed by failure of the Agency to send the Contract for execution. However, if more Calendar days elapse between the date the Bid is opened and the date the Agency sends the Contract to be executed, as specified in 00130.10, the Agency will consider granting an adjustment of time for completion of the work to offset any actual delay to Contract completion resulting directly from delay in commencement.

**00130.15 Right to Protest Award** - An adversely affected or aggrieved Bidder may submit to the Agency a written protest of the Agency's intent to Award within seven Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Documents. The Bidder's protest must be in writing and must specify the grounds upon which the protest is based.

A Bidder is adversely affected or aggrieved only if the Bidder is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid most eligible for Award under the Contractor Evaluation Criteria and is next in line for award, i.e., the protesting Bidder must claim that all lower Bidders are ineligible for Award:

- Because their Bids were nonresponsive; or
- The Agency committed a substantial violation of a provision in the Solicitation Documents or of an applicable Procurement Statute or administrative rule, and the protesting Bidder was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid.

**00130.20 Cancellation of Award** - Without liability to the Agency, the Agency may for good cause cancel Award at any time before the Contract is executed by all parties to the Contract, as provided by ORS 279C.395 for rejection of Bids, upon finding it is in the public interest to do so.

**00130.30 Contract Booklet** - The Contract booklet may include but is not limited to:

- Addenda
- Schedule of Items
- Contract (Agreement)
- Performance Bond
- Payment Bond
- Certification of workers' compensation coverage

**00130.40 Contract Submittals** - Before the Agency will execute the Contract, the successful Bidder shall furnish the following:

**(a) Performance and Payment Bonds** - When Awarded the Contract, the successful Bidder shall furnish a Performance Bond and a Payment Bond of a Surety authorized to do business in the State of Oregon.

The successful Bidder shall submit the standard bond forms, which are bound in the Contract Booklet or alternative bond forms acceptable to the Agency. Faxed or photocopied bond forms will not be accepted. The amount of each bond shall be equal to the Contract Amount. The Performance Bond and the Payment Bond must be signed by the Surety's authorized Attorney-in-Fact, and the Surety's seal must be affixed to each bond. A power of attorney for the Attorney-in-Fact shall be attached to the bonds in the Contract booklet, which must include bond numbers, and the Surety's original seal must be affixed to the power of attorney. Bonds shall not be canceled without the Agency's consent, nor will the Agency normally release them, prior to Contract completion. The amount of the Performance

and Payment Bonds shall be increased to equal the new Contract Amount whenever the Contract Amount is increased for any reason.

**(b) Certificates of Insurance** - The successful Bidder shall furnish the Agency certificates of insurance applicable to the Project, according to 00170.70. The insurance coverages shall remain in force throughout the performance of the Contract and shall not be allowed to lapse without prior written approval of the Agency. Bidders shall refer to 00170.70 for minimum coverage limits and other requirements.

For specified Contracts, certified copies, and in some instances the original, of insurance policies may be required by the Special Provisions.

**(d) Registration Requirements:**

(1) ORS 701.021, ORS 701.026, and ORS 671.530 require that Bidders be registered with the Oregon Construction Contractors Board or licensed by the State Landscape Contractors Board prior to submission of a Bid on a Project not involving federal funds. Registration with the Construction Contractors Board or licensing by the State Landscape Contractors Board is not a prerequisite to bidding on Federal-Aid Projects; however, the Agency will not execute a Contract until the Contractor is so registered or licensed.

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

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

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

**(e) Tax Identification Number** - The successful Bidder shall furnish the Agency the Bidder's Federal Tax Identification Number.

**00130.50 Execution of Contract and Bonds:**

**(a) By the Bidder** - The successful Bidder shall deliver the required number of Contract booklets with the properly executed Contract, Performance Bond, Payment Bond, certification of workers' compensation coverage, and the required certificates of insurance, to the Agency within 14 Calendar Days after the date on which the Contract booklets are sent or otherwise conveyed to the Bidder under 00130.10. The Bidder shall return the originals of all documents received from the Agency and named in this Subsection, with original signatures or Digital Signature. Certificates of insurance shall also be originals. Certificates of insurance for coverages that are permitted by the Agency under 00170.70(a) to be obtained by appropriate subcontractors shall be delivered by the Contractor to the Agency. No copies of these documents will be accepted by the Agency.

Proper execution requires that:

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

**(b) By the Agency** - Within 10 Working Days after the Agency has received and verified the properly executed documents specified in 00130.50(a), and received legal sufficiency approval from the Agency's attorney (if required), the Agency will execute the Contract. The Agency will then send a fully-executed original Contract booklet to the successful Bidder, who then officially becomes the Contractor.

**00130.60 Failure to Execute Contract and Bonds** - Failure of the successful Bidder to execute the Contract and provide the required certificates, certifications, and bonds may be cause for cancellation of the Award, and may be cause for forfeiture of the Bid guaranty under ORS 279C.385.

Award may then be made to the next lowest responsible Bidder, the Project may be re-advertised, or the Work may be performed otherwise as the Agency decides.

The forfeited Bid guaranty will become the Agency's property, not as a penalty but as liquidation of damages resulting from the Bidder's failure to execute the Contract and provide the certificates, certifications, and bonds as required by these Specifications.

**00130.70 Release of Bid Guaranties** - Bid guaranties will be released and checks returned 7 Calendar Days after Bids are opened, except for those of the three apparent lowest Bidders on each Project. The guaranties of the three apparent lowest Bidders will be released and checks returned to unsuccessful Bidders within 7 days of the Agency's execution of the Contract.

**00130.75 City's Business License** – Successful Bidder shall have current business license (occupational tax) with the City of Warrenton prior to entering into an agreement. Before permitting a subcontractor to begin work, Contractor shall verify that subcontractor has a current City of Warrenton business license.

**00130.80 Project Site Restriction** - Until the Agency sends the Contractor written Notice to Proceed with the Work, and the Contractor has filed the public works bonds required in 00170.20, the Contractor shall not move Materials, Equipment, or workers onto that Project Site.

**00130.90 Notice to Proceed** - Notice to Proceed will be issued within 5 Calendar Days after the Contract is executed by the Agency.

Should the Agency fail to issue the Notice to Proceed within 5 Calendar Days of Contract execution, the Contractor may apply for an adjustment of Contract Time according to 00180.80(c).



## Section 00140 - Scope of Work

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

- The Contractor shall furnish all Materials, Equipment, labor, transportation, and Incidentals required to complete the Work according to Plans, Specifications, and terms of the Contract.
- The Contractor shall perform the Work according to the lines, grades, Typical Sections, dimensions, and other details shown on the Plans, as modified by written order, or as directed by the Engineer.
- The Contractor shall perform all Work determined by the Engineer to be necessary to complete the Project, including Agency required changes in the Work in accordance with 00140.30.
- The Contractor shall contact the Engineer for any necessary clarification or interpretation of the Contract.

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

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

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

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

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

or may result in:

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

Upon receipt of a Change Order, the Contractor shall perform the Work as modified by the Change Order. If the Change Order increases the Contract Amount, the Contractor shall notify its Surety of the increase and direct the Surety to increase the amount of the performance and payment bonds to equal the new Contract Amount. The Contractor's performance of Work according to Change Orders shall neither invalidate the Contract nor release the Surety. Payment for changes in the Work will be made according to 00195.20. Contract Time adjustments, if any, will be made according to 00180.80. A Change Order signed by the Contractor is the agreement that the adjustment in the Contract Amount or Contract Time indicated is full compensation for all change order items including the impact of the change order on the balance of the Work to be accomplished.

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

- **Type 1** - Subsurface or latent physical conditions that could not have been discovered by careful examination of the Project Site, utility locations and available records as described in 00120.15 and differ materially from those indicated in the Contract Documents; or
- **Type 2** - Unknown physical conditions of unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

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

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

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

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

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

- Standard Specifications
- Standard Drawings
- Other Plans and Specifications issued by the Engineer

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

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

**00140.70 Cost Reduction Proposals** - The Contractor may submit written proposals to the Engineer that modify Plans, Specifications, or other Contract Documents for the sole purpose of reducing the total cost of construction. Unless otherwise agreed to in writing by the Agency, a proposal that is solely or primarily a proposal to reduce estimated quantities or delete Work, as determined by the Engineer, is not eligible for consideration as a cost reduction proposal and will instead be addressed under 00140.30, whether proposed or suggested by the Agency or the Contractor.

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

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

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

- A description of existing Contract requirements for performing the Work and the proposed change;
- The Contract items of Work affected by the proposed change, including any quantity 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 made according to Section 00197. Costs of re-design, which are incurred after the Agency 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 Engineer issues a Change Order incorporating the cost reduction proposal. If the Engineer fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.

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

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

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

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

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

The Contractor's cost of preparing the cost reduction proposal and the Agency's 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 Agency has accepted the proposal, will be included in the cost of the Work attributable to cost reduction measures.

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

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

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

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

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

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

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

**00140.95 "AS-BUILT" Records** – The Contractor shall maintain a current and accurate record of Work completed during the course of this Contract and make available to the Engineer updated copies of the project "As-Builts" for Engineer's review at any time. These "As-Builts" drawings shall be kept by accurately marking a designated set of the Contract plans with the specified information as Work proceeds. Accurate, complete and current "As-Built" drawings are a specified requirement for monthly progress payments of the Work completed. "As-Builts" shall be reviewed for completeness before recommendation of payment is granted. Incomplete or insufficient "As-Builts" will be returned to the Contractor and recommendation for progress payment denied. At project completion and as a condition of final payment, the Contractor shall deliver an acceptable complete and legible set of "As-Built" drawings to the Engineer.

The "As-Built" drawings shall show the information listed below. Where the term "locate" or "location" is used, it shall mean record of position with respect to both the construction vertical datum and either construction horizontal datum or a nearby permanent improvement.

- Record location of underground services and utilities as installed
- Record location of existing underground utilities and services that are to remain and that are encountered during the course of the Work
- Record changes in dimension, location, grade or detail to that shown on plans
- Record changes made by change order
- Record details not in original plans
- Provide fully completed shop drawings reflecting all revisions

Upon completion of the construction, the Contractor shall review and certify the construction set of "As-Built" drawings for completeness and accuracy of representation of any changes. Final payment will not be processed until "As-Built" drawings have been submitted and approved.

## Section 00150 - Control of Work

**00150.00 Authority of the Engineer (Project Manager)** - The Engineer has authority over the Work and its suspension. (see Section 00180) The Contractor shall direct all requests for clarification or interpretation of the Contract, in writing, to the Engineer. The Engineer will respond within a reasonable time. Contract clarification or interpretation from persons other than the Engineer will not be binding on the Agency..

The Engineer's determination is final on all matters, including but not limited to the following:

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

and, except as provided in Section 00199 for claims for additional Contract time or Contract price, may be challenged only through the dispute resolution process provided for in these General Provisions (00199) and, if applicable, the Special Provisions.

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

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

The Agency may appoint Inspectors and other personnel to assist in the administration of the Contract.

The authority stated in this subsection is subject to the individual's delegated authority by the Agency. If the individual does not have the stated authority, the subsection reference shall include Agency personnel that have such authority.

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

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

Inspectors are not authorized to:

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

**00150.10 Coordination of Contract Documents** - The Contract Documents, including but not limited to Contract Change Orders, the Special Provisions, the Plans, and the Standard Specifications are intended to collectively describe all of the items of Work necessary to complete the Project. The Contract Documents are complementary; what is required by one is as binding as if required by all.

(a) **Order of Precedence** - The Engineer will resolve any discrepancies between these documents in the following order of precedence:

1. Permits from outside agencies;

2. Contract (Agreement)
3. Addenda;
4. Bid Schedule;
5. Special Provisions;
6. General Conditions;
7. Standard Specifications;
8. Geotechnical Data Reports;
9. Agency-prepared drawings specifically applicable to the Project and bearing the Project title;
10. Standard Drawings;
11. Reviewed and accepted, stamped Working Drawings;
12. Approved Unstamped Working Drawings.

Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretation and clarifications, in precedence listed, will take precedence over all other Contract Document components referenced herein.

Notes on a drawing shall take precedence over drawing details. Dimensions shown on the drawings, or that can be computed, shall take precedence over scaled dimensions. The Drawings with the higher level of detail take precedence over less detailed Drawings.

**(b) Immaterial Discrepancies** - The Contract Documents specify details for the construction and completion of the Work. If Contract Documents describe portions of the Work in sufficient detail but are silent in some minor respect, the Contractor may proceed utilizing the current best industry practices.

**(c) Material Discrepancies** - If the Contractor identifies a discrepancy, error, or omission in the Contract Documents that cannot be resolved by the approach specified in (b) above, the Contractor shall immediately request clarification from the Engineer.

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

**(a) Agency Responsibilities** - The Engineer will provide the location of the existing benchmarks and horizontal control locations used to design the project and prepare the Plans.

**(b) Contractor Responsibilities** - The Contractor shall:

- Accurately measure detailed dimensions, elevations, and slopes from the Engineer's benchmarks and horizontal control locations;
- Provide all labor, materials and equipment to properly stake out the project so that it can be constructed in accordance with the Contract Documents. Any changes made shall be recorded and the changed vertical and horizontal locations incorporated into the "as-built" drawings.
- Inform the Engineer of any property corners monuments and/or survey markers that are not shown on the Plans and are found during construction activities prior to disturbing the monuments. Allow the Agency 2 Work days for referencing all found markers before they are removed. Monuments that are noted on the Plans to be protected and are disturbed by the Contractor's activities shall be replaced by the Contractor's surveyor at the Contractor's expense in accordance with ORS Chapter 209.

The Contractor shall include costs of Construction Stakes, Lines, and Grades in the unit prices bid for the various Pay Items. The Contractor will not be paid an additional amount for this Work, unless otherwise specified.

**00150.20 Inspection:**

**(a) Inspection by the Engineer** - The Engineer may test Materials furnished and inspect Work performed by the Contractor to ensure Contract compliance. The Contractor shall notify the Engineer 48 hours (two full Work Days) in advance for inspection of each portion of the Work.

Contractor shall not begin placing successive Courses or portions of Work until preceding Courses or portions of the Work have been inspected.

If the Contractor performs Work without the Engineer's inspection or uses Materials that the Engineer has not approved, the Engineer may order affected portions of the Work removed at the Contractor's expense.

At the Engineer's direction, any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore these portions of Work to the standard required by the Contract. If the Engineer rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Engineer, the Contractor shall bear all costs of uncovering and restoring the Work. If the Engineer accepts the uncovered Work, and the Contractor performed the Work only after providing the Engineer with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Agency according to 00195.20.

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

**(c) Sampling** - When directed by the Agency, the Contractor shall furnish the Engineer with samples of Materials that the Engineer will test. All of the Contractor's costs related to this required sampling are Incidental.

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

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

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

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

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

**00150.30 Delivery of Notices** - Written notices to the Contractor by the Engineer or the Agency will be delivered:

- In person;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested), to the current office address as shown in the records of the Agency; or
- By overnight delivery service of a private industry courier, to the current office address as shown in the records of the Agency.

Notices shall be considered as having been received by the Contractor:

- At the time of actual receipt when delivered in person
- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

Written notices to the Engineer or the Agency by the Contractor shall be delivered to the Agency address shown in the Special Provisions, unless a different address is agreed to by the Engineer, and shall be delivered:



- In person;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Notices will be considered as having been received by the Agency:

- At the time of actual receipt when delivered in person;
- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

**00150.35 Submittals:**

(a) **Description** - Submittals covered by these requirements include manufacturers' information, shop drawings, test procedures, test results, samples, requests for substitutions, and miscellaneous Work-related submittals. Submittals shall also include, but not be limited to, all mechanical, electrical and electronic equipment and systems, materials, reinforcing steel, fabricated items, and piping and conduit details. The Contractor shall furnish all drawings, specifications, descriptive data, certificates, samples, tests, methods, schedules, and manufacturer's installation and other instructions as specifically required in the Contract Documents to demonstrate fully that the materials and equipment to be furnished and the methods of work comply with the provisions and intent of the Contract Documents.

**(b) Contractor's Responsibilities**

1. The Contractor shall be responsible for the accuracy and completeness of the information contained in each submittal and shall assure that the material, equipment or method of work shall be as described in the submittal. The Contractor shall verify that all features of all products conform to the specified requirements. Submittal documents shall be clearly edited to indicate only those items, models, or series of equipment, which are being submitted for review. All extraneous materials shall be crossed out or otherwise obliterated. The Contractor shall ensure that there is no conflict with other submittals and notify the Engineer in each case where his submittal may affect the work of another contractor or the Agency. The Contractor shall coordinate submittals among its subcontractors and suppliers including those submittals complying with unit responsibility requirements specified in applicable technical sections.
2. The Contractor shall coordinate submittals with the Work so that Work will not be delayed. It shall coordinate and schedule different categories of submittals, so that one will not be delayed for lack of coordination with another. No extension of time will be allowed because of failure to properly schedule submittals. The Contractor shall not proceed with Work related to a submittal until the submittal process is complete. This requires that submittals for review and comment shall be returned to the Contractor with the indication "No Exceptions Taken" or "Make Corrections Noted."
3. Submittals shall be carefully reviewed by an authorized representative of the Contractor prior to submission to the Engineer. Each submittal shall be dated and signed by the Contractor as being correct and in strict conformance with the Contract Documents. In the case of Shop Drawings, each sheet shall be so dated and signed. Any deviations from the Contract Documents shall be noted by the Contractor on the transmittal form and such deviation shall be subject to approval in writing by the Engineer. The Engineer will only review submittals that have been so verified by the Contractor. Non-verified submittals will be returned to the Contractor without action taken by the Engineer, and any delays caused thereby shall be the total responsibility of the Contractor.
4. The Contractor shall certify on each submittal document that it has reviewed the submittal, verified field conditions, and complied with the contract documents.
5. The Contractor may authorize in writing a material or equipment supplier to deal directly with the Engineer or with the Agency with regard to a submittal. These dealings shall be limited to contract interpretations to clarify and expedite the Work.

**(c) Shop Drawings and Product Submittals**

1. Wherever called for in the Contract Documents or where required by the Engineer, the Contractor shall furnish to the Engineer for review, five (5) copies plus one reproducible copy or electronic file, of each Shop Drawing or Product submittal. Shop Drawings may include detail design calculations, shop-prepared drawings, fabrication and installation drawings, erection drawings, lists, graphs, catalog sheets, data sheets, and similar items. If a list, graph, catalog sheet, data sheet, etc. includes more than one item, clearly mark which item is the subject of the submittal. Shop Drawings shall bear the signature and seal of an engineer registered in the appropriate branch and in the state of Oregon, unless otherwise indicated. Whenever the Contractor is required to submit design calculations as part of a submittal, such calculations shall bear the signature and seal of an engineer registered in the appropriate branch and in the state of Oregon, unless otherwise indicated.
2. Shop Drawing and Product submittals shall be accompanied by the Engineer's standard submittal transmittal form, a reproducible copy of which is available from the Engineer. A submittal without the form or where applicable items on the form are not completed will be returned for resubmittal.
3. Organization
  - A single submittal transmittal form shall be used for each technical specification section or item or class of material or equipment for which a submittal is required. A single submittal covering multiple sections will not be acceptable, unless the primary specification references other sections for components. Example: if a pump section references other sections for the motor, shop-applied protective coating, anchor bolts, local control panel, and variable frequency drive, a single submittal would be acceptable. A single submittal covering vertical turbine pumps and horizontal split case pumps would not be acceptable.
  - On the transmittal form, index the components of the submittal and insert tabs in the submittal to match the components. Relate the submittal components to specification paragraph and subparagraph, Drawing number, detail number, schedule title, room number, or building name, as applicable.
  - Unless indicated otherwise, terminology and equipment names and numbers used in submittals shall match those used in the Contract Documents.
4. Format
  - Minimum sheet size shall be 8.5 inches by 11 inches. Maximum sheet size shall be 22 inches by 34 inches. Every page in a submittal shall be numbered in sequence. Each copy of a submittal shall be collated and stapled or bound, as appropriate. The Engineer will not collate sheets or copies.
  - Where product data from a manufacturer is submitted, clearly mark which model is proposed, with complete pertinent data capacities, dimensions, clearances, diagrams, controls, connections, anchorage, and supports. Sufficient level of detail shall be presented for assessment of compliance with the Contract Documents.
  - Each submittal shall be assigned a unique number. Submittals shall be numbered sequentially, and the submittal numbers shall be clearly noted on the transmittal. Original submittals shall be assigned a numeric submittal number (e.g., 25). If submittal "25" requires a resubmittal, the first resubmittal will bear the designation "25.A" and the second resubmittal will bear the designation "25.B" and so on.
  - If there is a follow-up submittal related to a previously submitted class of material or type of equipment (e.g., follow-up submittal to submittal "25"), it shall be assigned the number "25.1". If submittal "25.1" requires a resubmittal, the first resubmittal will bear the designation "25.1.A" and the second resubmittal will bear the designation "25.1.B" and so on.
5. Disorganized submittals that do not meet the requirements of the Contract Documents will be returned without review.
6. Except as may otherwise be indicated, the Engineer will return prints of each submittal to the Contractor with comments noted thereon, within 21 Days following receipt by the Engineer. It is considered reasonable that the Contractor will make a complete and acceptable submittal to the Engineer by the first resubmittal on an item. The Agency reserves the right to withhold monies due to the Contractor to cover additional costs of the Engineer's review beyond the first resubmittal. Engineer's cost for submittal review beyond the first resubmittal is provided in the Special Provisions. The Engineer's maximum review period for each submittal or resubmittal will be 21 Days.

7. If a submittal is returned to the Contractor marked "NO EXCEPTIONS TAKEN," formal revision and resubmission will not be required.
8. If a submittal is returned marked "MAKE CORRECTIONS NOTED," Contractor shall make the corrections on the submittal, but formal revision and resubmission will not be required, except where specifically required by Engineer as indicated on the submittal review form.
9. If a submittal is returned marked "AMEND-RESUBMIT," the Contractor shall revise it and shall resubmit the required number of copies to the Engineer for review. Resubmittal of portions of multi-page or multi-drawing submittals will not be allowed. For example, if a Shop Drawing submittal consisting of 10 drawings contains one drawing noted as "AMEND - RESUBMIT," the submittal as a whole is deemed "AMEND - RESUBMIT," and 10 drawings are required to be resubmitted.
10. If a submittal is returned marked "REJECTED-RESUBMIT," it shall mean either that the proposed material or product does not satisfy the specification, the submittal is so incomplete that it cannot be reviewed, or is a substitution request not submitted in accordance with the General Conditions. In the first 2 cases, the Contractor shall prepare a new submittal and shall submit the required number of copies to the Engineer for review. In the latter case, the Contractor shall submit the substitution request according to the General Conditions.
11. Resubmittal of rejected portions of a previous submittal will not be allowed. Every change from a submittal to a resubmittal or from a resubmittal to a subsequent resubmittal shall be identified and flagged on the resubmittal.
12. Fabrication of an item may commence only after the Engineer has reviewed the pertinent submittals and returned copies to the Contractor marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED". Corrections indicated on submittals shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as changes to the Contract requirements.
13. Corrections or comments made on the Contractor's Shop Drawings during review do not relieve the Contractor from compliance with Contract Drawings and Specifications. Review is for conformance to the design concept and general compliance with the Contract Documents only. The Contractor is responsible for confirming and correlating quantities and dimensions, fabrication processes and techniques, coordinating Work with the trades, and satisfactory and safe performance of the Work.

**(d) Quality Control (QC) Submittals**

1. Quality control submittals are defined as those required by the Specifications to present documentary evidence to the Engineer that the Contractor has satisfied certain requirements of the Contract Documents.
2. Unless otherwise indicated, QC submittals shall be submitted:
  - Before delivery and unloading, for the following types of submittals:
    - Manufacturers' installation instructions
    - Manufacturers' and Installers' experience qualifications
    - Ready mix concrete delivery tickets
    - Design calculations
    - Affidavits and manufacturers' certification of compliance with indicated product requirements
    - Laboratory analysis results
    - Factory test reports
  - For the following types of submittals, the manufacturer's field representative shall submit a draft certification prior to leaving the Project site and a final certification within 7 days of the event documented:
    - Manufacturers' field representative certification of proper installation
  - Within 30 Days of the event documented for the following types of submittals:
    - Field measurement
    - Field test reports
    - Receipt of permit

- o Receipt of regulatory approval
- 3. The Engineer will record the date that a QC submittal was received and review it for compliance with submittal requirements, but the review procedures above for Shop Drawings and samples will not apply.

**(e) Deferred Submittals to Agency**

1. For the purposes of this section, Deferred Submittals are defined as those portions of the Project that are Contractor-designed and must be submitted to the Agency's building official for approval and to meet Building Permit plan review requirements.
2. The Engineer will schedule a pre-submittal conference with the Contractor and Agency's building official to discuss proposed Deferred Submittal items, requirements, and review schedule.
3. The Contractor shall list the Deferred Submittals on the title or cover sheet of the Drawings for submission to the Agency and shall state the design criteria/assumptions of the Deferred Submittal items on the plans. Deferred Submittals shall include details for connection of materials to the structure and calculations showing that the specified structural requirements are met.
4. The Contractor shall submit Deferred Submittals to the Engineer for review for general conformance to the design of the structure. Neither the Agency nor the Engineer is responsible for coordination of Deferred Submittal components with Contract Documents. Review does not lessen nor shift burden or responsibility from Contractor or assigned subcontractor/supplier to the Agency or Engineer. The Engineer, upon confirming the Deferred Submittals are in general conformance with the design, shall forward the Deferred Submittals to the building official. Contractor is responsible, with no exceptions, to ensure that building official's Deferred Submittal review will not adversely affect Project's construction schedule. The Deferred Submittal items shall not be installed by the Contractor until the design and Deferred Submittals have been approved by the building official.

**(f) Effect of Review of Contractor's Submittals**

1. Review of Contract drawings, methods of work, or information regarding materials or equipment the Contractor proposes to provide, shall not relieve the Contractor of its responsibility for errors therein and shall not be regarded as an assumption of risks or liability by the Engineer or the Agency, or by any officer or employee thereof, and the Contractor shall have no claim under the contract on account of the failure, or partial failure, of the method of work, material, or equipment so reviewed. An indication of "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED" shall mean that the Agency or Engineer has no objection to the Contractor, upon its own responsibility, using the plan or method of Work proposed, or providing the materials or equipment proposed.

**00150.37 Equipment Lists and Other Submittals** - The Contractor shall submit Equipment lists, and other required submittals for approval by the Engineer. With each submittal, the Contractor shall clearly identify the applicable specification sub-section and the product make, model, size and proposed options.

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

The Contractor is responsible for full management of all aspects of the Work, including superintendence of all Work by Subcontractors, Suppliers, and other providers. The Contractor shall appoint a single Superintendent and may also appoint alternate Superintendents as necessary to control the Work. The form of appointment of the alternate shall state, in writing, the alternate's name, duration of appointment in the absence of the Superintendent, and scope of authority. The Contractor shall:

- Provide for the cooperation and superintendence on the Project by:
  - Furnishing the Engineer all data necessary to determine the actual cost of all or any part of the Work, added Work, or changed Work.
  - Allowing the Engineer reasonable access to the Contractor's books and records at all times. To the extent permitted by public records laws, the Engineer will make reasonable efforts to honor the Contractor's request for protection of confidential information.
  - Keeping one complete set of Contract Documents on the Project Site at all times, available for use by all the Contractor's own organization, and by the Engineer if necessary.
- Appoint a single Superintendent and any alternate Superintendent who shall meet the following qualifications:

- Appointees shall be competent to manage all aspects of the Work.
- Appointees shall be from the Contractor's own organization.
- Appointees shall have performed similar duties on at least one previous project of the size, scope and complexity as the current Contract.
- Appointees shall be experienced in the types of Work being performed.
- Appointees shall be capable of reading and thoroughly understanding the Contract Documents.
- The appointed single Superintendent, or any alternate Superintendent shall:
  - Be present for all On-Site Work, regardless of the amount to be performed by the Contractor, Subcontractors, Suppliers, or other providers, unless the Engineer provides prior approval of the Superintendent's or alternate Superintendent's absence.
  - Be equipped with a two way radio or cell phone capable of communicating throughout the project during all the hours of Work on the Project Site and be available for communication with the Engineer.
  - Have full authority and responsibility to promptly execute orders or directions of the Engineer.
  - Have full authority and responsibility to promptly supply the Materials, Equipment, labor, and Incidentals required for performance of the Work.
  - Coordinate and control all Work performed under the Contract, including without limitation the Work performed by Subcontractors, Suppliers, and Owner Operators.
  - Diligently pursue progress of the Work according to the schedule requirements of Section 00180.
  - Cooperate in good faith with the Engineer, Inspectors, and other contractors in performance of the Work.
  - Provide all assistance reasonably required by the Engineer to obtain information regarding the nature, quantity, and quality of any part of the Work.
  - Provide access, facilities and assistance to the Engineer in establishing such lines, grades and points as the Engineer requires.
  - Carefully protect and preserve the Engineer's benchmarks and horizontal control locations.

Any Superintendent or alternate Superintendent who repeatedly fails to follow the Engineer's written or oral orders, directions, instructions, or determinations, shall be subject to removal from the project.

If the Contractor fails or neglects to provide a Superintendent, or an alternate Superintendent, and no prior approval has been granted, the Engineer has the authority to suspend the Work according to 00180.70. Any continued Work by the Contractor, Subcontractors, Suppliers, or other providers may be subject to rejection and removal. The Contractor's repeated failure or neglect to provide the superintendence required by these provisions constitutes a material breach of the Contract, and the Engineer may impose any remedies available under the Contract, including but not limited to Contract termination.

**00150.50 Cooperation with Utilities:**

**(a) General** - As specified in the Special Provisions or as shown on the Plans, existing Utilities requiring adjustment may be adjusted by the Utility before, during, or after Project construction. "Adjustment of Utilities" shall mean the alteration, improvement, connection, disconnection, relocation, or removal of existing Utility lines, facilities, or systems in temporary or permanent manner.

**(b) Contractor's Responsibilities** - The Contractor shall:

- Follow applicable rules adopted by the Oregon Utility Notification Center;
- Contact Utility owners after the Contract is awarded to verify all Utilities' involvement on the Project Site;
- Coordinate Project construction with the Utilities' planned adjustments, take all precautions necessary to prevent disruption of Utility service, and perform its Work in the manner that results in the least inconvenience to the Utility owners;
- Include all Utility adjustment work, whether to be performed by the Contractor or the Utilities, on the Contractor's Project Work schedule submitted under 00180.41;
- Protect from damage or disturbance any Utility that remains within the area in which Work is being performed;

- Not disturb an existing Utility if it requires an unanticipated adjustment, but shall protect it from damage or disturbance and promptly notify the Engineer; and
- Report to the Engineer any Utility owner who fails to cooperate or fails to follow the planned Utility adjustment.

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

**(c) Notification** - This project is located within the Oregon Utility Notification Center area which is a Utilities notification system for notifying owners of Utilities about work being performed in the vicinity of their facilities. The Utilities notification system telephone number is 811 (or use the old number which is 1-800-332-2344).

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

#### **00150.53 Utilities and Existing Improvements:**

**(a) General** – Information shown on the plans as to the location of existing water courses and utilities has been compiled from available sources and may not be accurate. The Contractor shall determine the location and nature of affected water courses, utilities and underground improvements prior to commencing Work.

The Contractor shall provide for the flow of water courses and essential utilities that may be interrupted during the progress of the Work and shall restore such water courses or utilities after completion of the Work.

The Contractor shall be responsible for exploratory excavations as it deems necessary to determine the exact locations and depths of utilities which may interfere with Work. All such exploratory excavations shall be performed as soon as practicable after Notice to Proceed and, in any event, a sufficient time in advance of construction to avoid possible delays to the Contractor's progress. When such exploratory excavations show the utility location as shown on the Plans to be in error, the Contractor shall so notify the Engineer.

The number of exploratory excavations required shall be that number which is sufficient to determine the alignment and grade of the utility. Unless otherwise provided in the Special Provisions, all potholing and exploratory work shall be incidental to the Work and no separate payment shall be made therefore.

The Contractor shall coordinate project construction with the adjustment of utilities, take all necessary precautions to prevent disturbing the utilities, and perform work so that utility owners and users are caused a minimum of inconvenience.

The Contractor shall protect underground utilities and other improvements which may be impaired during construction operations, regardless of whether or the not the utilities are indicated on the plans. The Contractor shall take all possible precautions for the protection of unforeseen utility lines to provide for uninterrupted service and to provide such special protection as may be necessary.

To ease or streamline the work, the Contractor may desire to adjust the utilities by asking the utility owners to move, remove, or alter their equipment in ways other than those shown on the plans or in the Contract Documents. The Contractor shall conduct the negotiations, make the arrangements, and pay all costs that arise from such changes.

**(b) Utilities to be Moved** – In case it shall be necessary to move the property of any public utility or franchise holder, such utility company or franchise holder shall be notified by the Contractor to move such property within a specified reasonable time. When utility lines that are to be removed are encountered within the area of operations, the Contractor shall notify the utility company and the Engineer a sufficient time in advance for the necessary measures to be taken to prevent the interruption of service.

**(c) Utilities to be Removed** – Where the proper completion of the Work requires the temporary or permanent removal and/or relocation of an existing utility or other improvement which is indicated, the Contractor shall remove and, without unnecessary delay, temporarily replace or relocate such utility or improvement in manner satisfactory to the Engineer and the owner of the facility. In all cases of such temporary removal or relocation,

restoration to the former location shall be accomplished by the Contractor in a manner that will restore or replace the utility or improvement as nearly as possible to its former locations and to as good or better condition than found prior to removal.

- (d) **Underground Utilities and Improvements Indicated** – Existing utility lines and underground improvements that are indicated or the locations of which are made known to the Contractor prior to excavation and that are to be retained, and all utility lines and underground improvements that are encountered during excavation operations shall be protected from damage during excavation and backfilling and, if damaged, shall be immediately repaired or replaced by the Contractor, unless otherwise repaired by the owner of damaged utility. If the owner of the damage facility performs its own repairs, the Contractor shall reimburse said owner for the costs of repair.
- (e) **Underground Utilities and Improvements Not Indicated** – In the event that the Contractor damages existing utility lines or underground improvements that are not indicated in the plans or marked in the field, or are not indicated or marked with reasonable accuracy, or the locations of which are not made known to the Contractor prior to excavation, the Contractor shall immediately provide a verbal report of such damage to the Engineer, and provide a written report thereof promptly thereafter. The Contractor shall immediately notify the owner of the damaged utility. If directed by the Engineer, repairs shall be made by the Contractor under the provisions for changes and extra work contained in the General Conditions.

This subsection applies only to main line utilities. For service lines, see Subsection 00150.53(f).

For purposes of this section, "reasonable accuracy" is defined as within two (2) feet from the outside lateral dimensions of both sides of an underground utility or facility from actual location. No representation shall be made concerning the accuracy of vertical elevations of existing utilities, even if indicated in the plans, and no additional payment will be made for damage to utilities encountered at depths differing from those indicated.

- (f) **Underground Services Indicated or Not** – If service lines are encountered, whether shown, marked or not, the Contractor shall take precautions to carefully work around them and repair them if they are damaged by the Contractor, at no additional cost to the Agency. For purposes of this subsection, service lines to private property are defined as:
- Sanitary sewer service laterals of 6-inch diameter or less
  - Water service lines of 2-inch diameter or less
- (g) **Approval of Repairs** – All repairs to a damaged utility or improvement shall be inspected and approved by an authorized representative of the utility or improvement owner, and accepted by the Agency before being concealed by backfill or other Work.
- (h) **Agency's Right of Access** – The right reserved to the Agency and to the owners of public utilities and franchises to enter at any time upon any public street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work of this Contract.

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

If such work takes place on or near the Project Site, the Contractor shall have the following obligations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**00150.75 Protection and Maintenance of Work During Construction** - The Contractor shall protect and maintain the Work during construction and until Third Notification has been issued, unless otherwise provided in the Contract.



For the purposes of this Subsection, "maintenance" shall include measures to prevent deterioration of Roadway and Structures at the Project Site, and to keep them in good condition at all times during the prosecution of the Work. The Contractor shall continuously allocate sufficient Equipment and workers to achieve such maintenance.

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

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

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

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

For the purposes of this Subsection, "unauthorized work" shall include without limitation the following:

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

The Agency will not pay the Contractor for unacceptable Work, except as provided in 00150.25, or unauthorized work. The Engineer may issue a written order for the correction or removal of such work at the Contractor's expense.

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

**00150.90 Final Inspection:**

**(a) On-site Construction Work** - The Engineer will inspect the Project at a time close to the completion of On-Site Work for Contractor's compliance with the Contract Documents.

When all On-Site Work on the Project is completed, including but not limited to Change Order Work and Extra Work, the Engineer will issue Second Notification as specified in 00180.50(g), including notification of required corrective work (punch list) to be completed prior to Engineer's issuance of Third Notification (Final Completion).

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

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

- The Contractor has completed all On-Site Work required under the Contract, including the punch list items from (a) above;
- The Contractor has removed all Equipment; and
- The Contractor has submitted all required certifications, bills, forms, warranties and other documents.
- The Contractor has submitted complete and acceptable "As-Built" drawings as specified in 00140.95.

**00150.91 Post-Construction Review** - The Contractor or the Engineer may request a Post-Construction Review meeting, to be held at a time prior to issuance of Third Notification but not earlier than 15 Days following the date of

Second Notification. The meeting may be held if agreed to by both parties. The party making the request will conduct the meeting, and will announce the time and place of the meeting at least 15 Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects.

**00150.95 Final Acceptance** - After the Engineer completes Final Inspection of all Correction Period work and deems it satisfactorily completed, the Agency will acknowledge Final Acceptance. The Agency will notify the Contractor in writing of the date of Final Acceptance within 7 Calendar Days after Final Acceptance, or as soon thereafter as is practicable.

**00150.96 Maintenance Warranties and Guarantees** - Prior to Second Notification, the Contractor shall transfer to the Agency all unexpired manufacturer's, installer's or supplier's warranties and guarantees for Materials and Equipment installed on the Project. Such warranties and guarantees shall recite that they are enforceable by the Agency.

**00150.97 Responsibility for Materials and Workmanship:**

- (a) The Contractor shall perform the Work according to the terms, conditions, and requirements of the Contract.
- (b) Until the Agency's Final Acceptance of the Work, the Contractor shall be responsible for:
  - Correcting or repairing any defects in, or damage to, the Work which results from the use of improper or defective materials or workmanship; or
  - Replacing, in its entirety, the Work affected by the use of improper or defective materials or workmanship to the extent provided by law; and
  - Correcting or repairing any Work, Materials, Structures, Existing Surfacing, Pavement, Utilities, or sites, including without limitation Wetlands, damaged or disturbed in that correction, repair, or replacement. (see 00170.80 to 00170.85)

## Section 00160 - Source of Materials

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

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

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

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

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

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

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

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

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

The current version of the QPL at the time of Bid Closing is the version in effect for the Project. The Engineer may approve for use a conditionally qualified product, or a product qualified for inclusion in a later edition of the QPL, if the Engineer finds the product acceptable for use on the Project.

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

**00160.10 Ordering, Producing, and Furnishing Materials** - The Contractor shall not place orders for or produce full quantities of Materials anticipated to be required to complete the Work until the Work has advanced to a stage that allows the quantities to be determined with reasonable accuracy.

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

- Kind of work involved;
- Amount of work involved;
- Time required to obtain Materials; and
- Other relevant factors.

(b) **Quantity of Materials** - Materials quantities shown on the Plans, or indicated by quantities and Pay Items, are subject to change or elimination. The Contractor is responsible for payment for excess Materials delivered to the Project Site or storage sites. Unless otherwise specified in the Contract, the Agency will not be responsible for:

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

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

**00160.20 Preferences for Materials:**

(a) **Buy America** - If federal highway funds are involved on the Project, the Contractor shall limit the quantity of foreign Materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including without limitation the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States, unless the cost of foreign-origin iron or steel Materials does not exceed one-tenth of one percent (0.1%) of the Contract Amount or \$2,500, whichever is greater. The Contractor shall not incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at the Contractor's expense. For purposes of this Specification, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

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

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

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

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

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

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

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

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

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

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

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

Controlled Land, areas, or property, except as specified in the Special Provisions or by the written authorization of the Engineer.

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

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

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

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

The Agency will not compensate the Contractor for handling and stockpiling By-Products according to the Special Provisions requirements. If by written order the Engineer directs the Contractor to stockpile or place designated By-Products at alternate sites, the By-Products designated shall be loaded, hauled, and placed as directed, and this work will be paid for according to 00195.20.

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

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

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

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

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

The Department of Geology and Mineral Industries, as required under ORS 517.790;

The Department of State Lands, as required under ORS 196.815 (when removing material from the bed or banks of any waters or from any Wetland); and

Local governmental authorities having jurisdiction over land use at the source location.

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

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

**00160.80 Requirements for Sources of Borrow and Aggregate** - The Contractor shall conduct operations according to all applicable federal, State, and local laws (including without limitation ORS 517 and OAR 632-030) when developing, using, and reclaiming all sources of Borrow material and Aggregate. The Contractor shall provide erosion

control at Borrow sources that are not within the Project Site. The Contractor shall not operate in Wetlands except as allowed by permit. The Contractor shall comply with all requirements for pollution and sediment control, including without limitation the National Pollutant Discharge Elimination System where applicable.

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

- (a) If a natural growth of trees or shrubs is present, preserve a border of such to conceal land scars.
- (b) Excavate Borrow sources and Aggregate sources, except for those in streams and rivers, to provide:
  - Reasonably uniform depths and widths;
  - Natural drainage so no water stands or collects in excavated areas, when practicable;
  - Slopes trimmed to blend with the adjacent terrain upon completion of operations;
  - Slopes covered with native soil, or acceptable plant rejects to support plant growth, if required by Specifications, Plans, or permits; and
  - A vegetative cover that blends with the adjacent natural growth.
- (c) Excavate in quarries so that:
  - Faces will not be steeper than vertical (no overhang);
  - Vertical faces conform to Oregon OSHA standards, Division 3, and as shown on an approved development plan;
  - Floors or benches are excavated to a uniform Slope free of depressions and will drain and not interfere with the downland owner's property; and
  - Upon completion, the quarry is left appearing neat and compatible with surrounding terrain.
- (d) Obliterate haul roads specifically built for access to sources, and restore the areas disturbed by these roads as nearly as practicable to the conditions that existed before the roads were built, unless otherwise directed by the landowner or regulatory body.

## Section 00165 - Quality of Materials

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

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

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

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

**00165.04 Costs of Testing** - The Special Provisions identify the Agency's and Contractor's responsibilities for testing expenses. When the Contract requires that the Agency performs the testing, the testing will be at the Agency's expense.

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

**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) unless otherwise specified in the Special Provisions. The MFTP is published once per year and is available from the ODOT –Construction Section, 800 Airport Road SE; Salem, OR 97301-4798; phone 503-986-3000. The MFTP is also available on the ODOT Construction Section web site.

(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 Special Provisions. The NTMAG is available on the ODOT Construction Section web site.

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

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

- Field-Tested Materials:
  - Special Provisions;
  - Standard Specifications; and
  - MFTP..

- **Nonfield Tested Materials:**
  - ODOT;
  - WAQTC;
  - AASHTO;
  - ASTM;
  - 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 Documents to required sampling and testing frequencies, the Contractor shall sample and test the Materials according to the first applicable of the following:

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

**00165.30 Field-Tested Materials:**

**(a) Acceptance of Field-Tested Materials** The Contractor's test results for field-tested Materials may be verified by the Agency. Materials will be analyzed as determined by the Engineer for acceptance before the Engineer will accept them for incorporation into the Work. Incorporated Materials that do not meet Specifications will be evaluated according to 00165.01 and 00150.25.

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

**00165.35 Nonfield-Tested Materials** - 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 Test Results and Quality Compliance Certificates furnished.

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

- Be from the manufacturer verifying that the Material furnished has been sampled and tested and the test results meet the Specifications.
- Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL or other).
- Identify the independent 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, 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 this document (ODOT Form 734-2126) as required by 00160.20 for Federal-aid projects.

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

**00165.50 Acceptance Sampling and Testing** -The Contractor shall sample and test Materials for acceptance, as required by the Contract. Materials will be analyzed as determined by the Engineer for acceptance before the Engineer will accept them for incorporation into the Work. When the Engineer determines the Materials or Work does not conform to the Specifications the Engineer may accept the Materials or Work with pay adjustments or reject the Materials or Work per 00150.25.

**00165.70 Use of Materials without Engineer's Acceptance:**

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

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

**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.

## Section 00170 - Legal Relations and Responsibilities

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

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

In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Contract interpretation.

The Contract shall not be construed against either party regardless of which party drafted it. Other than as modified by the Contract, the applicable rules of contract construction and evidence shall apply. This Contract shall be governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws.

Any dispute between the Agency and the Contractor that arises from or relates to this Contract and that is not resolved under the provisions of Section 00199 shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon in the county where the Agency's main office is located; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Subsection be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THE CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

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

**(a) Federal Agencies:**

Agriculture, Department of  
Forest Service  
Natural Resource Conservation Service

Army, Department of the  
Corps of Engineers

Commerce, Department of  
National Marine Fisheries Service

Defense, Department of

Energy, Department of

Environmental Protection Agency (EPA)

Federal Energy Regulatory Commission

Geology Survey

Health and Human Services, Department of

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

Housing and Urban Development, Department of

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

Bureau of Reclamation  
Geological Survey  
Office of Surface Mining, Reclamation, and Enforcement  
Minerals Management Service  
Solar Energy and Energy Conservation Bank  
U.S. Fish and Wildlife Service  
Labor, Department of  
    Mine Safety and Health Administration  
    Occupational Safety and Health Administration (OSHA)  
Transportation, Department of  
    Federal Highway Administration  
Water Resources Council

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

Administrative Services, Department of  
Agriculture, Department of  
    Natural Resources Division  
    Soil and Water Conservation District  
Columbia River Gorge Commission  
Consumer and Business Services, Department of  
    Insurance Division  
    Oregon Occupational Safety and Health Division (OR-OSHA)  
Energy, Office of  
Environmental Quality, Department of (DEQ)  
Fish and Wildlife, Department of  
Forestry, Department of  
Geology and Mineral Industries, Department of  
Human Resources, Department of  
Labor and Industries, Bureau of  
Land Conservation and Development Department  
Parks and Recreation, Department of  
State Lands, Department of  
Water Resources Department

**(c) Local Agencies:**

City Councils  
County Courts  
County Commissioners, Boards of  
Design Commissions  
Historical Preservation Commissions  
Lane Regional Air Pollution Authority (LRAPA)  
Planning Commissions  
Port Districts  
Special Districts

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

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

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

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

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

- All necessary Rights-of-Way, Rights of Entry and Easements;
- Permits required for crossing or encroaching upon navigable streams;
- Permits required for removing materials from or depositing materials in waterways;
- Permits required for operating in Agency-controlled source of Materials or disposal area;
- System development fees charged by local units of government;
- Building construction permits, not including specialty work such as heating, ventilation, air conditioning, or electrical;
- Cost of referencing and replacing endangered survey monuments; and
- Environmental permits, excluding erosion control permits.

If, after the Bid Closing date, the Agency obtains any Permits, Rights of Way or Easements which require changes to the Work and thereby causes an increase or decrease in the cost of, or the time required for the performance of the Work, the Contractor shall submit information sufficient for the Engineer to determine the extent of the effects on the cost and/or schedule. If the Engineer agrees the cost and/or schedule will be affected by such changes, such effects will be handled in accordance with the General Conditions. The Engineer will provide the Contractor with a copy of any such Permits, Rights-of-Way or Easements.

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

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

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

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

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

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

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

**00170.06 Taxes** - The Contract unit or lump sum prices shall include full compensation for any payroll taxes which may be incurred under State and Federal Unemployment and Social Security Acts, and all Sales Taxes on materials furnished by Contractor. The Contractor shall promptly pay such taxes to the proper agency, and shall indemnify and save harmless the Agency from any liability which may or could arise therefrom.

**00170.07 Record Requirements** - For purposes of this Subsection the term "Contractor" includes the Contractor, all subcontractors, Material Suppliers, and providers of rented operated Equipment (except non-DBE truck drivers), at all tiers, for all subcontracts with first-tier Subcontractors, all subcontracts between the first-tier Subcontractors and their subcontractors and any other lower tier subcontracts, and "Related Entities" as that term is defined in OAR 731-005-0780. The Material Suppliers included in this definition are those for Aggregates, Asphalt Cement Concrete, Portland Cement Concrete and the supply and fabrication of structural steel items or Material Suppliers that provide quotes.

**(a) Records Required** - The Contractor shall maintain all records, whether created before or after execution of the Contract, or during Contract performance, or after Contract completion, to clearly document:

- The Contractor's performance of the Contract or a subcontract;
- The Contractor's ability to continue performance of the Contract or a subcontract; and
- All claims arising from or relating to performance under the Contract or a subcontract.

These records shall include all records, including fiscal records, regardless of when created for the Contractor's business. The records for the Contractor's business include without limitation the:

- Bidding estimates and records, worksheets, tabulations or similar documents.
- Job cost detail reports, including monthly totals.
- Payroll records (including without limitation the ledger or register, and tax forms) and all documents which establish the periods, individuals involved, the hours for the individuals, and the rates for the individuals.

- Records that identify the Equipment used by the Contractor and subcontractors in the performance of the Contract or subcontracts, including without limitation, Equipment lists, rental contracts and any records used in setting rental rates.
- Invoices from vendors, rental agencies, and subcontractors.
- Material quotes, invoices, purchase orders and requisitions.
- Contracts with subcontractors and contracts with Material Suppliers, Suppliers and providers of rented equipment.
- Contracts or documents of other arrangements with any Related Entity as defined in OAR 731-005-0780.
- General ledger.
- Trial Balance.
- Financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial statement notes).
- Income tax returns.
- All worksheets used to prepare bids or claims, or to establish the cost components for the Pay Items, including without limitation, the labor, benefits and insurance, Materials, Equipment, and subcontractors.

The following are examples, but not an exhaustive list, of records that would be included, if generated by the Contractor. If the Contractor generates such records, or equivalent records, they are included among the records subject to 00170.07.

- Daily time sheets and supervisor's daily reports.
- Collective bargaining agreements.
- Earnings records.
- Journal entries and supporting schedules.
- Insurance, welfare, and benefits records.
- Material cost distribution worksheet.
- Subcontractors' and lower tier subcontractors' payment certificates.
- Payroll and vendor's cancelled checks.
- Cash disbursements journal.
- All documents related to each and every claim together with all documents that support the amount of damages as to each claim.
- Additional financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial notes) preceding the execution of the Contract and following final payment of the Contract.
- Depreciation records on all business Equipment maintained by the business involved, its accountant, or other Entity. (If a source other than depreciation records is used to develop cost for the Contractor's internal purposes in establishing the actual cost of owning and operating Equipment, all such other source documents.)

The Contractor shall maintain all fiscal records in material compliance with generally accepted accounting principles, or other accounting principles that are accepted accounting principles and practices for the subject industry and adequate for the nature of the Contractor's business, and in such a manner that providing a complete copy is neither unreasonably time consuming nor unreasonably burdensome for the Contractor or the Agency. Failure to maintain the records in this manner shall not be an excuse for not providing the records.

The Contractor shall include in its subcontracts, purchase orders, and all other written agreements, a provision requiring all subcontractors, Material Suppliers and providers of rented operated Equipment, (except non-DBE truck drivers), at all tiers to comply with 00170.07. The Contractor shall also require all subcontractors, Material Suppliers, and providers of rented operated Equipment, (except non-DBE truck drivers), at all tiers and Related Entities to include in their contracts, purchase orders, and all other written agreements, a provision requiring all lower tier subcontractors, Material Suppliers and providers of rented operated Equipment (except non-DBE truck drivers) to comply with 00170.07. The Material Suppliers to which this applies are those for Aggregates, Asphalt Cement Concrete, Portland Cement Concrete and the supply and fabrication of structural steel items or Material Suppliers that provide Material quotes and Related Entities as defined in OAR 731-005-0780.

**(b) Access to Records** - The Contractor shall provide the Engineer access to or a copy of all Contractor records upon request. A Project Manager's authority to request or access records is subject to OAR 731-005-0780(9). During the record retention period the Engineer, employees of the Agency, representatives of the Agency, or representatives of regulatory bodies or units of government may:

- Inspect, examine and copy or be provided a copy of all Contractor records;
- Audit the records, a Contract or the performance of a Contract;
- Inspect, examine and audit the records when, in the Agency's sole discretion, the records may be helpful in the resolution of any claim, litigation, administrative proceeding or controversy arising out of or related to a Contract.

Reasons for access to audit, inspect, examine and copy records include without limitation, general auditing, reviewing claims, checking for collusive bidding, reviewing or checking payment of required wages, performance and contract compliance, workplace safety compliance, evaluating related Entities, environmental compliance, and qualifications for performance of the Contract, including the ability to perform and the integrity of the Contractor.

Where such records are stored in a computer or in other digital media, the Engineer may request, and the Contractor shall provide, a copy of the data files and such other information or access to software to allow the Engineer review of the records.

Nothing in 00170.07 is intended to operate as a waiver of the confidentiality of any communications privileged under the Oregon Evidence Code. Nothing in 00170.07 limits the records or documents that can be obtained by legal process.

**(c) Record Retention Period** - The Contractor shall maintain the records and keep the records accessible and available at reasonable times and places for at least 3 years from the date of final payment under the Contract, or until the conclusion of all audits, litigation, administrative proceedings, disputes and claims arising out of or related to the Contract, whichever date is later.

**(d) Public Records Requests** - If records provided under this section contain any information that may be considered exempt from disclosure as a trade secret under either ORS 192.501(2) or ORS 646.461(4), or under other grounds specified in Oregon Public Records Law, ORS 192.410 through ORS 192.505, the Contractor shall clearly designate on or with the records the portions which the Contractor claims are exempt from disclosure, along with a justification and citation to the authority relied upon. Entire records or documents should not be designated as a trade secret or otherwise exempt from disclosure. Only specific information within a record or document should be so designated.

To the extent allowed by the Oregon Public Records Law or other applicable law related to the disclosure of public records, Agency will not disclose records or portions of records the Contractor has designated as trade secrets to a third party, who is not a representative of the Agency, to the extent the records are exempt from disclosure as trade secrets under the Oregon Public Records Law or other applicable law, except to the extent Agency is ordered to disclose in accordance with the Oregon Public Records Law or by a court of competent jurisdiction. Application of the Oregon Public Records Law or other applicable law shall determine whether any record, document or information is actually exempt from disclosure.

In addition, in response to a public records request, the Agency will not produce or disclose records so identified as exempt by the Contractor to any person other than representatives of the Agency, and others with authorized access under 00170.07(b), without providing the Contractor a copy of the public records request, unless:

The Contractor consents to such disclosure; or

Agency is prohibited by applicable law or court order from providing a copy of the public records request to the Contractor.

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

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

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

**(b) Prompt Payment by Contractor to First-Tier Subcontractor(s)** - According to ORS 279C.580(3)(a), after the Contractor has determined and certified to the Agency that one or more of its Subcontractors has satisfactorily performed subcontracted Work, the Contractor may request payment from the Agency for the Work, and shall pay the Subcontractor(s) within 10 Calendar Days out of such amounts as the Agency has paid to the Contractor for the subcontracted Work.

**(c) Interest on Unpaid Amount** - If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract within 30 Days after the Contractor's receipt of payment, the Contractor or first-tier Subcontractor shall owe the Entity the amount due plus interest charges that begin at the end of the 10 day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b). The rate of interest on the amount due shall be in accordance with ORS 279C.515(2). The amount of interest shall not be waived.

**(d) Agency's Payment of the Contractor's Prompt Payment Obligations** - If the Contractor fails, neglects or refuses to make prompt payment of any invoice or other demand for payment for labor or services furnished to the Contractor or a Subcontractor by any Entity in connection with the Contract as such payment becomes due, the Agency may pay the Entity furnishing the labor or services and charge the amount of the payment against monies due or to become due the Contractor under the Contract.

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

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

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

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

**00170.20 Public Works Bond** - If the original Contract Amount is \$100,000 or greater, then before starting work, or if the Contract Amount is amended to a Contract Amount \$100,000 or greater, and unless otherwise exempt under ORS 279C.836(4), (7) – (9), the Contractor shall file a public works bond with the Oregon Construction Contractors Board in the amount required by ORS 279C.836 [\$30,000 (1970)] before starting or continuing Work on the project. Further, the Contractor shall then include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Oregon Construction Contractors Board in the amount required by ORS 279C.836 [\$30,000 (1970)] before starting Work, or if the Contract Amount is amended to \$100,000 or above, before continuing Work on the project. ORS 279(C).830(3)(a,b) The Contractor shall verify subcontractors have filed a public works bond before the subcontractor begins Work.



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

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

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

Workers exposed to traffic shall wear upper body garments or safety vests that are highly visible and meet the requirements of 00225.25.

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

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

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

**00170.61 Industrial Accident Protection:**

(a) **Workers' Compensation** - The Contractor shall provide workers' compensation coverage for on-the-job injuries as required by 00170.70(d).

(b) **Longshoremen's and Harbor Workers' Compensation** - If Work to be performed is over or adjacent to navigable waters, the Longshoremen's and Harbor Workers' Compensation Act, (Chapter 18, Title 33 of the USC) may apply, and the Contractor shall be responsible for complying with its provisions (which may include the provision of additional workers' compensation benefits to employees).

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

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

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

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

(b) **State Prevailing Wage Requirements** - The Contractor shall comply with the prevailing wage provisions of ORS 279C.800 through ORS 279C.870.

(1) **Minimum Wage Rates** - The Bureau of Labor and Industries (BOLI) determines and publishes the existing State prevailing wage rates in the publication "Prevailing Wage Rates for Public Works Contracts in Oregon". The Contractor shall pay workers not less than the specified minimum hourly wage rate according to ORS 279C.838 and ORS 279C.840 and shall include this requirement in all subcontracts.

See the Project Wage Rates page included with the Special Provisions for additional information about which wage rates apply to the project and how to access the applicable wage rates.

**(2) Payroll and Certified Statements** - As required in ORS 279C.845, the Contractor and every subcontractor shall submit written certified statements to the Engineer on the form prescribed by the Commissioner of BOLI in OAR 839-025-0010 certifying compliance with wage payment requirements and accurately setting out the Contractor's or subcontractor's weekly payroll records for each worker employed upon the project.

The Contractor and subcontractors shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

**(3) Additional Retainage:**

**a. Agency** - As required in ORS 279C.845(7) the Agency will retain 25% of any amount earned by the Contractor on the project until the Contractor has filed the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. The Agency will pay to the Contractor the amount retained within 14 Days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

**b. Contractor** - As required in ORS 279C.845(8) the Contractor shall retain 25% of any amount earned by a First-Tier subcontractor on the project until the First-Tier subcontractor has filed with the Agency the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. Before paying any amount retained, 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.

**(4) Owner/Operator Data** - For a project funded by the FHWA, the Contractor shall furnish data to the Engineer for each owner/operator providing trucking services. Furnish the data before the time the services are performed and include without limitation for each owner/operator:

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

**(c) State Overtime Requirements** - As a condition of the Contract, the Contractor shall comply with the pertinent provisions of ORS 279C.520 and 279C.540.

**(1) Maximum Hours of Labor and Overtime Pay** - According to ORS 279C.540, no person shall be employed to perform Work under this Contract for more than 10 hours in any 1 Day, or 40 hours in any 1 week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, the Contractor shall pay the employee at least time and a half pay:

- For all overtime in excess of 8 hours a day or 40 hours in any 1 week when the work week is 5 consecutive days, Monday through Friday; or
- For all overtime in excess of 10 hours a day or 40 hours in any 1 week when the work week is 4 consecutive days, Monday through Friday; and
- For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

For additional information on requirements for overtime and establishing a work schedule see OAR 839-025-0050 and OAR 839-025-0034.

**(2) Notice of Hours of Labor** - The Contractor shall give written notice to employees of the number of hours per day and days per week the employees may be required to work. Provide the notice either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees.

**(3) Exception** - The maximum hours of labor and overtime requirements under ORS 279C.540 will not apply to the Contractor's Work under this Contract if the Contractor is a party to a collective bargaining agreement in effect with any labor organization. For a collective bargaining agreement to be in effect it shall be enforceable within the geographic area of the project, and its terms shall extend to workers who are working on the project (see OAR 839-025-0054).

**(d) State Time Limitation on Claim for Overtime** - According to ORS 279C.545, any worker employed by the Contractor is foreclosed from the right to collect any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 Days from the completion of the contract, provided the Contractor posted and maintained a circular as specified in this provision. Accordingly, the Contractor shall:

- (1) Cause a circular, clearly printed in boldfaced 12-point type containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed to perform Work; and
- (2) Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

**(e) Additional Requirements When Federal Funds are Involved** - When federal funds are involved, the following requirements shall apply in addition to the requirements of 00170.65(a) through 00170.65(d). The Contractor shall include these provisions in all subcontracts as well as ensure that all Subcontractors include these provisions in their lower tier subcontracts.

**(1) FHWA Requirements** - For Federal-Aid projects, the Contractor shall comply with the provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts".

**(2) Minimum Wage Rates** - The Contractor shall pay each worker in each trade or occupation employed to perform any work under the contract not less than the existing State (BOLI) prevailing wage rate or the applicable federal prevailing wage rate required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), whichever is higher. The Contractor shall include this provision in all subcontracts.

See the Project Wage Rates page included with the Special Provisions for additional information about which wage rates apply to the project and how to access the applicable wage rates.

**(3) Payroll and Certified Statements** - In addition to providing the payroll information and certified statements required under ORS 279C.845 (see 00170.65(b-2)), the Contractor and every subcontractor shall submit written certified statements that also meet the requirements in Section IV of FHWA Form 1273 except the Contractor and every subcontractor shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

**(4) Overtime** - With regard to overtime pay, the Contractor shall comply with the overtime provision affording the greatest compensation required under FHWA Form 1273 and ORS 279C.540.

#### **00170.70 Insurance:**

**(a) Insurance Coverages** - Prior to starting work hereunder, CONTRATOR, at CONTRATOR'S cost, shall secure and continue to carry until Final Acceptance, with an insurance company acceptable to CITY, the following insurance, written on an occurrence basis, in amounts not less than the limitations on liability for local public bodies provided in ORS 30.272 and ORS 30.273:

**Commercial General Liability** - CONTRATOR shall obtain, at CONTRATOR'S expense and keep in effect until Final Acceptance, Commercial General Liability Insurance covering bodily injury and property damage. Coverage shall include Contractors, subcontractors and anyone directly or indirectly employed by either.

**Pollution Liability** - If indicated by Special Provisions, Pollution Liability Insurance covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage resulting from sudden and accidental pollution, gradual pollution, and related clean-up costs incurred by the Contractor, or by the subcontractor if the coverage is obtained by the subcontractor, while performing Work required by the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for

Pollution Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

**Asbestos Liability** - If indicated by Special Provisions, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, The Contractor or subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

**Lead Liability** - If indicated by Special Provisions, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, the Contractor or subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the separate policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

**Commercial Automobile Liability** - CONTRATOR shall obtain, at CONTRATOR'S expense and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).

**Commercial Automobile Liability with Pollution Coverage** - If indicated by Special Provisions, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide Commercial Automobile Liability Insurance with Pollution coverage covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability with Pollution Coverage and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions or the amount required by the U.S. Department of Transportation, whichever is greater. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.

Commercial Automobile Liability with Pollution Coverage is required for this Project because the Project includes pollution related Work. If the Contractor will be performing pollution related Work, this coverage covering the Contractor must be provided. If an appropriate subcontractor, but not the Contractor, will perform the pollution related Work, Commercial Automobile Liability with Pollution Coverage covering the subcontractor, but not the Contractor, must be provided, however, the Contractor shall provide Commercial Automobile Liability insurance coverage covering the Contractor as provided in the Commercial Automobile Liability bullet above. If both the Contractor and an appropriate subcontractor will be performing pollution related Work, Commercial Automobile Liability with Pollution Coverage covering both the Contractor and the subcontractor shall be provided, and the Contractor may provide the coverage covering both the Contractor and the subcontractor, or the Contractor and the subcontractor may provide their own, separate Commercial Automobile Liability with Pollution coverages.

**(b) Tail Coverage** - If any of the required liability insurance coverages of 00170.70(a) are on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months. The Contractor shall furnish certification of "tail" coverage as described, or continuous "claims made" liability 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 the Contract. If Continuous "claims made" coverage is used, the Contractor shall keep the coverage in effect for a duration of not less than 24 months from the end of the Contract. This will be a condition to the Engineer's issuance of a Third Notification.

**(c) Additional Insured** - The liability insurance coverage shall include CITY and its officers and employees as Additional Insured but only with respect to CONTRATOR'S activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. Prior to starting work under this Contract, CONTRATOR shall furnish a certificate to CITY from each insurance company providing insurance showing that the CITY is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

**(d) Professional Liability Insurance** - Professional Liability Insurance. The CONTRATOR shall have in force a policy of Professional Liability Insurance. The CONTRATOR shall keep such policy in force and current during the term of this contract.

**(e) Workers' Compensation** - All employers, including the Contractor and its Subcontractors, if any, that employ subject workers who are performing Work or providing labor or Materials under the Contract in the State shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. The Contractor shall ensure that each of its Subcontractors complies with these requirements.

The Contractor shall certify in the Contract that the Contractor is registered by the Oregon Workers' Compensation Division either as a carrier-insured employer, a self-insured employer, an exempt employer, or is an independent contractor who will perform the Work without the assistance of others.

The Contractor shall ensure that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

**(f) Notice of Cancellation or Change** - There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from CONTRATOR or its insurer(s) to CITY. Any failure to comply with the reporting provisions of this clause will constitute a material breach of this Contract and will be grounds for immediate termination of this Agreement.

**(g) Certificate(s) of Insurance** - As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the Agency at the time(s) provided in 00130.50(a). As evidence of insurance coverages required by this Contract but permitted by the Agency under 00170.70(a) to be obtained by an appropriate subcontractor, the Contractor shall furnish Certificate(s) of Insurance to the Agency for such coverages together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. The Certificate(s) will specify all of the parties who are Additional Insureds. The Contractor shall obtain, or ensure that the appropriate subcontractors obtain, insurance coverages required under this Contract from insurance companies or entities acceptable to the Agency and authorized to issue insurance in the State. The Contractor, or the appropriate subcontractor, but not the Agency, shall be responsible for paying all deductibles, self-insured retentions and/or self-insurance included under these provisions.

**(h) Builders' Risk** - If indicated by Special Provision, the Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builders' Risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for an amount equal to at least the value indicated in the Special Provisions. Any deductible shall not exceed \$50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or \$50,000, whichever is greater. The policy shall include the Agency as loss payee.

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

**00170.72 Indemnity/Hold Harmless** - To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, the Contractor shall indemnify, defend (with counsel approved by the Agency) and hold harmless the Agency, Agency's Authorized Representatives, Design Engineer, Design Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies, and if indicated by Special Provisions that federal transportation funding is involved the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to the following:

- Any damage, injury, loss, expense, inconvenience or delay described in this Section 00170.
- Any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects.
- Any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract.

- The acts, errors or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder but in such case only to Contractor's or subcontractor's proportionate extent.
- Any lien filed upon the project or bond claim in connection with the Work.

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

In claims against any person or entity indemnified under this Subsection by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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

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

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

No ex-employee of the Agency who has worked for the Agency on any phase of the Project within the prior 2 years may be employed by the Contractor to perform Work on the Project.

**00170.79 Third Party Beneficiary** - There are no third-party beneficiaries of the Contract, unless federal transportation funding is involved then the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees, are third-party beneficiaries of the Contract.

**00170.80 Responsibility for Damage to Work:**

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

**(b) Repair of Damage to Work** - Until Final Completion, the Contractor shall promptly rebuild, repair, restore, and make good damages to all portions of the permanent or temporary Work. The Contractor shall perform all repairs of damage to Work at no additional cost to the Agency, except for repairs necessitated by damage caused by:

- Acts of God or Nature, as defined in Section 00110; or
- Actions of governmental authorities.

**(c) Vandalism and Theft** - Vandalism includes damage to or destruction of Work or portions of Work that remain on the Project Site resulting from vandalism, criminal mischief, arson, or other criminal or illegal behavior.

Theft includes the loss of Work or portions of Work that are lost or stolen or otherwise unaccounted for from the Project Site or from Materials or fabrication locations. The Contractor shall remain solely responsible for all losses caused by theft, including without limitation theft that occurs in conjunction with vandalism.

The Contractor shall provide protection of the Work from vandalism and theft until Final Completion.

**00170.82 Responsibility for Damage to Property and Facilities:**

**(a) In General** - As used in this Subsection, the term "Contractor" shall include the Contractor's agents, Subcontractors, and all workers performing Work under the Contract; and the term "damage" shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature.

The Contractor shall be solely responsible for damages arising from:

- The Contractor's operations;
- The Contractor's negligence, gross negligence, or intentional wrongful acts; and
- The Contractor's failure to comply with any Contract provision.

The Agency may withhold funds due the Contractor or the Contractor's Surety until all lawsuits, actions, and claims for injuries or damages are resolved, and satisfactory evidence of resolution is furnished to the Agency.

**(b) Protection and Restoration of Agency Property and Facilities** - The following requirements apply to highways, highway Structures and other improvements that are existing, under construction, or completed. The Contractor shall:

- Provide adequate protection to avoid damaging Agency property and facilities;
- Be responsible for damage to Agency property and facilities caused by or resulting from the Contractor's operations; and
- Clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by the Engineer.

**(c) Protection and Restoration of Non-Agency Property and Facilities** - The Contractor shall determine the location of properties and facilities that could be damaged by the Contractor's operations, and shall protect them from damage. The Contractor shall protect monuments and property marks until the Engineer has referenced their location and authorized their removal. The Contractor shall restore property or facilities damaged by its operations to the condition that existed before the damage, at no additional compensation.

The Contractor shall provide temporary facilities when needed, e.g., to maintain normal service or as directed by the Engineer, until the required repair, rebuilding, or replacement is accomplished.

The Contractor shall protect specific service signs, e.g., business logos, and tourist-oriented directional signs (TODS) from damage, whether the signs are to remain in place or be placed on temporary supports. The Contractor shall repair or replace damaged signs at no cost to the Agency. Liquidated damages will be assessed against the Contractor in the amount of \$200 per day for each sign out of service for more than 5 Calendar Days because of the Contractor's operations.

**00170.85 Responsibility for Defective Work** - The Contractor shall make good any defective Work, Materials or Equipment incorporated into the Work, according to 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 all applicable statutes of limitation and ultimate repose, the Performance Bond, Warranty Bond, or Correction 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 statutes of limitation or ultimate repose or any applicable Performance Bond, Warranty Bond, or Correction Period.

**(b) Correction Period Warranty for Agency Projects:** - The Contractor shall warrant all Work and workmanship, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated in the Work, for one year from the date of Second Notification (Correction Period), except that manufacturers' warranties and extended warranties according to 00170.85(c) shall not be abridged. The Correction Period warranty described herein shall include extension of the Performance Bond for a period of one year from the date of Second Notification.

The Contractor shall be responsible for meeting the technical and performance Specifications required, making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from occurrences beginning during the Correction Period and are the result of defects in Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs associated with completing the repair of the defects and for associated Work including but not limited to permitting, mobilization, traffic control, erosion control, surface restoration, site cleanup and remediation caused by, or resulting in whole or in part from, defects in Materials, Equipment, or workmanship, and other Work determined by the Engineer to be necessary to complete the repair of the defects.

Within 10 Calendar Days of the Agency's written notice of defects, the Contractor, or the Contractor's Surety, shall vigorously and continuously correct and repair the defects and all related damage. If the Contractor or the Contractor's Surety fails to correct and repair the defects, the Agency may have the correction and repair done by others. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

In the event of an emergency, where delay could result in serious loss or damage, the Agency may make emergency corrections and repairs, without written notice. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

Corrections, repairs, replacements or changes shall be warranted for an additional one year period beginning on the date of the Agency's acceptance of the corrections, repairs, replacements or changes.

Without limiting the general applicability of other survival clauses under the Contract, this warranty provision shall survive expiration or termination of the Contract.

**(c) Manufacturer, installer or Supplier Warranties and Guarantees:**

**(1) Manufacturer, Installer or Supplier Warranties** - For those Specification Sections referencing this 00170.85(c-1) Subsection, the Contractor shall furnish Warranties from the Manufacturer, Installer or Supplier and signed by an authorized Representative.

The warranty period will be specified in the applicable Specification Section for which it applies.

The warranty period will begin on the date the Engineer issues Second Notification unless otherwise specified in the Contract.

Corrections, repairs, replacements or changes shall be warranted for an additional Warranty period beginning on the date of the Agency's acceptance of the corrections, repairs, replacements or changes.

When the Agency makes written notification to the Manufacturer, Supplier or Installer of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

Warranty work shall be performed when weather permits. If, in the opinion of the Engineer, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's, Supplier's or Installer's expense. The Manufacturer, Supplier or Installer shall replace all temporary repairs at no additional cost to the Agency.

The Manufacturer, Supplier or Installer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Agency.

**(2) Trade Practice Guarantees** - For those Items installed on the Project that have customary trade practice guarantees, the Contractor shall furnish the guarantees to the Engineer at the completion of the Contract.

**00170.89 Protection of Utility, Fire-control, and Railroad Property and Services; Repair; Roadway Restoration:**

**(a) Protection of Utility, Fire-Control, and Railroad Property and Services; Coordination** - The Contractor shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control authorities during performance of the



Work. The Contractor shall cooperate with and facilitate the relocation or repair of all Utilities and Utility services, as required under 00150.50, and of Railroad and fire-control property and railways.

The Contractor shall conduct no activities of any kind around fire hydrants until the local fire-control authority has approved provisions for continued service.

The Contractor shall immediately notify any Utility, Railroad, or fire-control authority whose facilities have been damaged.

If an Entity has a valid permit from the proper authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, the Contractor shall allow the permit holder to perform the work.

**(b) Restoration of Roadway after Repair Work** - The Contractor shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Engineer. All restoration work required as a result of Contractor's failure to protect Utilities, Railroads, railways and fire-control facilities shall be at the Contractor's expense. Restoration which constitutes Extra Work will be paid as Extra Work.

**00170.92 Fencing, Protecting Stock, and Safeguarding Excavations** - The Contractor shall be responsible for loss, injury, or damage that results from its failure to restrain stock and persons.

**(a) At the Contractor's Expense** - The Contractor shall restrain stock to lands on which they are confined using temporary fences or other adequate means. The Contractor shall provide adequate temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

The Contractor shall repair, at Contractor's expense and to the Engineer's satisfaction, fences damaged by the Contractor's operations and the operations of the Contractor's agents, employees and Subcontractors.

**(b) At the Agency's Expense** - The Contractor shall construct fences, or move and reconstruct fences, as shown on the Contract Documents or as directed by the Engineer. The Contractor shall tear down and remove fencing within the Right-of-Way when no longer needed, as part of the removal Work described in and paid for according to Section 00310.

**00170.93 Trespass** - The Contractor shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

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

**00170.95 Unlawful Discrimination Policy - Agency** - It is the policy of the City of Warrenton that no person shall be denied the benefits of or be subjected to discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity and expression. The City of Warrenton also requires its contractors and grantees to comply with this policy.

## Section 00180 - Prosecution and Progress

**00180.00 Scope** - This Section consists of requirements for assignment of the Contract, subcontracting, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

**00180.05 Assignment/Delegation of Contract** - Unless the Agency gives prior written consent, the Contractor shall not assign, delegate, sell, or transfer to any Entity, or otherwise dispose of any Contract rights or obligations, including without limitation:

- The power to execute or perform the Contract; or
- Any of its right, title or interest in the Contract.

Any attempted assignment, delegation, or disposition without prior Agency consent shall be void.

Such Agency consent will not normally be given except for the assignment of funds due under the Contract, as provided in 00180.06.

If written Agency consent is given to assign, delegate, or otherwise dispose of any Contract rights or obligations, it shall not relieve the Contractor or its Surety of any part of their responsibility under the Contract.

**00180.06 Assignment of Funds Due under the Contract** - Assignment of funds due or to become due under the Contract to the Contractor will not be permitted unless:

- The assignment request is made on the form acceptable to the Agency;
- The Contractor secures the written consent of the Contractor's Surety to the assignment; and
- The Engineer approves the assignment.

**00180.10 Responsibility for Contract** - The Contractor shall direct and coordinate the operations of its employees, Subcontractors and agents performing Work, and see that the Engineer's orders are carried out promptly. The Contractor's failure to direct, supervise and control its employees, Subcontractors and agents performing Work will result in one or more of the following actions, or other actions as the Engineer deems appropriate:

- Suspension of the Work;
- Withholding of Contract payments, as necessary to protect the Agency;
- Ordering removal of individuals from the Project Site; or
- Termination of the Contract.

Action by the Agency under this provision will not prejudice any other remedy it may have.

**00180.15 Agency's Right to Do Work at Contractor's Expense** - Except as otherwise provided in 00150.75 and 00220.60, if the Contractor neglects to prosecute the Work properly or fails to perform any provision of the Contract, the Agency may, after 2 Calendar Days' written notice, correct the deficiencies at the Contractor's expense. In situations where the Engineer reasonably believes there is danger to life or property, the Agency may immediately and without notice correct the deficiencies at the Contractor's expense.

Action by the Agency under this provision will not prejudice any other remedy it may have.

### **00180.20 Subcontracting Limitations:**

**(a) General** - The Contractor's own organization shall perform Work amounting to at least the percentage of the original Contract Amount as indicated in the Special Provisions. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the Subcontract(s).

**(b) Own Organization** - The term "own organization", as used in Section 00180, includes only employees of the Contractor, Equipment owned or rented by the Contractor, Incidental rental of operated Equipment, and Materials and Equipment to be incorporated into the Work purchased or produced by the Contractor.

**00180.21 Subcontracting:**

**(a) Substitution of Disclosed Subcontractors** - The Contractor may only substitute a previously disclosed first-tier Subcontractor according to the provisions of ORS 279C.585. The Contractor shall provide the Engineer with a written notification that identifies the name of the proposed new Subcontractor and the reason for the substitution. Authorized reasons for substitution are limited to the following circumstances (see ORS 279C.585(1) through ORS 279C.585(10)):

- The disclosed Subcontractor fails or refuses to execute a written contract that is reasonably based either upon the Project Plans and Specifications, or the terms of the Subcontractor's written Bid, after having had a reasonable opportunity to do so;
- The disclosed Subcontractor becomes bankrupt or insolvent;
- The disclosed Subcontractor fails or refuses to perform the contract;
- The disclosed Subcontractor fails or refuses to meet the bond requirements of the prime Contractor that had been identified prior to the Bid submittal;
- The Contractor demonstrates to the Agency that the Subcontractor was disclosed as the result of an inadvertent clerical error;
- The disclosed Subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board;
- The Contractor determines that the Work performed by the disclosed Subcontractor is not in substantial compliance with the Plans and Specifications, or that the Subcontractor is substantially delaying or disrupting the progress of the Work;
- The disclosed Subcontractor is ineligible to work on a public improvement according to the applicable statutory provisions;
- The substitution is for "good cause" as defined by State Construction Contractors Board rule; or
- The substitution is reasonably based on the Contract alternates chosen by the Agency.

**(b) Terms of Subcontracts** - Subcontracts shall provide that work performed under the subcontract shall be conducted and performed according to the terms of the Contract. Compliance with 00170.07 is required. All subcontracts, including Contractor's with the first-tier Subcontractors and those of the first-tier Subcontractors with their subcontractors, and any other lower tier subcontracts shall contain a clause or condition that if the Contractor or a subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

(1) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within 10 Calendar Days out of amounts the Agency pays to the Contractor under the Contract.

(2) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor.

(3) A clause that requires the Contractor, except as otherwise provided in this subsection, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

- Notifies the Subcontractor in writing at least 45 Calendar days before the date on which the Contractor makes the change; and
- Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(4) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within 30 Calendar Days after receiving payment from the Agency, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under 00180.21(d-1). The Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the Agency or the Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and ends on the date on which the amount due is paid; and shall be computed at the rate specified in 00170.10(c).

(5) A clause that requires the Contractor's first-tier Subcontractor to include a payment clause and an interest penalty clause that conform to the standards of ORS 279C.580 (see 00180.21(d-1) and 00180.21(d-4)) in each of the first-tier Subcontractor's subcontracts and to require each of the first-tier Subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Material supplier.

These payment clauses shall require the Contractor to return all retainage withheld from the Subcontractor, whether held by the Contractor or the Agency, as specified in 00195.50(d).

As required by ORS 279C.800 through ORS 279C.870, subcontracts shall include:

- A provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work on the Project, unless exempt.
- A provision requiring that the workers shall be paid not less than the specified minimum hourly rate of wage.

(c) **Contractor's Responsibilities** - The Contractor shall remain solely responsible for administration of the subcontract, including but not limited to:

- Performance of subcontracted Work;
- Progress of subcontracted Work;
- Payments for accepted subcontracted Work; and
- Disputes and claims for additional compensation regarding subcontracted Work.

It shall be the direct responsibility of the Contractor to ensure that each and every Subcontractor will not only be issued a complete and current set of Plans and Specifications, but also that these Plans and Specifications are on the project site and in use by the Subcontractor when it is performing its portion of the project.

Subcontracted Work shall not create a contract between the Agency and the Subcontractor, will not convey to the Subcontractor any rights against the Agency, and will not relieve the Contractor or the Contractor's Surety of any of their responsibilities under the Contract.

(f) **Failure to Comply** - Failure to comply with 00180.21 will be cause for the Engineer to take action reasonably necessary to obtain compliance. This action may include, but is not limited to:

- Suspension of the Work;
- Withholding of Contract payments as necessary to protect the Agency; and
- Termination of the Contract.

**00180.22 Payments to Subcontractors and Agents of the Contractor** - To the extent practicable, the Contractor shall pay in the same units and on the same basis of measurement as listed in the Schedule of Items for subcontracted Work or other Work not done by the Contractor's own organization. The Agency will not be responsible for any overpayment or losses resulting from overpayment by the Contractor to Subcontractors and to its other agents, work providers, service providers, and trucking service providers.

If requested in writing by a first-tier Subcontractor, the Contractor shall send to the Subcontractor, within 10 Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to the Agency, or pay document provided by the Agency to the Contractor, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.

**00180.30 Materials, Equipment, and Work Force** - The Contractor shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute and complete the Work. The Contractor shall use only Equipment of adequate size and condition to meet the requirements of the Work and Specifications, and to produce a satisfactory quality of Work. Upon receipt of the Engineer's written order, the Contractor shall immediately remove, and not use again on the Project without the Engineer's prior written approval, Equipment that, in the Engineer's opinion, fails to meet Specifications or produce a satisfactory product or result.

The work force shall be trained and experienced for the Work to be performed. Upon receipt of the Engineer's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Engineer's prior written approval, any supervisor or employee of the Contractor or any subcontractor who, in the Engineer's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If the Contractor fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment and personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Engineer may terminate the Contract under the provisions of 00180.90(a).

**00180.31 Required Materials, Equipment, and Methods** - The Engineer's decisions under this Section are final.

**(a) General** - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, the Contractor shall use the Equipment or methods specified unless otherwise authorized by the Engineer in writing.

**(b) Substitution of Materials and Equipment to be Incorporated into the Work** - After execution of the Contract, the Engineer may approve substitution of Materials and Equipment to be incorporated into the Work as follows:

**(1) Reasons for Substitution** - The Engineer will consider substitution only if:

- In the judgement of the Engineer, the proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency and utility; or
- Due to reasons beyond the control of the Contractor, the specified Materials or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence.

**(2) Submittal of Request** - The Contractor shall submit requests for substitution to the Engineer, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

**(c) Substitution of Equipment Specified to Perform Work** - The Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain portions of the Work, the Contractor may submit a request to the Engineer to use Equipment of a different size or type. The request will not be considered as a cost reduction proposal under 00140.70. The request shall:

- Be in writing and include a full description of the Equipment proposed and its intended use;
- Include the reasons for requesting the substitution; and
- Include evidence, obtained at the Contractor's expense and satisfactory to the Engineer, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Engineer will consider the Contractor's request and will provide a written response to the Contractor, either permitting or denying use of the proposed Equipment.

Permission may be granted on a trial basis to test the quality of Work actually produced, subject to the following:

- There will be no cost to the Agency, either in Contract Amount or in Contract Time;
- The permission may be withdrawn by the Engineer at any time if, in the Engineer's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract;

- If permission is withdrawn, the Contractor shall perform the remaining Work with the originally-specified Equipment; and
- The Contractor shall remove and replace nonspecification Work resulting from the use of the Contractor's proposed Equipment, or otherwise correct it as the Engineer directs, at no additional compensation.

**(d) Substitution of Methods** - The Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, the Contractor may submit a request for a change by following the provisions of 00140.70, "Cost Reduction Proposals".

**00180.40 Limitation of Operations:**

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

- Conduct the Work at all times so as to cause the least interference with traffic, and
- Not begin Work that may allow damage to Work already started.

**(b) On-Site Work** - The Contractor shall not begin On-Site Work until the Contractor has:

- Received Notice to Proceed;
- Filed with the Construction Contractors Board the public works bond as required in 00170.20;
- An approved Project Work schedule;
- An approved Traffic Control Plan;
- An approved Spill Prevention Control and Countermeasure Plan, if required;
- An approved Pollution Control Plan;
- An approved Erosion and Sediment Control Plan;
- Met with the Engineer at the required preconstruction conference; and
- Assembled all Materials, Equipment, and labor on the Project Site, or has reasonably assured that they will arrive on the Project Site, so the Work can proceed according to the Project Work schedule.

**00180.41 Project Work Schedules** - The Contractor shall submit a Project Work schedule meeting the requirements of this Subsection to the Engineer. The Project Work schedule is intended to identify the sequencing of activities and time required for prosecution of the Work. The schedule is used to plan, coordinate, and control the progress of construction. Therefore, the Project Work schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities.

The Contractor shall submit a schedule or plan for each activity that is behind schedule showing, in sufficient detail, the proposed corrective action to complete Contract Work within the Contract Time. Sufficient detail shall include all required double shifts, overtime work, or combination of both.

Contractor's activity related to developing, furnishing, monitoring, and updating these required schedules is Incidental.

The Contractor shall submit a supplemental "look ahead" Project Work schedule to the Engineer prior to or at each Progress Meeting. The "look ahead" Project Work schedule is supplemental to the Type A, B, or C schedule specified below. The supplemental "look ahead" Project Work schedule shall:

- Identify the sequencing of activities and time required for prosecution of the Work.
- Provide for orderly, timely, and efficient prosecution of the Work.
- Contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities.

The supplemental "look ahead" Project Work schedule shall be written in common terminology and show the planned Work activities broken down into logical, separate activities by area, stage, and size and include the following information:

- The resources the Contractor, subcontractors, or services will use.
- The locations of each activity that will be done including the limits of the work by mile posts, stations, or other indicators.
- The time frames of each activity by Calendar Days, shifts, and hours.
- All anticipated shoulder, lane, and road closures.

At a minimum, the Contractor shall prepare a bar chart that:

- Shows at least 3 weeks of activity including the week the bar chart is issued.
- Uses a largest time scale unit of 1 Calendar Day. Smaller time scale units may be used if needed.
- Is appropriate to the activities.
- Identifies each Calendar Day by month and day.

Include the Contract name, Contract number, Contractor's name, and date of issue on each page of the bar chart.

The Contractor shall submit the supplemental "look ahead" Project Work schedule starting at First Notification and continuing until Second Notification has been issued and all punch list items and final trimming and clean-up has been completed. The Contractor shall meet with the Engineer each week to review the supplemental "look ahead" Project Work schedule. If the Engineer or the Contractor determines that the current supplemental "look ahead" Project Work schedule requires changes or additions, either notations can be made on the current schedule or the Engineer may require the submittal of a revised supplemental "look ahead" Project Work schedule. Review of the current and subsequent supplemental "look ahead" Project Work schedules does not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

One of the following Type "A", "B", or "C" schedules will be required under the Contract. The type of schedule will be identified in the Special Provisions.

**(a) Type "A" Schedule** - When a Type "A" schedule is required, the Contractor shall do the following:

**(1) Schedule** -At the preconstruction conference, the Contractor shall provide to the Engineer four copies of a Project Work schedule, including a time-scaled bar chart and narrative, showing:

- Expected beginning and completion dates of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00225.05.

The schedule shall show detailed Work activities as follows:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Materials samples and shop drawings;
- Fabrication, installation, and testing of special Materials and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in Calendar Days; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of workdays scheduled.

- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in Calendar Days.
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

Each page of the bar chart shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch by 36 inch, using multiple sheets when needed.

Within 7 Calendar Days after the preconstruction conference, the Engineer and the Contractor shall meet to review the Project Work schedule as submitted. The Engineer will review the schedule for compliance with all Contract Time limitations and other restraints. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract. Within 10 Calendar Days of this meeting, the Contractor shall resubmit to the Engineer four copies of the Project Work schedule, including required revisions.

**(2) Review by the Engineer** - The Project Work schedule may need revision as the Work progresses. Therefore, the Contractor shall periodically review the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule.

The Contractor shall compile an updated Project Work schedule incorporating any changes to the Project completion time(s). The bar chart shall reflect the updated information. The Contractor shall submit four copies of the updated Project Work schedule to the Engineer within 7 Calendar Days after the meeting. The report shall include without limitation the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

**(b) Type "B" Schedule** - When a Type "B" Schedule is required, the Contractor shall do the following:

**(1) Initial Schedule** - 5 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer four copies of a time-scaled bar chart Project Work schedule showing:

- Expected beginning and completion date of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00225.05.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

**(2) Detailed Schedule** - In addition to the above requirements, and within 30 Calendar Days after the Notice to Proceed, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled bar chart Project Work schedule indicating the critical course of the Work. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer.

Detailed work schedule activities shall include the following:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Material samples and shop drawings;



- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in normal workdays; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of normal workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in normal workdays (every day except Saturday, Sunday, and legal holidays).
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

The bar chart drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

Within 10 Calendar Days after submission of the Project schedule the Engineer and the Contractor shall meet to review the Project schedule as submitted. Within 10 Days of the review meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the Project schedule, including required revisions.

The accepted Project schedule shall represent all Work, as well as the planned sequence and time for the Work. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**(3) Review and Reporting** - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

- Review with the Engineer** - The Contractor shall perform ongoing review of the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the Project Work schedule.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include commencement and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it.

The Contractor shall evaluate this information and compare it with the Contractor's project schedule. If necessary, the Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit one digital and four paper copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

**b. Progress Report** - The Contractor shall submit a progress report to the Engineer each month. The report shall include the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

**(c) Type "C" Schedule** - When a Type "C" Schedule is required, the Contractor shall do the following:

**(1) Initial Schedule** - 10 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer one digital copy and four paper copies of a time-scaled bar chart Project Work schedule. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The initial schedule shall show:

- The expected beginning and completion date of each activity, including all stages and phases;
- The time needed for completion of the utility relocation work; and
- The elements of the traffic control plan as required under 00225.05.

A logic diagram and a time-scaled bar chart will be acceptable in lieu of a time-scaled logic diagram.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

**(2) Detailed Project Work Schedule** - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled critical path method (CPM) network Project Work schedule and computer analysis printout, both clearly indicating the critical path. The digital copy shall be compatible with MS Project 2003, Primavera P3, SureTrak Project Manager 3.0, or another scheduling program approved by the Engineer. The first submitted detailed time-scaled critical path method (CPM) network Project Work schedule shall also contain a listing of the quantity of Work for each activity, when appropriate, in common units of measure.

Detailed work schedule activities shall include the following:

- Construction activities;
- Any limitations of operation specified in 00180.40;
- The time needed for completion of the utility relocation work;
- Implementation of TCP for each stage and phase;
- Submittal and approval of Material samples, mix designs, and shop drawings;
- Agency timeframes to process and return Contractor submitted plans, working drawings, equipment lists and other submittals;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment;
- Duration of Work, including completion times of all stages and their sub-phases; and
- Specified cure times for all concrete elements.

The activities shall be separately identifiable by coding or use of sub-networks or both. The duration of each activity shall be verifiable and consistent with the description in the Project narrative required in (3) below.

Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. In the restraints, include those activities from any Project Work schedule that initiated the sub-network as well as those restrained by it.

The time scale used on the Contractor's detailed time-scaled critical path method (CPM) network Project Work schedule shall be appropriate for the duration of the activities and the Project duration. The time scale shall be in normal workdays, defined as every day except Saturday, Sunday and legal holidays, with calendar dates identified no less than the first and midpoint of each calendar month. The smallest unit shown shall be 1 Day. The network shall show the length of the activity or part scaled to accurately represent the number of normal workdays scheduled. Distinct symbols or graphics shall be used to show multiple shift, holiday, or weekend work.

The schedule network drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the drawings shall be on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

The Contractor shall include a tabulation of each activity in the computer mathematical analysis of the network diagram. The following information represents the minimum required for each activity:

- Event (node) number(s) for each activity;
- Maintain event (node) numbers throughout the Project;
- Activity description;
- Original duration of activities (in normal workdays);
- Estimated remaining duration of activities (in normal workdays);
- Earliest start date and actual start date (by calendar date);
- Earliest finish date and actual finish date (by calendar date);
- Latest start date (by calendar date);
- Latest finish date (by calendar date); and
- Slack or float time (in workdays).

Computer print-outs shall consist of at least a node sort and an "early start/total-float" sort.

Within 14 Calendar Days after submission of the detailed time-scaled critical path method (CPM) network Project Work schedule, the Engineer and the Contractor shall meet to review the detailed time-scaled critical path method (CPM) network Project Work schedule as submitted. Within 7 Calendar Days of the meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the detailed time-scaled critical path method (CPM) network Project Work schedule, including required revisions.

This first accepted detailed time-scaled critical path method (CPM) network Project Work schedule, also called the accepted Project Work schedule, shall represent all Work, as well as the planned sequence and time for the Work. Review and acceptance of any Project Work schedules and Project narratives by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**(3) Project Narrative** - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide to the Engineer a final written Project narrative that discusses the planning, coordinating, scheduling and resourcing of the Work. The Project narrative shall include the following written description:

- Plans for staging the project.
- All critical activities.
- All near critical activities defined as those with less than 30 Days of float.
- All subcontractor activities that are critical, near critical, and those that are greater than two weeks in duration.
- Labor resourcing, by stage and phase, to include the number of crews, average crew size and planned night/weekend shifts including that of subcontractors.

- Equipment allocation, by stage and phase to include mobilization, demobilization and planned activities including that of subcontractors.
- Notifications required under the Contract during each stage and phase which may include but is not limited to road closures, lanes closures, night work, cold plane pavement removal, and pile driving.
- Provide discussion on addressing reasonably predictable weather conditions and their impact on all weather sensitive activities. Also, provide discussion on other weather limitations that may affect the project schedule.
- Submittal and approval of material samples, mix designs, and shop drawings.
- Procurement of critical materials.
- Plans for dealing with "unique" construction items.
- Coordination of utilities and any immediate concerns for impacts/delays.
- Constructability issues.
- Cost Reduction Proposals and/or immediate requests for changes to the specifications.
- Concerns/issues that need to be addressed within the first 90 Days following First Notification.

The accepted Project narrative shall represent all critical and near critical Work, as well as the planned sequence and time for the Work.

**(4) Review and Reporting** - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

**a. Review with the Engineer** - The Contractor shall perform ongoing review of the accepted Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the accepted Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the accepted Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the accepted Project Work schedule and associated Project narrative. Upon acceptance by the Engineer, this will become the new accepted Project Work schedule and associated Project narrative.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include actual start and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it. The procedure for acceptance of the revised or updated Project Work schedule as the new accepted Project Work schedule will be as provided above.

The Contractor shall evaluate this information each month and compare it with the accepted Project Work schedule. The Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit , digitally and in paper, copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

**b. Progress Report** - Each month the Contractor shall submit a progress report and an update of the Project Work schedule to the Engineer. The report and updated schedule shall be submitted both digitally and in paper copy and shall include the following:

- A sufficient description, in narrative form, to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule;

- Proposed corrective actions;
- Proposals to keep the Project on schedule in the event of a delay; and
- Any changes to the logic as compared to the accepted Project Work schedule.

**(d) Substitution of Schedules** - When a Type "A" schedule is required, a Type "B" or Type "C" schedule may be substituted for the Type "A" schedule.

When a Type "B" schedule is required, a Type "C" schedule may be substituted for the Type "B" schedule.

**(e) Specified Contract Time Not Superseded by Schedule Revisions** - The completion dates in any Project Work schedule and any revised or updated Project Work schedules shall be within the Contract Time(s) specified for the Project, or within adjusted Contract Times approved according to 00180.80(c). Acceptance of any Project Work schedule or any revised or updated Project Work schedules shall not constitute approval of any completion dates that exceed such Contract Time(s). If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with a revised Project Work schedule, a request for adjustment of Contract Time according to 00180.80(c). A request for an adjustment of Contract Time will be evaluated using the most recently accepted Project Work schedule.

**(f) Float Time** - Float time shown on the Project Work schedule, including any time between a Contractor's scheduled completion date and the specified Contract Time(s), does not exist for the exclusive use of either party to the Contract and belongs to the Project.

**(g) Schedules Do Not Constitute Notice** - Submittal of a Project Work schedule, with supporting Project narrative, does not constitute or substitute for any notice the Contractor is required under the terms of the Contract to give the Agency.

**(h) Failure to Provide Schedule** - The Project Work schedule is essential to the Agency. The Contractor's failure to provide the schedule, schedule information, progress reports, Project narratives, or schedule updates when required will be cause to suspend the Work, or to withhold Contract payments as necessary to protect the Agency, until the Contractor provides the required information to the Engineer.

**00180.42 Preconstruction Conference** - Unless otherwise approved in writing by the Engineer, before any Work is performed and within 7 Calendar Days of the Notice to Proceed, the Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon.

**00180.43 Commencement and Performance of Work** - From the time of commencement of the Work to the time of Final Acceptance the Contractor shall:

- Provide adequate Materials, Equipment, labor, and supervision to perform and complete the Work;
- Perform the Work as vigorously and as continuously as conditions permit, and according to a Project Work schedule that ensures completion within the Contract Time or the adjusted Contract Time;
- Not voluntarily suspend or slow down operations without prior written approval from the Engineer; and
- Not resume suspended Work without the Engineer's written authorization.

**00180.44 Project Meetings** - The Contractor shall participate in conferences and meetings for the purposes of addressing issues related to the Work, reviewing and coordinating progress of the Work and other matters of common interest to the Contractor, Engineer and Agency.

- (a) Meeting Participants** - Representatives of entities participating in meetings shall be qualified and authorized to act on behalf of entity each represents.
- (b)** Meet in Agency's meeting room facility, or in a location otherwise agreed to by Agency and Contractor.
- (c)** Engineer will distribute to each anticipated participant written notice and agenda of each meeting at least 4 days before meeting.

- (d) Require attendance of Contractor's superintendent and project manager, and Subcontractors who are or are proximate to be actively involved in the Work, or who are necessary to agenda.
- (e) Engineer will invite agencies, utility companies or others when the Work affects their interests, and others necessary to agenda.
- (f) Engineer will record minutes of meeting and distribute copies of minutes within seven days of meeting to participants and interested parties. Contractor shall advise Engineer within two days of receipt of meeting minutes if Contractor does not agree with content of minutes.

**(g) Progress Meetings**

- (1) Purpose of Progress Meetings: To expedite work of subcontractors or other organizations that are not meeting scheduled progress, resolve conflicts, and coordinate and expedite execution of the Work.
- (2) Attend regularly scheduled bi-weekly progress meetings conducted by Engineer.
- (3) Review progress of the Work, Progress Schedule, 3-week look-ahead schedule, narrative report, Application for Payment, record documents, and additional items of current interest that are pertinent to execution of the Work.
- (4) Verify:
  - Actual start and finish dates of completed activities since last progress meeting.
  - Durations and progress of activities not completed.
  - Reason, time, and cost data for Change Order Work that will be incorporated into Progress Schedule and Application for Payment.
  - Percentage completion of items on Application for Payment.
  - Reasons for required revisions to Progress Schedule and their effect on Contract Time and Contract Amount.
- (5) Review status of Requests for Clarification/Information and Submittals review.
- (6) Discuss Project safety and security.
- (7) Discuss traffic control.
- (8) Discuss potential problems which may impede scheduled progress and corrective measures.

**(h) Coordination Meetings**

- (1) Purpose of Coordination Meetings: To coordinate the Work of this Contract with the work of the Agency and with work of other contractors.

**(i) Pre-Event Meetings**

- (1) Prior to start of critical activities, the Contractor shall schedule a meeting with Engineer to review applicable specifications and drawings, coordination of inspection requirements and other key activities.

**(j) Pre-Survey Conference**

- (1) The Contractor, applicable subcontractors, Contractor's surveyor, and Agency's surveyor shall meet with the Engineer two weeks prior to beginning survey work. The purpose of the meeting is to discuss methods and practices of accomplishing the survey work.

**(k) Other Meetings**

- (1) The Contractor shall prepare for and attend other meetings as identified elsewhere in the Contract Documents.

**00180.50 Contract Time to Complete Work:**

(a) **General** - The time allowed to complete the Work or Pay Item is stipulated in the Special Provisions, and will be known as the "Contract Time". (see 00110.20)

(b) **Kinds of Contract Time** - The Contract Time will be expressed in one or more of the following ways:

(1) **Fixed Date Calculation** - The calendar date on which the Work or Pay Item shall be completed; or

(2) **Calendar Day Calculation** - The number of Calendar Days from a specified beginning point in which the Work or Pay Item shall be completed.

(3) **Work Day Calculation** - The number of Work Days from a specified beginning point in which the Work or Pay item shall be completed.

(c) **Beginning of Contract Time** - When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin with the first Calendar Day following the date of the Notice to Proceed. When the Contract Time is stated in Work Days, counting of Contract Work Days will begin with the first Work Day following the date of the Notice to Proceed.

(d) **Recording Contract Time** - All Contract Time will be recorded and charged to the nearest one-half Day.

Contract Times may be extended because of delays in the completion of the Work due to abnormal weather conditions provided that the Contractor shall, within 10 days of the beginning of such delay, notify Engineer in writing of the cause of the delay and request an extension of time. Such requests shall be accompanied with supporting documentation referenced to the NOAA INDEX weather in the Project vicinity. Engineer will make recommendations to Agency to extend the Contract Times for completing the Work when, in Engineer's judgement, the findings of facts and extent of delay justify such an extension. Contractor shall not be entitled to any additional compensation of any kind arising out of or relating to abnormal weather conditions.

(e) **Exclusions from Contract Time** - Regardless of the way Contract Time is expressed in the Contract, certain Calendar Days will not be charged against Contract Time. These exclusions will be allowed when the Contractor is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature;
- Court orders enjoining prosecution of the Work;
- Strikes, labor disputes or freight embargoes that, despite the Contractor's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations. "Strike" and "labor dispute" may include union action against the Contractor, a Subcontractor, a Materials supplier, or the Agency; or
- Suspension of the Work by written order of the Engineer for reasons other than the Contractor's failure or neglect.

(f) **Time Calculation Protest** - In the event the Contractor disputes the accuracy of the statement of Contract Time charges, it shall immediately contact the Engineer and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Engineer within 7 Calendar Days of the date the Engineer mailed or delivered the statement. Failure to submit a formal written protest within the 7 Calendar Day period constitutes the Contractor's approval of the time charges, or adjusted time charges, itemized in the statement.

(g) **End of Contract Time** - When the Engineer determines that the On-Site Work has been completed, except for the items listed below, the Engineer will issue a Second Notification.

The Second Notification will list:

- The date the time charges stopped;

- Final trimming and cleanup tasks (see 00140.90);
- Equipment to be removed from the Project Site;
- Minor corrective work (punch list) to be completed; and
- Submittals, including without limitation all required certifications, bills, forms, warranties, certificate of insurance coverage (00170.70(b)), and other documents, required to be provided to the Engineer before Third Notification will issue.

The Contractor shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame specified for Final Completion.

**00180.60 Notice of Delay** - The Contractor shall notify the Engineer of any delay that will likely prevent completion of the Work or a Pay Item by the date specified in the Project Work schedule. The notice shall be in writing and shall be submitted within 7 Calendar Days of when the Contractor knew or should have known of the delay. The notice shall include, to the extent available, the following:

- The reasons or causes for the delay;
- The estimated duration of the delay and the estimated resulting cumulative delay in Contract completion;
- Except for 00180.50(e) and 00180.65 delays, whether or not the Contractor expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Contractor expects to accelerate due to the delay; and
- Whether or not the Contractor expects to request additional compensation due to the delay. Except for 00180.50(e) and 00180.65 delays, failure to include this information will constitute waiver of the Contractor's right to later make such a request.
- If Contractor is delayed and has stopped Contract Item work for less than 60 minutes, neither additional Contract Time nor additional compensation will be considered.

**00180.65 Right-of-Way and Access Delays** - Right-of-Way and access delays will be taken into consideration in adjusting Contract Time, and in approving additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Contractor:

- Necessary Rights-of-Way;
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for the Contractor's use; or
- Access to, or rights of occupancy of, buildings and other properties the Contractor is required to enter or to disturb according to Contract requirements.

If the duration and time period of an anticipated delay is stated in the Special Provisions, only the delay occurring beyond that duration and time period- will be considered for adjusting Contract Time or providing additional compensation.

**00180.70 Suspension of Work:**

(a) **General** - The Engineer has authority to suspend the Work, or part of the Work, for any of the following causes:

- Failure of the Contractor to correct unsafe conditions;
- Failure of the Contractor to carry out any provision of the Contract;
- Failure of the Contractor to carry out orders issued by the Engineer, the Agency, or any regulatory authority;
- Existence of conditions unsuitable to proper or safe performance of the Work; or
- Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Contractor shall not resume Work without the Engineer's written authorization.



**(b) Contractor's Responsibilities during and after Suspension** - During periods of suspension of the Work, the Contractor shall continue to be responsible for protecting and repairing the Work according to 00170.80, and for ensuring that a single designated representative responsible for the Project remains available according to 00150.40(b).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Contractor shall perform the following at no additional compensation:

- Replace or repair any Work, Materials, and Equipment to be incorporated into the Work that was lost or damaged because of the temporary use of the Project Site by the public; and
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Engineer.

**(c) Compensation and Allowances for Suspension** - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than the Contractor's failure or neglect. (refer to 00180.50(e), 00180.65, and 00195.40)

#### **00180.80 Adjustment of Contract Time:**

**(a) General** - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Contractor, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time". Except as provided in 00180.65 and 00195.40, an adjustment of Contract Time shall be the Contractor's only remedy for any delay arising from causes beyond the control of the Contractor.

**(b) Contractor's Request Not Required** - The Engineer may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Engineer may also increase Contract Time in the event of Right-of-Way and Access delays (see 00180.65), and those delays due to causes beyond the Contractor's control specified in 00180.50(e). The Engineer will promptly inform the Contractor of adjustments made to Contract Time according to this Subsection, and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration and time period in the Special Provisions, the Engineer will only consider additional delay beyond the stipulated duration and time period in determining whether to adjust Contract Time.

**(c) Contractor's Request Required** - In the event the Contractor believes that additional Contract Time is due, the Contractor shall submit to the Engineer a timely request for adjustment of Contract Time. The Engineer will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revised Project Work schedule submitted according to 00180.41, for comparison with the last revision of the Project Work schedule; or
- Are not otherwise deemed waived and are submitted within 15 Days after the date of Second Notification, if Second Notification has been issued.

The Engineer will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Project Work schedule. The Engineer will not authorize, nor the Agency pay, acceleration costs incurred by the Contractor prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Contractor's request for adjustment of Contract Time shall be submitted to the Engineer on a form provided by, or in a format acceptable to, the Engineer, and shall include a copy of the written notice required under 00180.60. The request shall include without limitation:

- Consent of the Contractor's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Engineer to evaluate the asserted justification for the amount of additional Contract Time requested;

- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current approved Project Work schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion.

**(d) Basis for Adjustment of Contract Time** - In the adjustment of Contract Time, the Engineer will consider causes that include, but are not limited to:

- Failure of the Agency to submit the Contract and bond forms to the Contractor for execution within the time stated in 00130.50, or to submit the Notice to Proceed within the time stated in 00130.90;
- Errors, changes, or omissions in the Supplemental Drawings, quantities, or Specifications;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;
- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in 00195.40;
- Causes cited in 00180.50(e); and
- Right-of-way and access delays referenced in 00180.65.

The Engineer will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect the specified or Adjusted Contract Time;
- Delays that affect the Contractor's planned early completion, but that do not affect the specified or adjusted Contract Time;
- Shortage or inadequacy of Materials, Equipment or labor;
- Work stoppage required by the Engineer to determine the extent of Work defects
- Time for the Contractor to correct the Work defects from date of notification of the defects until the correction work is completed and has been approved by the Engineer.
- Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in 00180.50(e);
- Different area of Material source in 00160.40(a);
- Substitution of Equipment in 00180.31(c);
- Reasonably predictable weather conditions; or
- Other matters within the Contractor's control or Contract responsibility.

**(e) Consideration and Response by Agency** - The Engineer will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Engineer may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

The Engineer may adjust Contract Time for causes not specifically identified by the Contractor in its request.

The Engineer will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Engineer's findings. If the Contractor disagrees with the Engineer's findings, the Contractor may request review according to the procedure specified in 00199.40.

**00180.85 Failure to Complete on Time; Liquidated Damages:**

**(a) Time is of the Essence** - Time is of the essence in the Contractor's performance of the Contract. Delays in the Contractor's performance of the Work may inconvenience the traveling public, interfere with business and commerce,

and increase cost to the Agency. It is essential and in the public interest that the Contractor prosecute the Work vigorously to Contract completion.

The Agency does not waive any rights under the Contract by permitting the Contractor to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

**(b) Liquidated Damages** - The Agency will sustain damage if the Work is not completed within the specified Contract Time. However, in certain Agency projects it may be unduly burdensome and difficult to demonstrate the exact dollar value of such damages. The Agency will identify such projects in the Special Provisions related to them. In these projects, the Contractor agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount specified in the Special Provisions for each Calendar Day the Contractor expends performing the Contract in excess of the Contract Time or adjusted Contract Time.

Payment by the Contractor of liquidated damages does not release the Contractor from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Contractor's failure to fully perform the Contract according to its terms. The liquidated damages shall constitute payment in full only of damages incurred by the Agency due to the Contractor's failure to complete the Work on time.

If the Contract is terminated according to 00180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages will be assessed against the Contractor for the duration of time reasonably required to complete the Work.

#### **00180.90 Termination of Contract and Substituted Performance:**

**(a) Termination for Default** - Termination of the Contract for default may result if the Contractor:

- Fails to comply with the requirements for records;
- Violates any material provision of the Contract;
- Disregards applicable laws and regulations or the Engineer's instructions;
- Refuses or fails to supply enough Materials, Equipment or skilled workers for prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to Subcontractors;
- Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
- Has a receiver appointed because of the Contractor's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination; or
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

If the Contract is terminated by the Agency, upon demand the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of all Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the Agency because of the Contractor's breach of Contract; or
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the terms of 00195.50, except that the Engineer will be entitled to withhold sufficient funds to cover costs incurred by the Agency as a result of the termination. Final payment to the Contractor will be made according to the provisions of Section 00195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

**(b) Substituted Performance** - According to the Agency's procedures, and upon the Engineer's recommendation that sufficient cause exists, the Agency, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety 10 Calendar Days' written notice, may:

- Terminate the Contract;
- Substitute the Contractor with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of Materials not on the Project Site, for which the Contractor received progress payments under 00195.50;
- Take possession of Equipment on the Project Site that is to be incorporated into the Work;
- Take possession of Equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments under 00195.50; and
- Finish the Work by whatever method the Agency deems expedient.

If, within the 10 Calendar Day notice period provided above, the Contractor and/or its Surety corrects the basis for declaration of default to the satisfaction of the Engineer, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Engineer, the Contract will not be terminated.

**(c) Termination for Public Convenience** - The Engineer may terminate the Contract for convenience in whole or in part whenever the Engineer determines that termination of the Contract is in the best interest of the public and for, but not limited to, the following reasons:

- If work under the contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the Work other than a suit or action filed in regard to a labor dispute; or
- If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract; or
- If Agency funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. This Contract may be modified to accommodate a reduction in funds; or
- If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract.

The Engineer will provide the Contractor and the Contractor's Surety 7 Calendar Days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Agency with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

Termination under any provision of this paragraph shall not affect any right, obligation, or liability of Contractor or Agency that accrued prior to such termination.

If the Contract is terminated for public convenience, neither the Contractor nor its Surety shall be relieved of liability for damages or losses suffered by the Agency as a result of defective, unacceptable or unauthorized Work completed or performed.

Compensation for Work terminated by the Engineer under this provision will be determined according to the provisions of 00195.70(b).

#### **00180.95 Project Closeout**

- (a) Description of Requirements** – Project Closeout is defined to include general requirements near the end of the Contract Time, in preparation for Substantial Completion, Final Completion, final payment, normal

termination of Contract, occupancy by Agency and similar actions evidencing completion of the Work. Specific requirements for individual units of Work are specified in various technical specification sections.

**(b) Prerequisites To Substantial Completion**

- (1) Prior to requesting Engineer's inspection for certification of Substantial Completion for the entire work, complete the following and list known exceptions in request:
  - In progress payment request, coincide with or first following date claimed, show either 100% completion for portion of work claimed as "substantially complete", or list incomplete items, value of incompleteness, and reasons for being incomplete. Include supporting documentation for completion as indicated in these Contract Documents.
  - Submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications and similar documents.
  - Obtain and submit releases enabling Agency's full and unrestricted use of the Work and access to services and utilities.
  - Deliver tools, spare parts, extra stocks of materials, and similar physical items to Agency.
  - Where applicable, make final change-over of locks and transmit keys to Agency and advise Agency's personnel of change-over in security provisions.
  - Complete start-up testing of systems, and instructions of Agency's operating/maintenance personnel. Discontinue (or change-over) and remove from Project site temporary facilities and services, along with construction tools and facilities, mock-ups, and similar elements.
  - Touch-up and otherwise repair and restore marred exposed finishes.
- (2) Upon receipt of Contractor's request, Engineer will either proceed with inspection or advise Contractor of prerequisites not fulfilled. Following initial inspection, Engineer will either prepare Certificate of Substantial Completion, or advise Contractor of Work which must be performed prior to issuance of certificate; a repeat inspection will be performed when requested and assured by the Contractor that Work has been substantially completed. Results of completed inspection will form initial "punch-list" requirements for Final Completion. If more than two visits are required to complete the final inspection for Substantial Completion then the Contractor shall pay the Agency for the Engineer's time, for all categories of labor required to complete the inspection for Substantial Completion at the Engineer's standard billing rates at the time of inspection. This time shall include time for travel and time to prepare inspection reports. Contractor shall also pay the Engineer's expenses at cost plus 10% and \$0.55 per mile for travel to and from the site.

**(c) Prerequisites To Final Completion**

- (1) Prior to requesting Engineer's final inspection for final payment and acceptance, complete the following and list known exceptions (if any) in request:
  - Submit final payment request with final releases and supporting documentation which have not previously been submitted and accepted. Include certificates of insurance for products and completed operations where required.
  - Submit updated final statement, accounting for additional (final) changes to Contract Amount.

- Submit certified copy of Engineer's final punch-list of itemized work to be completed or corrected, stating that each item has been completed or otherwise resolved for acceptance, endorsed and dated by Engineer.
  - Submit final meter readings for utilities, measured record of stored fuel, and similar data as of time of Substantial Completion or when Agency took possession of and responsibility for corresponding elements of the work.
  - Submit consent of surety.
  - Submit final liquidated damages settlement statement, acceptable to Agency.
  - Submit record drawings, maintenance manuals, and similar final record information.
- (2) Re-inspection Procedure: Upon receipt of Contractor's notice that the Work has been completed, including punch-list items resulting from earlier inspections, and accepting incomplete items delayed because of acceptable circumstances, Engineer will re-inspect the work. Upon completion of re-inspection, Engineer will either make recommendation for final payment and acceptance by the Agency or advise Contractor of work not completed or obligations not fulfilled as required for final payment. If necessary, procedure will be repeated. If more than two visits are required to complete the final inspection for final payment then the Contractor shall pay the Agency for the Engineer's time, for all categories of labor required to complete the inspection for final acceptance at the Engineer's standard billing rates at the time of inspection. This time shall include time to travel and time to prepare inspection reports. Contractor shall also pay the Engineer's expenses at cost plus 10% and \$0.55 per mile for travel to and from the site.

**(d) Closeout Documents**

- (1) Submit following Closeout Submittals after receipt of Second Notification and at least seven (7) days prior to Application for Final Payment:
- Evidence of Compliance with Requirements of Governing Authorities.
  - Project Record Documents.
  - Operation and Maintenance Manuals.
  - Warranties and Bonds.
  - Keys and Keying Schedule.
  - Evidence of Payment and Release of Liens as outlined in Conditions of the Contract.
  - Certificate of Compliance

## Section 00190 - Measurement of Pay Quantities

**00190.00 Scope** - The Engineer will measure pay quantities for accepted Work according to the United States standard measure unless otherwise provided in the Contract. Unless otherwise specified in the Contract, the Engineer will round off all quantity computations using the following convention:

- The final significant digit will not be changed when the succeeding digit is less than 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 Engineer's verification. The Engineer's decision about measurement is final.

**00190.10 Measurement Guidelines** - Measurement of quantities will be made on the following bases, unless otherwise specified in the Contract:

**(a) Unit Basis** - Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.

**(b) Length Basis** - Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Engineer.

**(c) Area Basis** - Area will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) at least to the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.

**(d) Weight Basis** - Weight will be pound or ton, unless otherwise specified in the Contract and will be determined as follows:

**(1) Pound** - Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 1.0 pound unless otherwise specified in the Contract.

Provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

**(2) Ton** - Ton weight will be determined on Contractor-provided scales as required under 00190.20 unless otherwise allowed by the Specifications. Weight by ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.

If bituminous materials, portland cement, lime, and similar bulk Materials are shipped by truck or rail, the supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on the Contractor-provided vehicle scales.

Shipping invoice weights of the supplier's truck or transport shall be subject to periodic check weighing on the Contractor's vehicle scales, or other scales designated, according to 00190.20. If the check weight is less than the supplier weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

No payment will be made:

- For quantities in excess of the supplier weight
- When Materials have been lost, wasted, or otherwise not incorporated into the Work
- For additional hauling costs resulting from the check weighing

**(e) Volume Basis** - Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract and will be measured at least to the nearest 0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.

Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.

When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).

**(f) Time Basis** - Time will be hour, Day, or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 Day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.

**(g) Standard Manufactured Items** - If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract.

**(h) Lump Sum Basis** - Lump sum, when used, means the Work described shall be completed and accepted without measurement unless changes are ordered in writing by the Engineer.

#### **00190.20 Contractor to Provide Vehicle Weigh Scales:**

**(a) General** - If the Specifications require measurement by weighing on vehicle weigh scales, the Contractor shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Engineer's approval, weights may be determined by plant or hopper scales according to 00190.30.

Contractor-provided scales shall be furnished, installed and maintained by the Contractor or its supplier, or, subject to the Engineer's approval, may be commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Pay Items to be measured by weight shall include all Contractor costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; and for transporting Materials to the scales or to check weighing.

**(b) Requirements** - The scales shall conform to ORS 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

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

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

**(c) Approaches** - Vehicle scale approaches shall be:



- At each end of the scale platform;
- Straight and in line with the platform; and
- Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing.

**(d) Inspections** - Contractor shall have all scales certified, that is inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company as follows:

- Before use if installed at a new site;
- 60 Calendar Days after initial inspection;
- Every 6 months thereafter; and
- When the Engineer directs additional inspections.

No Materials weighed on scales without current certifications according to this Subsection will be accepted. The Contractor shall provide a copy of all required certifications to the Engineer.

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

If additional inspections directed by the Engineer confirm that the scale accuracy is within the required tolerances, the Agency will pay the cost for inspecting and testing the scales. If the scale accuracy is not within these tolerances, the Contractor shall pay the cost for inspecting and testing the scales.

**(e) Inspection Results** - If an inspection indicates the scales have been under-weighing (indicating less than the true weight), the Agency will make no additional payment to the Contractor for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true weight), the weights will be reduced for Materials received after the time the Engineer determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

**(f) Contractor-Provided Weigh Technician** - The Contractor shall provide a technician to operate Contractor-provided vehicle weigh scales. The Agency may observe procedures and require check weighing according to the following:

**(1) Scale with Automatic Printer** - If the scales have an automatic weigh memo printer that does not require manual entry of gross weight information, the Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth Day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on projects where more than 2,000 tons of all types of Materials are received from a scale. The Contractor shall provide the Engineer with the results of the check weighing.

**(2) Scale Without Automatic Printer** - If the scales require manual entry of gross weight information, the Agency may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Contractor shall inform the Engineer of his intent to use a scale without an automatic printer at least 3 working Days before weighing begins or before the Contractor changes to a scale that does not have an automatic printer. The Contractor shall pay costs for the weigh witness. The hourly cost of the weigh witness will be as stated in

the Special Provisions. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs for check weighings will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on all projects where materials are received from a scale without an automatic printer. The Contractor shall provide the Engineer with the results of the check weighing.

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

- Determine twice a Day, or as otherwise directed by the Engineer, the empty haul weights (tare weights) of hauling vehicles, unless vehicles are tared before each load;
- Furnish daily a listing of the tare weights if 10 or more loads are hauled during that Day;
- Furnish a note listing the net weight for each consecutive ten loads with the following load;
- Furnish a daily listing of the net weights and total weight for each type of Material hauled during that Day; and
- Furnish a legible, serially numbered weigh memo for each load of Materials to the Agency's Materials receiver at the point of delivery, or as directed by the Engineer. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of vehicle, driver and weigh technician.

**(g) Agency-Provided Weigh Technician** - If the Contractor provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, the Agency will provide a weigh technician at the Contractor's expense. The Contractor shall provide a weighhouse for the weigh technician according to Section 00205. The Agency's weigh technician will:

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

**00190.30 Plant Scales** - The Contractor, with the Engineer's written approval, may weigh plant-mixed Materials on scales that have either:

- An automatic weight batching and mixing control printer system; or
- A weigh hopper printer system.

Any additional costs resulting from the use of these scales shall be borne by the Contractor. Check weighing will be done according to 00190.20(f).

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

The Engineer's approval for the Contractor's use of plant scales to determine pay weights will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine weights within the tolerances allowed by state law.

## Section 00195 - Payment

### 00195.00 Scope and Limit:

**(a) General** - The Agency will pay only for measured Pay Item quantities incorporated into the Work or performed according to the terms of the Contract. The Contractor understands and agrees that Pay Item quantities listed in the Schedule of Items do not govern payment.

Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of 00170.80. The Contractor shall include the costs of bonds and insurance for the Project in the unit price for each Pay Item of Work to be performed.

**(b) Essential or Incidental Materials or Work** - When the Specifications state that the unit price for a Pay Item is compensation for certain Materials or Work essential or incidental to the Pay Item, the same Materials or Work will not be measured or paid under any other Pay Item.

**00195.10 Payment For Changes in Materials Costs** - On certain projects, as identified in the Special Provisions, an escalation/de-escalation clause with respect to certain materials will be in effect during the life of the Contract.

**00195.13 Asphalt Cement Material Price Escalation/De-Escalation Clause** - Subsections 00195.13, 00195.13(a), 00195.13(b), 00195.13(c), and 00195.13(d) contain the price escalation/de-escalation clause relating to asphalt cement materials (as defined in 00195.13(d)).

**(a) Monthly Asphalt Cement Material Price (MACMP)** - The Monthly Asphalt Cement Material Price (MACMP) will be established by the Agency each month and will be based on the published prices of PG 64-22 asphalt cement furnished by Potem & Partners, Inc. The MACMP will be based on the average prices for the Pacific Northwest, Portland Oregon area. Each MACMP for a given month will be the average of the published prices of that MACMP for each Friday in that month. For information regarding the calculation of the MACMP, and for the actual MACMP, go to the ODOT website at:

[http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt\\_fuel.shtml](http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt_fuel.shtml)

If the ODOT selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MACMP each month. The MACMP will apply to all asphalt cement including but not limited to paving grade, polymer modified, and emulsified asphalts, and recycling agents. The Agency does not guarantee that asphalt cement will be available at the MACMP

**(b) Base Asphalt Cement Material Price (Base)** - The Base price for this Project is the MACMP published on the ODOT website for the month immediately preceding the bid opening date.

**(c) Monthly Asphalt Cement Adjustment Factor** - The Monthly Asphalt Cement Adjustment Factor will be determined each month as follows:

- If the MACMP is within  $\pm 5\%$  of the Base, there will be no adjustment.
- If the MACMP is more than 105% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (1.05 \times \text{Base})$$

- If the MACMP is less than 95% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (0.95 \times \text{Base})$$

**(d) Asphalt Cement Price Adjustment** - If specified in the Special Provisions, an asphalt cement escalation/de-escalation clause will be in effect during the life of the Contract. A price adjustment will be made for each pay item in the bid schedule containing asphalt cement. The price adjustment as calculated in 00195.13(c)

above will use the MACMP for the month the asphalt is incorporated into the Project. The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

#### **00195.20 Changes to Plans or Character of Work:**

**(a) Insignificant Changed Work** - If the changes made under 00140.30 do not significantly change the character, quantity or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

**(b) Significant Changed Work** - If the changes made under 00140.30 significantly alter the character, quantity, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. The Contractor shall not be entitled to compensation for any loss in profits resulting from elimination of, reduction of, or other change to, a part of the Work.

Any such adjustments may be less than, but will not be more than the amount justified by the Engineer on the basis of the established procedures set out in Section 00197 for determining rates for Extra Work, but those procedures shall account for the decrease or elimination of Work as well as for increases in the Work. This does not limit the application of Section 00199.

The term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or unit cost from that involved or included in the originally proposed construction.

For purposes of this Section, "Significant" is defined as:

- a) An increase or decrease of more than 25 percent of the total cost of the Work calculated from the original proposal quantities and the unit contract prices; or,
- b) An increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition b) above, a major item is defined as any item that amounts to 10 percent or more of the original total contract price.

**00195.30 Differing Site Conditions** - Upon written notification, as required in 00140.40, the Engineer will investigate the identified conditions. If the Engineer determines that the conditions are differing Project Site conditions under 00140.40 and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an adjustment in the Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. The Engineer will notify the Contractor as to whether or not an adjustment of the Contract is warranted.

No Contract adjustment which benefits the Contractor will be allowed unless the Contractor has provided the required written notice. Any such adjustments will be made according to 00195.20.

**00195.40 Unreasonable Delay by the Agency** - If the Contractor believes that performance of all or any portion of the Work is suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of the Agency, or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due the Contractor because of the suspension, delay or interruption, the Contractor shall immediately file a written notice of delay according to 00180.60. The Contractor shall then promptly submit a properly supported request for any additional compensation, Contract Time, or both, according to the applicable provisions in 00180.60 through 00180.80 and Section 00199.

The Engineer will promptly evaluate a properly submitted request for additional compensation. If the Engineer determines that the delay was unreasonable, and that the cost required for the Contractor to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Engineer will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Engineer will notify the Contractor of the determination and whether an adjustment to the Contract is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless the Contractor has provided the written notice required by 00180.60;
- For costs incurred more than 10 Calendar Days before the Engineer receives the Contractor's properly submitted written request;
- For any portion of a delay that the Engineer deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract; or
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection.

**00195.50 Progress Payments and Retained Amounts:**

- (a) **Progress Payments** - The Agency's payment of progress payments, or determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d), shall not be construed as Final Acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the Contractor uses these estimates as a basis for making payments to Subcontractors, the Contractor assumes all risk and bears any losses that result.

Progress payments shall be determined through the use of forms developed by the Engineer.

- (1) **Progress Estimates** - At the same time each month, the Engineer will make an estimate of the amount and value of Pay Item Work completed. The amount of Work completed will be the sum of the estimated number of units completed for unit price Pay Items plus the estimated percentage completed of lump sum Pay Items.

The estimated value of the Work completed will then be determined by using the Contract unit price for unit price Pay Items, and by using one of the following methods to determine the value of the lump sum Pay Items:

- A Contractor-submitted, Engineer-approved Schedule of Values; or
- Engineer's determination, when there is no approved, Contractor-submitted Schedule of Values.

The amounts to be allowed for lump sum Pay Items in progress payments will not exceed the reasonable value of the Work performed, as determined by the Engineer.

Incidentals such as formwork, falsework, shoring, and cribbing shall be included in the unit prices for the various Pay Items requiring their use, unless specified as a separate Pay Item. No payment will be made for Pay Items that include Incidentals until units or portions of such Pay Item Work are in place and completed. The costs of Incidentals will be paid in proportion to the percentage of Pay Item Work completed.

- (2) **Value of Materials on Hand** - The Engineer will also make an estimate of the amount and value of acceptable Materials on hand, i.e., already delivered and stored according to 00195.60(a), to be incorporated into the Work.

- (3) **Value of Work Completed** - The sum of the values in (1) and (2) above will be collectively referred to in this Subsection as the "value of Work completed", subject to (4) below.

- (4) **Limitations on Value of Work Accomplished** - In determining the "value of Work accomplished", the Engineer's estimate will be based on the unit prices for the various Pay Items. Any amounts not included in progress payments due to substantial mathematical unbalancing of Pay Item prices will be included in the final payment issued according to 00195.90(b).

- (5) **Reductions to Progress Payments** - With each progress payment, the Contractor will receive a Contract payment voucher and summary setting forth the value of Work accomplished reduced by the following:

- Amounts previously paid;
- Amounts deductible or owed to the Agency for any cause specified in the Contract;
- Additional amounts retained to protect the Agency's interests according to Subsection (e) below.

**(b) Retainage** - The amount to be retained from progress payments will be 5% of the value of Work accomplished, and will be retained in one of the forms specified in Subsection (c) below.

As provided in 00170.65(a) additional retainage of 25% of amounts earned will be withheld and released according to ORS 279C.845 when the Contractor fails to file the certified statements required in ORS 279C.845, FHWA Form 1273, and 00170.65.

**(c) Forms of Retainage** - Moneys retained by the Agency under ORS 279C.570(7) shall be retained in a fund by the Agency and paid to the Contractor in accordance with ORS 279C.570. Upon written request from the Contractor, other forms of acceptable retainage are specified below in Subsections (1) and (2). "Cash, Alternate A" is the Agency-preferred form of retainage. If the Agency incurs additional costs as a result of the Contractor's election to use a form of retainage other than Cash, Alternate A, the Agency may recover such costs from the Contractor by a reduction of the final payment.

**(1) Cash, Alternate A** - Retainage will be deducted from progress payments and held by the Agency until final payment is made according to 00195.90, unless otherwise specified in the Contract.

The Agency will deposit the cash retainage withheld in an interest-bearing account in a bank, trust company, or savings association for the benefit of the Agency, as provided by ORS 279C.560(5). Interest earned on the account shall accrue to the Contractor. Amounts retained and interest earned will be included in the final payment made according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor will be released to the Contractor according to 00195.50(d).

**2) Bonds, Securities, and Other Instruments** - In accordance with ORS 279C.560, unless the Agency finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, the Agency will approve the Contractor's written request to deposit bonds, securities or other instruments with the Agency or in a custodial account or other account satisfactory to the Agency with an approved bank or trust company, to be held instead of cash retainage for the benefit of the Agency. In such event, the Agency will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor.

Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to the Agency and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

- Bills, certificates, notes or bonds of the United States;
- Other obligations of the United States or agencies of the United States;
- Obligations of a corporation wholly owned by the federal government;
- Indebtedness of the Federal National Mortgage Association;
- General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon;
- Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Agency may require to protect its interests. When the Engineer determines that all requirements for the protection of the Agency's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor.

**(d) Reduction of Retainage** - As the Work progresses, the amounts to be retained under (b) of this Subsection are subject to reduction in the Engineer's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, the Engineer may, without application by the Contractor, reduce the retained amount to 100% of the value of the Work remaining.
- For a project funded by the FHWA, when a subcontractor has satisfactorily completed all of its Work, it may request release of retainage for that Work from the Contractor. The Contractor shall request reduction of retainage in the amount withheld for the subcontractor's Work after certifying to the Agency that the subcontractor's Work is complete, and that all contractual requirements pertaining to the subcontractor's

Work have been satisfied. Within 60 Calendar Days of the end of the month in which the Agency receives the Contractor's certification regarding the subcontractor's Work, the Agency will either notify the Contractor of any deficiencies which require completion before release of retainage, or verify that the subcontractor's Work complies with the Contract and release all retainage for that Work with the next scheduled progress payment. Within 10 Calendar Days of receipt of retainage, the Contractor shall pay to the subcontractor all such retainage released except for latent defects or warranty.

- The Agency will only release retainage for satisfactorily completed portions of the Work represented by Pay Items in the Schedule of Items, or by Pay Items added by Change Order. Work not represented by a Pay Item, but which constitutes part of an uncompleted Pay Item, will not be regarded as satisfactorily completed Work for the purposes of this Subsection.

If retainage has been reduced or eliminated, the Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in 00195.50(b).

**(e) Withholding Payments** - In addition to any other rights the Agency may have to withhold payments under other provisions of the Contract, the Engineer may withhold such amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Contractor has:

- Completed all Final Trimming and Cleanup according to 00140.90 and Punch List work according to 00150.90(a). An amount of up to twice the Engineer's estimated value of Final Trimming and Cleaning and Punch List work may be withheld.
- Complied with all orders issued by the Engineer according to the Specifications; and
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and Agency employees that the Contractor is obliged to defend. (see 00170.72)

Notwithstanding ORS 279C.555 or ORS 279C.570 or 00195.50(d), if a Contractor is required to file statements on the prevailing rate of wages, but fails to do so, the Agency will retain 25% of any amount earned as required in 00170.65.

**(f) Prompt Payment Policy** - Payments shall be made promptly according to ORS 279C.570.

#### **00195.60 Advance Allowance for Materials on Hand:**

**(a) General** - If the total value of Materials on hand is at least \$1,000 or the total value of a single class of Materials on hand is at least \$500, the Engineer may authorize an advance allowance for the Materials in the progress payments. The Agency will not make advance allowances on the Materials unless the following three conditions are satisfied:

**(1) Request for Advance Allowance** - If Materials on hand meet the requirement of (2) below, an advance allowance will be made if:

- A written request for advance allowance for Materials on hand has been received by the Engineer at least 5 Calendar Days before the pay period cutoff date; and
- The request is accompanied by written consent of the Contractor's Surety, if required by the Agency.

**(2) Stored or Stockpiled Conditions** - The Materials shall have been delivered and/or acceptably stored or stockpiled according to the Specifications and as follows:

- At the Project Site;
- On Agency-owned property;
- On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Agency to enter upon the property and remove Materials for at least 6 months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency; or
- On property outside the State of Oregon on which the property owner has authorized storage in writing, provided that such storage location is allowed by the Special Provisions or authorized in writing by the Engineer. The permit must allow the Agency to enter upon the property and remove Materials for at least

6 months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency.

To be eligible for advance allowance, the Materials shall:

- Meet Specification requirements;
- Have the required Materials conformance and quality compliance documents on file with the Engineer (see Section 00165);
- Be in a form ready for incorporation into the Work; and
- Be clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project.

**(3) Responsibility for Protection** - The Contractor has full control and responsibility for the protection of Materials on hand from the elements and against damage, loss, theft, or other impairment until the entire Project has been completed and accepted by the Agency.

If Materials are damaged, lost, stolen, or otherwise impaired while stored, the monetary value advanced for them, if any, will be deducted from the next progress payment.

If these conditions in 00195.60(a-1) through 00195.60(a-3) have been satisfied, the amount of advance allowance, less the retainage described in 00195.50, will be determined by one of the following methods as elected by the Engineer:

- Net cost to the Contractor of the Materials, f.o.b. the Project Site or other approved site; or
- Price (or portion of it attributable to the Materials), less the cost of incorporating the Materials into the Project, as estimated by the Engineer.

**(b) Proof of Payment** - The Contractor shall provide the Engineer with proof of payment to the Materials suppliers for purchased Materials within 30 Calendar Days of the date of the progress payment that includes the advance allowance.

If proof of payment is not provided, sums advanced will be deducted from future progress payments, and the Engineer will not approve further prepayment advance allowance requests.

**(c) Terminated Contract** - If the Contract is terminated, the Contractor shall provide the Agency immediate possession of all Materials for which advance allowances have been received, as provided above. If, for any reason, immediate possession of the Materials cannot be provided, the Contractor shall immediately refund to the Agency the total amount advanced for the Materials. The Agency may deduct any amount not so refunded from final payment.

**00195.70 Payment under Terminated Contract** - Payment for Work performed under a Contract that is terminated according to the provisions of 00180.90 will be determined under (a) or (b) of this Subsection.

**(a) Termination for Default** - Upon termination of the Contract for the Contractor's default, the Agency will make no further payment until the Project has been completed. The Agency will make progress payments to the party to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs, as determined by the Engineer, to complete the Project.

Upon completion of the Project, the Engineer will determine the total amount that the defaulting Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work (the "cost of the Work").

If the cost of the Work, less the sum of all amounts previously paid to the Contractor, exceeds the expense incurred by the Agency in completing the Work, including without limitation expense for additional managerial and administrative services, the Agency will pay the excess to the Contractor, subject to the consent of the Contractor's Surety.

If the expense incurred by the Agency in completing the Work exceeds the Contract Amount, the Contractor or the Contractor's Surety shall pay to the Agency the amount of the excess expense.



The Engineer will determine the expense incurred by the Agency and the total amount of Agency damage resulting from the Contractor's default. That determination will be final as provided in 00150.00.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Contractor will be made as provided in Subsection (b) below.

**(b) Termination for Public Convenience:**

**(1) General** - Full or partial termination of the Contract shall not relieve the Contractor of responsibility for completed or performed Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed or performed Work.

**(2) Mobilization** - If mobilization is not a separate Pay Item, and payment is not otherwise provided for under the Contract, the Agency may pay the Contractor for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by the Contractor to the Engineer.

**(3) All Other Work** - The Agency shall pay the Contractor at the unit price for the number of Pay Item units of completed, accepted Work. For units of Pay Items partially completed, payment will be as mutually agreed, or, if not agreed, as the Engineer determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Agency will purchase Materials left on hand according to 00195.80.

**00195.80 Allowance for Materials Left on Hand:**

**(a) Purchase of Unused Materials** - If Materials are delivered to the Project Site, or otherwise acceptably stored at the order of the Engineer, but not incorporated into the Work due to complete or partial elimination of Pay Items, changes in Plans, or termination of the Contract for public convenience according to 00180.90, and it is not commercially feasible for the Contractor to return them for credit or otherwise dispose of them on the open market; the Agency will purchase them according to the formula and conditions specified in Subsection (b) below.

**(b) Purchase Formula and Conditions:**

**(1) Formula** - The Agency will apply the following formula in determining the Contractor's allowance for Materials left on hand:

Contractor's Actual Cost, plus 5% Overhead Allowance, minus Advance Allowances under 00195.60, but no markup or profit.

**(2) Conditions** - The Agency will not purchase the Contractor's Materials left on hand unless the Contractor satisfies the following conditions:

- Requests the Agency's purchase of unused Materials;
- Shows acquisition of the Materials according to 00160.10;
- Shows that the Materials meet Specifications;
- Provides receipts, bills and other records of actual cost of Materials delivered to the designated delivery points; and
- Demonstrates to the satisfaction of the Engineer that the materials cannot be returned for credit or otherwise disposed of on the open market.

**00195.90 Final Payment:**

**(a) Final Estimate** - As soon as practicable after Final Inspection of the Project, as provided in 00150.90, the Engineer will prepare a final estimate of the quantities of the Pay Items completed. With this estimate of quantities as a base, the total amount due the Contractor will be determined according to the terms of the Contract including without limitation any amounts due for Extra Work performed.

**(b) Final Payment** - The amount of final payment will be the difference between the total amount due the Contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, and after the Engineer's issuance of Third Notification, final payment will be mailed to the Contractor's last known address as shown in the records of the Agency.

**(c) No Waiver of Right to Make Adjustment** - The fact that the Agency has made any measurement, estimate, determination or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d) or payment for any part of the Work, shall not prevent either party from:

- Showing the true amount and character of the Work;
- Showing that any measurement, estimate, determination or certification is incorrect;
- Recovering from the other party damages that may have been suffered because the other party failed to comply with the Contract.

**(d) Evidence of Contractor Payments** - As a condition of Final Payment, the Engineer may require the Contractor to submit evidence, satisfactory to the Engineer, that all payrolls, material bills, and other indebtedness connected with the project have been paid, except that in case of any disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment, a surety bond satisfactory to the Agency guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.

#### **00195.95 Error in Final Quantities and Amounts:**

**(a) Request for Correction of Compensation** - If the Contractor believes the quantities and amounts detailed in the final Contract payment voucher, prepared by the Engineer according to 00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Engineer detailing all proposed corrections.

This statement must be submitted to the Engineer within 90 Calendar Days from the date the voucher was mailed to the Contractor, according to 00195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Agency. This does not limit the application of Section 00199.

#### **(b) Acceptance or Rejection of Request:**

**(1) Consideration of Request** - The Engineer will consider and investigate the Contractor's request for correction of compensation submitted according to 00195.95(a), and will promptly advise the Contractor of acceptance or rejection of the request in full or in part.

**(2) Acceptance of Request** - If the Engineer accepts the Contractor's request(s) in full or in part, the Engineer will prepare a post-final Contract payment voucher, including all accepted corrections, and will forward it to the Contractor.

**(3) Rejection of Request** - If the Engineer rejects the request(s) in full, the Engineer will issue a written notice of rejection and mail it to the Contractor.

**(4) Contractor Objection to Revised Voucher or Notice of Rejection** - If the Contractor disagrees with the revised voucher or notice of rejection, the Contractor may seek review and resolution according to the procedure specified in 00199.40. If the Contractor fails to submit a request for 00199.40 review within 30 Calendar Days after the Engineer mails a post-final Contract payment voucher or notice of rejection, the Contractor waives all rights to a claim based on errors in quantities and amounts.

#### **00195.96 Waiver of Claims:**

**(a) The making and acceptance of final payment will constitute:**

**(1) A waiver of all Claims by Agency against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to 00150.90, from failure to comply with the Contract**

Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

(2) A waiver of all Claims by Contractor against Agency other than those previously made in accordance with the requirements herein and expressly acknowledged by Agency in writing as still unsettled.

## Section 00196 - Payment for Extra Work

**00196.00 General** - Only work not included in the Contract as awarded but deemed by the Engineer to be necessary to complete the Project (see 00140.60) will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made according to 00195.20.

Compensation for Extra Work will be paid only for Work authorized in writing by the Engineer and performed as specified. Work performed before issuance of the Engineer's written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Engineer, according to 00196.10 and 00196.20.

**00196.10 Negotiated Price** - If the Engineer can reasonably determine a price estimate for Extra Work, the Engineer may then give written authorization to the Contractor to begin the Extra Work. As soon as practicable, but within 10 Calendar Days after that authorization, the Contractor shall respond in writing to the Engineer's Extra Work price estimate by submitting to the Engineer an Extra Work price quote. The price quote shall detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit
- Other costs associated with the proposed Extra Work

Pending approval of the price quote, the Engineer will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, the Engineer will review the price quote and advise the Contractor if it is accepted or rejected. The Engineer will not accept a price quote that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Engineer will issue a Change Order, and the Extra Work will be paid at the accepted price.

**00196.20 Force Account** - If the Engineer and the Contractor cannot agree on a price for the Extra Work, the Engineer may issue a Force Account Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be made according to Section 00197.

## Section 00197 - Payment for Force Account Work

**00197.00 Scope** - The Materials, Equipment and labor rates and procedures established in this Section apply only to Extra Work ordered by the Engineer to be performed as Force Account Work.

**00197.01 General** - Before ordering Force Account Work, the Engineer will discuss the proposed work with the Contractor, and will seek the Contractor's comments and advice concerning the formulation of Force Account Work specifications. The Engineer is not bound by the Contractor's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment and Labor to be used on the approved Force Account Work; and
- Determine the time of the Contractor's performance of the ordered Force Account Work.

Force account work performed by subcontractors will be measured and paid for on the same basis and in the same manner as force account work performed directly by the Contractor.

If the Engineer orders the performance of Extra Work as Force Account Work, the Engineer will record, on a daily basis, the Materials, Equipment and Labor used for the Force Account Work during that day. Engineer and the Contractor shall sign the record daily to indicate agreement on the Materials, Equipment and Labor used for the Force Account Work performed on that day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by the Engineer, except those furnished and paid under rental rates for use of Equipment;
- Equipment which the Engineer considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour;
- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work; and
- The Engineer's and Contractor's signatures confirming its accuracy.

### **00197.10 Materials:**

**(a) General** - The Contractor will be paid for Materials actually used in the Force Account Work as directed by the Engineer, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the supplier to the purchaser, whether the purchaser is the Contractor, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

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

**(c) Not Directly Purchased From Supplier** - If Materials cannot be obtained by direct purchase from and direct billing by the supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Engineer, but not more than the purchaser paid for the Materials. No markup other than actual handling costs will be permitted.

**(d) Purchaser-Owned Source** - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source on Pay Items, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

**00197.20 Equipment:**

(a) **General** - Equipment approved by the Engineer to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated or on standby if so ordered by the Engineer. Equipment hours will be recorded on the daily record to the nearest quarter hour.

Except as modified by these provisions, Equipment use approved by the Engineer will be paid at the rental rates given in the most current edition of the Rental Rate Blue Books for Construction Equipment ("Blue Book"), Volumes 1, 2, and 3, published by Penton Media, Inc., and available from EquipmentWatch (phone 1-800-669-3282).

(b) **Equipment Description** - On the billing form for Equipment costs, the Contractor shall submit to the Engineer sufficient information for each piece of Equipment and its attachments to enable the Engineer to determine the proper rental rate from the Blue Book.

**(c) Rental Rates (without Operator):**

(1) **Rental Rate Formula** - Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

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

Some attachments are considered "standard Equipment" and are already included in the monthly base rate for the Equipment. That information can be obtained from EquipmentWatch.

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

(3) **Rate Adjustment Factor** - The rate adjustment factor used above will be determined by applying only the Model Year Adjustment to the Blue Book Rates. The Regional and User Defined Ownership/Operating Adjustments shall not apply.

(4) **Hourly Operating Rate** - The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.

**(5) Limitations -**

If multiple attachments are included with the rental Equipment, and are not considered "standard Equipment", only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by the Engineer as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than \$5, or for unlisted Equipment that has a fair market value of \$400 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the work, may be rejected by the Engineer or accepted and paid for at reduced rates.

(d) **Moving Equipment** - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, its On-Site Work location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on Pay Item or related Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with the Contractor's own forces, transportation costs will include the rental rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment, without attachments, plus the Equipment operator's wage.

(e) **Standby Time** - If ordered by the Engineer, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than \$1 per hour will not be paid. Payment will be limited to not more than 8 hours in a 24-hour period or 40 hours in a one week period. Standby Time provisions shall also apply to Section 00195 - Payment.

(f) **Blue Book Omissions** - If a rental rate has not been established in the Blue Book, the Contractor may:

- If approved by the Engineer, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type;
- Request EquipmentWatch to furnish a written response for a rental rate on the Equipment, which shall be presented to the Engineer for approval; or
- Request that the Engineer establish a rental rate.

(g) **Outside Rental Equipment** - If Contractor-owned or Subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice. Approval of the Engineer to rent from outside sources must be obtained prior to renting the equipment.

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 that were excluded.

The Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of 00180.20(c) apply to owner-operated Equipment.

**00197.30 Labor** - The Contractor will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations, as follows:

(a) **Wages** - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current, prevailing rates in the locality of the Project.

(b) **Required Contributions** - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required 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.

(c) **Required Benefits** - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits when such other benefits are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

No overtime will be compensated unless authorized in advance of performing the work by the Engineer.

**00197.80 Percentage Allowances** - To the Contractor's actual costs incurred, as limited in this Section 00197, amounts equal to a percentage markup of such costs will be allowed and paid to the Contractor as follows:

Subsection	Percent
00197.10 Materials	17
00197.20 Equipment	17
00197.30 Labor	22

When a Subcontractor performs ordered Force Account Work, the Contractor will be allowed a supplemental markup of 8% on each Force Account Work order.

These allowances made to the Contractor will constitute complete compensation for bonds, insurance, overhead, general and administrative expense, 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** - Billings for Force Account Work by the Contractor shall be submitted for the Engineer's approval on forms provided by the Agency or approved by the Engineer. Billings for Materials (other than Incidental items out of the inventory of the Contractor or Subcontractors), rental Equipment from sources other than the Contractor or Subcontractors, and Special Services, shall be accompanied by copies of invoices for the goods and services. The invoices shall be fully itemized showing dates, quantities, unit prices, and complete descriptions of goods and services provided. Invoices for amounts of \$10 or less per invoice are not required, unless requested by the Engineer.

Costs included on the billings shall comply with 00197.01(a) and 00197.10 through 00197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount to less than \$10.



## Section 00199 - Disagreements, Protests, and Claims

**00199.00 General** - This Section details the process through which the parties agree to resolve any disagreement concerning additional compensation or concerning a combination of additional compensation and Contract Time. (See 00180.80 for disagreements and claims concerning additional Contract Time only, and 00195.95 for disagreements and claims concerning correction of final compensation.) The Agency will not consider direct disagreements, protests, or claims from subcontractors, Suppliers, or any other Entity not a party to the Contract.

**00199.10 Procedure for Resolving Disagreements** - When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Engineer of all issues in the dispute, including without limitation the items to be included in the written notice in 00199.20. If the discussion fails to provide satisfactory resolution of the disagreement, the Contractor shall follow the protest procedures outlined in 00199.20. If the Engineer denies all or part of the Contractor's protest, and the Contractor desires to further pursue the issues, the Contractor shall submit a claim for processing according to 00199.30.

**00199.15 Inappropriate Protest or Claim** - It shall be presumed that the Contractor submits a protest or claim for additional compensation in good faith, based upon facts which reasonably support the Contractor's position and with full knowledge and understanding of the injury done to the Agency when notice of differing Project Site conditions or claims for additional compensation are not submitted in a timely manner as required under the Contract. Accordingly, the submission of a protest or claim without the concurrent submission of evidence that reasonably supports the protest or claim, or the submission of a protest or claim in an untimely manner will constitute a waiver of the protest or claim.

**00199.20 Protest Procedure** - If the Contractor disagrees with anything required in a Change Order or other written or oral order from the Engineer, including any direction, instruction, interpretation, or determination, or if the Contractor asserts a disagreement or dispute on any other basis, except 0195.95, that, in the Contractor's opinion, entitles or would entitle the Contractor to additional compensation or a combination of compensation and Contract Time, the Contractor shall do all of the following in order to pursue a protest and preserve its claim:

(a) **Oral Notice** - Give oral notice of protest to the Engineer and outline the areas of disagreement before starting or continuing the protested Work.

(b) **Written Confirmation of Oral Notice** - Not later than the end of the next business day following the day that oral notice of protest is given, deliver written documentation to the Engineer of the oral notice that includes the notice of protest and the areas of disagreement.

(c) **Written Notice** - File a proper written notice of protest with the Engineer within 7 Calendar Days after receiving the protested order. In the notice the Contractor shall:

- Describe the acts or omissions of the Agency or its agents that allegedly caused or may cause damage to the Contractor or to the Project, citing specific facts, persons, dates and Work involved;
- Describe the Contractor's proposed alternative to the Work ordered, if any, which will avoid damage to Contractor or to the Project;
- Describe the nature of the damages;
- Cite the specific Contract provision(s), if any, that support the protest;
- Include the estimated dollar cost, if any, of the protested Work, and furnish a list of estimated Materials, Equipment and labor for which the Contractor might request additional compensation; and
- If additional compensation is estimated to be due, include the estimated amount of additional time required, if any.

**FAILURE TO COMPLY WITH THIS NOTICE REQUIREMENT RENDERS THE NOTICE IMPROPER AND SHALL CONSTITUTE A WAIVER OF ANY CLAIM FOR ADDITIONAL COMPENSATION OR A COMBINATION OF ADDITIONAL COMPENSATION AND CONTRACT TIME FOR ANY PART OF THE PROTESTED WORK.**

**(d) Engineer's Record and Response** – The Engineer will file a copy of each written notice of protest in the Project records and will issue a written response to the protest within seven (7) work days of receipt of a timely filed written notice of protest. The Engineer has no responsibility to evaluate the protest unless the Contractor has timely filed a proper notice submitting all of the above information.

**(e) Final Documentation of Claim** - Within 60 Calendar Days following completion of the protested work, Contractor shall provide the Engineer with complete documentation of protested work, listing exact materials, equipment and labor used for the work and the dollar amount requested for each. If the claim is accepted, no additional compensation will be awarded based on documentation submitted after this deadline. If the claim is denied or if the Contractor is not satisfied with the decision by the Engineer, the amount claimed by the Contractor in any subsequent Step or proceeding may not exceed the dollar amount requested under this subsection.

**(f) Records** - Keep complete records of all costs and time incurred throughout the protested Work, and allow the Engineer access to those and other supporting records. Provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with the Engineer.

**(g) Comparison of Records** - Provide the Engineer adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Engineer will compare records and either bring them into agreement at the end of each day, or record and attempt to explain any differences.

**(h) Work to Proceed** - In spite of any protest, proceed promptly with the Work ordered by the Engineer.

**(i) Evaluation of Protest** - The Engineer has no responsibility for evaluating a protest that is not timely filed, or for which adequate supporting documentation has not been made available to the Engineer. Provided the procedures above are followed, the Engineer will promptly evaluate all protests, after the Contractor has fully complied with the requirements described in 00199.20(c), Written Notice. If the protest is denied, the Engineer will notify the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Engineer will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

The Engineer has no responsibility for evaluating and may reject a protest that does not comply with 00199.20(b). If the protest is rejected, the Engineer will notify the Contractor in writing of the reasons for rejection.

**(j) Protest Evaluation by Third Party Neutral** - If the Engineer agrees that the Contractor has fully complied with the requirements described in 00199.20(b), and if the Engineer fully or partially denies, in writing, the Contractor's protest according to 00199.20(f), the Contractor may request that a mutually selected Third Party Neutral review the protest. Procedures for selecting, using, and paying for the cost of the Third Party Neutral will be specified by Change Order.

If the Contractor does not accept the Engineer's evaluation of the protest, or either the Contractor or Engineer disagrees with the resolution recommended by the Third Party Neutral, the Contractor may pursue a claim as described in 00199.30.

### **00199.30 Claims Procedure:**

**(a) General** - If the Contractor believes that additional compensation is due, or a combination of additional compensation and Contract Time, and has pursued and exhausted all the procedures provided in 00199.10 and 00199.20 to resolve a disagreement and protest, the Contractor may file a claim.

The Agency's Contract is with the Contractor. There is no contractual relationship between the Agency and any subcontractors, Suppliers or any Entity other than the Contractor. It is the Contractor's responsibility to fully evaluate any claim before presenting it to the Agency. In addition, when a claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the Contractor remains solely responsible for presenting the claim to the Agency.

Claims that include Work done or costs incurred by subcontractors, Suppliers, or any Entity other than the Contractor will not be considered by the Agency unless the Contractor has:

- Completed and provided its own written evaluation of the claim;
- Verified by its own independent review and evaluation of the amount of compensation sought; and
- Certified the claim in accordance with 00199.30(b) (Part 10).

**(b) Claims Requirements** - At any time during the progress of the Work, but not later than 45 Calendar Days following the date of the Second Notification, the Contractor shall submit to the Engineer in writing, claims for additional compensation or a combination of additional compensation and Contract Time additional to that specified in the Contract. For a claim not submitted within the 45 day limit, that has not met the requirements of 00199.20, or is not filed as provided in 00199.30, the Contractor waives any claim for additional compensation or for additional compensation and Contract Time, and the Agency may reject the claim.

Written claims to the Engineer or the Agency by the Contractor shall be delivered to the Agency address shown in the Special Provisions, unless a different address is agreed to by the Engineer, and shall be delivered:

- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Claims will be considered as having been received by the Agency:

- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

The Agency reserves the right at any time and at any step in the claim decision or review process to request additional information, records or documentation related to the claim or the Contract either directly or through agents working toward resolution of the disputed or claimed events and issues.

Claims shall be made in writing, and shall include all information, records and documentation necessary for the Agency to properly and completely evaluate the claim.

To be considered, claims for additional compensation, or for additional compensation and Contract Time, shall be completed according to 00199.30 and shall be submitted with the required information and in the format below and labeled as required below for each claimed issue:

**(Part 1)** Summary (label page 1.1 through page 1.X) - In the summary, include a detailed, factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim and the dates of when the event arose. Also include detailed facts supporting the Contractor's position relative to the Engineer's decision (see 00199.20(f));

**(Part 2)** Proof of notice (label page 2.1 through page 2.X) - Submit a copy of the written notice, with all attachments, that was given to the Agency. Include the date when that written notice and the date when oral notice was given:

**(Part 3)** Copies of the Contract Specifications that support the Contractor's claim (label page 3.1 through page 3.X);

**(Part 4)** Theory of entitlement supporting the claim (label page 4.1 through page 4.X) - Include a narrative of how or why the specific Contract Specifications support the claim and a statement of the reasons why such Specifications support the claim;

**(Part 5)** Itemized list of claimed amounts (label page 5.1 through page 5.X) - Claimed damages that resulted from the event with a narrative of the theories and records and documents used to arrive at the value of the damages;

**(Part 6)** Additional Contract Time requests (label page 6.1 through page 6.X) - If the claim is for a combination of additional compensation and Contract Time, submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed:

- Include the specific days and dates under claim;
- Provide detailed facts about the specific acts or omissions of the Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and

- Provide a schedule evaluation that accurately describes the impacts of the claimed delay.
- Also see 00180.80 for additional requirements regarding claims for Contract Time and causes that are eligible and ineligible for consideration;

**(Part 7)** Copies of actual expense records (label page 7.1 through page 7.X) - Include documents that contain the detailed records and which support and total to the exact amount of additional compensation sought. Include the information and calculations necessary to support that amount. That amount may be calculated on the basis of Section 00197, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials;
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75 percent of those calculated under the provisions of 00197.20. For each piece of Equipment, the Contractor shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;
- Direct labor;
- Job overhead;
- General and administrative overhead; and
- Other categories as specified by the Contractor or the Agency;

**(Part 8)** Supporting records and documents (label page 8.1 through page 8.X) - Include copies of, or excerpts from the following:

- Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and
- Any daily reports or diaries related to the event, photographs or media that help explain the issue or event (optional), or all other information the Contractor chooses to provide (optional);

**(Part 9)** Certification (label page 9.1 through 9.X) - A certified statement, signed by a person authorized to execute Change Orders, by the Contractor, subcontractor, Supplier, or Entity, originating the claim, as to the validity of facts and costs with the following certification:

*Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of \$ \_\_\_\_\_, exclusive of interest) and is fully documented and supported under the Contract between the parties.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

**(Part 10)** Contractor evaluation of a lower tier claim (label page 10.1 through 10.X) - If the claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the following are required:

- Data required by the other Subsections of 00199.30(b);
- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, separate evaluation of entitlement;
- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, independent verification and evaluation of the amount of damages sought; and

- A person authorized to execute Change Orders on behalf of the Contractor, subcontractor, Supplier and Entity, at all tiers above the level of which the claim originates, must sign a statement with the following certification:

*Under penalty of law for perjury or falsification, the undersigned, (Name) (Title), (Company) certifies that this claim originating from the subcontractor, Supplier or Entity (Company) for additional compensation for Work on the Contract is a reasonable statement, independently verified, of the costs incurred (in the amount of \$\_\_\_\_\_, exclusive of interest) and is fully documented and supported under the Contract between the parties.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

If the Engineer determines that additional information, records or documentation is needed to allow proper evaluation of the claim submittal, the Engineer will request the information, records or documentation. The Contractor shall submit to the Engineer within 14 Calendar Days, or as otherwise agreed by the parties, the required additional information, records and documentation.

If the Engineer determines that the claim submittal with the additional information, records and documentation submitted is incomplete and not accepted as a claim, the Engineer will notify the Contractor in writing and the submittal will be rejected and will not be considered under 00199.40.

**(c) Records Requirements** - The Contractor shall comply with 00170.07.

**(d) Compliance Required** - Full compliance by the Contractor with the provisions of this Section is a condition precedent to the commencement of any lawsuit by the Contractor to enforce any claim.

**00199.40 Claim Decision; Review; Exhaustion of Administrative Remedies** - The Agency intends to resolve all claims at the lowest possible administrative level. The Engineer will also determine whether multiple claims should be advanced separately or together.

If the Engineer denies the claim for additional compensation or a combination of additional compensation and Contract Time, in full or in part, according to 00199.40(a), the Contractor may request review of the denial. The disputed claim for additional compensation or a combination of additional compensation and Contract Time may then be resolved, in full or in part, at any of the progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

If the Engineer has denied a claim, in full or in part, for Contract Time only according to 00180.80, or has denied a claim, in full or in part, for correction of final compensation according to 00195.95, those disputed claims may then be resolved, in full or in part, at either of the two progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

A person authorized by the Contractor to execute Change Orders on behalf of the Contractor must be present and attend all claim hearings. For all claims, all of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

If, at any step in the claim decision or review process, the Contractor fails to promptly submit requested information or documentation that the Agency deems necessary to analyze the claim, the Contractor is deemed to have waived its right to further review, and the claim will not be considered properly filed and preserved.

**(a) Decision by the Engineer** - The Engineer will, as soon as practicable, consider, investigate, and evaluate a Contractor's claim for additional compensation, or for a combination of additional compensation and Contract Time, if submitted as required by 00199.30.

Once the Engineer determines the Agency is in receipt of a properly submitted claim, the Engineer will arrange a meeting, within 21 Calendar Days or as otherwise agreed by the parties, with the Contractor in order to present the claim for formal review and discussion.

If the Engineer determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Engineer will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Engineer will provide a written decision to the Contractor within 30 Calendar Days of the last Engineer-level meeting.

If the Contractor does not accept the Engineer's decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Engineer arrange a review at Step 1 (see (b) below).

**(b) Step 1: Public Works Director Level Review** - The Contractor shall request that the Engineer arrange a meeting with the Public Works Director or the Public Works Director's designee, as determined by the Public Works Director, in order to present the denied or partially denied claim for formal review and discussion. The meeting will take place within 21 Calendar Days of the Agency's receipt of the request, or as otherwise agreed by the parties.

If the Public Works Director (or designee) determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Public Works Director (or designee) will schedule a second meeting, to be held within 14 Calendar Days, or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Public Works Director (or designee) will provide a written decision to the Contractor within 30 Calendar Days of the last meeting with the Public Works Director (or designee).

The claim is subject to 00199.60, if not all of the records requested by the Public Works Director (or designee) were furnished. If applicable, advancement of the claim is subject to the provisions of 00199.60 regarding waiver and dismissal of the claim or portions of the claim.

If the Contractor does not accept the decision, the Contractor may, within 180 Calendar Days from the date of receipt of the Public Works Director (or designee) written decision or within 90 Calendar Days of the date of Second Notification, whichever is later, initiate Step 2 as set forth in subsection (c) below.

**(c) Step 2: Arbitration and Litigation** - The Contractor must follow each step in order, and exhaust all available administrative remedies before resort to arbitration and litigation. Litigation of a claim that cannot be resolved in Step 1 shall be initiated by filing a complaint in the Circuit Court for the State of Oregon in the county where the Agency's main office is located that contains a stipulation to arbitration under ORS 36.410. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to the Court Arbitration Program set forth in ORS 36.400 to 36.425, Chapter 13 of the Oregon Uniform Trial Court Rules and the Circuit Court supplemental local rules concerning arbitration. Either party may seek, and shall be entitled to, an order directing the other party to submit to arbitration as provided herein and to judgment for its costs, expenses and attorney fees in obtaining and enforcing the order

In no event shall this Subsection be construed as a waiver by the Agency or by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**(d) Payment of Costs, Expenses and Attorney's Fees** – The prevailing party shall be entitled to an award for reasonable costs and expenses incurred after the initiation of Step 2, including costs and expenses incurred for arbitration, trial de novo and on appeal. Costs and Expenses shall include, but shall not be limited to, reasonable attorney fees and expenses, arbitrator fees and expenses, and costs of discovery

As used in this subsection 00199.40(d), "prevailing party" for an arbitration award means (1) a Contractor who has received an arbitration award, exclusive of interest, costs and expenses, that is more than the dollar amount claimed by the Contractor in its Final Documentation of Claim under 00199.20(d) or (2) the Agency if there is no arbitration award to the Contractor or if the arbitration award to the Contractor, exclusive of interest, costs and expenses, is less than the dollar amount of the award in the Step 1 decision. For all other arbitration awards, there shall not be a "prevailing party."

The award of costs and expenses after trial de novo shall be made as provided for in ORS 36.425. The award of costs and expenses after appeal from a judgment entered after trial de novo shall be to the prevailing party designated as such by the appeals court.

The Contractor shall comply with 00170.00.

**00199.50 Mediation** - Notwithstanding the formal claims procedure specified above, the parties may enter into nonbinding mediation by mutual agreement at any time, in which case the parties may also agree to suspend the time requirements in Section 00199 pending the outcome of the mediation process. The rules, time and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between the Contractor and the Agency. Either party may terminate mediation at any time upon 5 Calendar Days notice to the other, after which the time requirements of Section 00199 shall be automatically reinstated and shall resume from the point at which the time requirements were suspended.

**00199.60 Review of Determination Regarding Records** - If not all of the records requested by the Agency under 00199.40(c) Step 2 were provided, then the Agency will determine:

- If the records are of the type described in 00170.07; and
- If the records have not been maintained or the records, or access to the records, has not been provided to the Agency as required by 00170.07 and this Section; and
- If the records are material and necessary for proper evaluation of part or all of the claim; and
- The portions of the claim for which the records are material and necessary for proper evaluation.

If the Agency makes the foregoing determinations, then subject to the review process described below, all portions of the claim for which the Agency determined the records are material and necessary for proper evaluation are immediately waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the Agency may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the Agency makes this determination, the claim or portions of the claim will not be waived or dismissed under this provision.

If the Contractor does not accept the Agency written determination that the records are material and necessary for proper evaluation of part or all of the claim, and the portions of the claim for which the records are material and necessary, the Contractor may, within 14 Calendar Days of receipt of the Agency determination, request, in writing, a review of such determination by the Public Works Director (or designee). If the Contractor does not request a review of the Agency determination, the Agency determination shall then become the Agency's final determination as of the expiration of the time limit to request review.

If the Contractor requests the review, the Public Works Director (or designee) will schedule a review meeting within 14 Calendar Days, or as otherwise agreed by the parties, of when the Public Works Director (or designee) receives the written review request. The Agency and the Contractor will each have an opportunity to explain their respective positions at the review meeting in a manner determined by the Public Works Director (or designee).

Within 10 Calendar Days of the review meeting, the Public Works Director (or designee) will issue a written proposed finding of whether the records not maintained or not provided to the Agency, or for which access was not provided to the Agency, are material and necessary for proper evaluation of part or all of the claim. If the Public Works Director (or designee) makes that finding, then the Public Works Director (or designee) will also make a proposed written finding as to what portions of the claim the records are material and necessary and, therefore, waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the Public Works Director (or designee) may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the Public Works Director (or designee) makes this determination, then the claim or portions of the claim will not be waived or dismissed under this provision.

The Public Works Director's (or designee) findings will be submitted to the Contractor. The Public Works Director's (or designee) findings are the Agency's final determination.

If the Agency's final determination is that the records are material and necessary for proper evaluation of part or all of the claim, then the claim or that portion of the claim for which the records are material and necessary is waived and irrevocably dismissed, unless the Contractor provides the records, or access to the records, to the Agency within 5 Calendar Days of the Agency's final determination. If the Contractor provides the records, or access to the records, within this time limit, the Agency will schedule a meeting with the Contractor within 14 Calendar Days or as otherwise agreed by the parties, to discuss the records.

The Agency's final determination that records are material and necessary for proper evaluation of part or all of the claim, and the Agency's final determination of the portions of the claim for which the records are material and necessary, shall be final and binding.

If the entire claim is waived and irrevocably dismissed pursuant to the Agency's final determination there will be no further decision by the Agency on the claim or further review of the claim under 00199.40 and the claim will not be eligible for mediation under 00199.50. If only portions of the claim are waived and irrevocably dismissed pursuant to the Agency's final determination, the Agency will provide a written decision to the Contractor regarding the remaining portions of the claim within 30 Calendar Days of the final Step 2 meeting, or the Agency's final determination regarding the records, whichever is later. There will be no further decision by the Agency on or further review under 00199.40 of the portions of the claim waived and irrevocably dismissed pursuant to Agency's final determination and those portions will not be eligible for mediation under 00199.50.



**Certificate of Compliance**

City of Warrenton,

225 S MAIN AVE. WARRENTON, OR 97146

ATTN: City of Warrenton Public Works Director

PROJECT NAME: SW Alder Avenue 2nd Street to 1st Street

PROJECT LOCATION: SW Alder Avenue 2nd Street to 1st Street

I hereby certify that:

- A. All work on the above referenced contract has been performed and materials supplied in accordance with the plans, specifications and contract documents for the above work;
- B. There have been no substitutions of Subcontractors without prior notification to the City in accordance with ORS279C.585;
- C. Contractor and subcontractors performing work under this contract were registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.138 before commencing work under the contract;
- D. All payments due to all persons supplying labor or material for the performance of the work provided for in this contract have been made;
- E. All contributions or amounts due the Industrial Accident Fund from the contractor or subcontractors incurred in the performance of the contract have been paid;
- F. All sums withheld from employees under ORS 316.167 have been paid to the Department of Revenue.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

**SPECIAL PROVISIONS**

**PART 00100 – GENERAL CONDITIONS**

**Section 00120 – Bidding Requirements and Procedures**

**00120.01 Receipt of Bids; Opening - Add the following:**

Sealed bids will be received up to the hour of **2:00 PM** local time, on Tuesday, April 20, 2021

Received by:

Adam Dailey  
Engineering Consultant

Received at:

Bids will **ONLY** be received and accepted via the online electronic bid service through QuestCDN.com

Any bids received after the above specified time will not be considered.

Bids will be publicly opened at the hour of **2:00 PM** local time, on Tuesday, April 20, 2021

Opened by:

Adam Dailey, PE  
Design Engineer Consultant

Opened at:

City Hall  
225 S. Main Ave. Warrenton, OR. 97138

**00120.02 Prequalification of Bidders – Add the following:**

Prequalification of bidders IS NOT required.

When prequalification is required, forms may be obtained from:

N/A

Prequalification applications must be received at the above location no less than seven (7) calendar days prior to bid opening. Required minimum prequalification class(es) of work for the Contractor (or Contractor in combination with proposed subcontractor(s) for this contract are:

N/A

**00120.03 Request for Solicitation Documents – Add the following:**

The contract documents may be viewed and downloaded by registering with QuestCDN online ([www.questcdn.com](http://www.questcdn.com)) or calling (952-233-1632). A contractor may view the Contract Documents at no cost on the QuestCDN website prior

to deciding to become a Plan-holder. To be considered a Plan-holder for construction bids, a contractor must register on QuestCDN.com and purchase the contract documents, in digital form for downloading, at a cost of \$50.00. Registering as a Plan-holder is recommended for all prime contractors and subcontractors because Plan-holders will receive addendums and other contract document updates via QuestCDN.

For this project bids will ONLY be received and accepted via the online electronic bid service through QuestCDN.com. To access the electronic bid form, download the project documents and click the online bidding button at the top of advertisement. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted.

**00120.04 Pre-Bid Meeting – Add the following:**

An OPTIONAL pre-bid meeting will be held.

2:00 PM Tuesday, April 6, 2021

225 S MAIN AVE. WARRENTON, OR 97146

Bids submitted by bidders who have not attended a MANDATORY pre-bid meeting will not be accepted and will be returned unopened.

Statements made by a City representative at the pre-bid meeting are not binding on City unless confirmed by written addendum. A project site tour will follow as part of the pre-bid meeting.

## Section 00150 – Control of Work

**00150.30 Deliver of Notices** – Contractor written notice to Engineer or Agency shall be delivered to:

Adam Dailey, PE  
Design Engineer Consultant  
A.M. Engineering  
PO Box 973 Seaside OR. 97138  
503-468-8600

**00150.50 Cooperation with Utilities** - This subsection is supplemented with the following:

The Contractor is required to coordinate construction activities with the gas company and notify the gas company immediately if conflicts are encountered.

**00150.55 Cooperation with Other Contractors** – This subsection is supplemental with the following:

The Contractor is required to coordinate construction activities with all Contractors included, or not included, in this project.

## Section 00165 – Quality of Materials

**00165.03 Testing by Agency** - The Agency at its own cost shall retain the services of a testing laboratory to conduct field testing on the compaction of subgrade, engineered fill, aggregate base, asphaltic concrete, pipe bedding and trench backfill. Areas failing to meet the density requirements shall be re-compacted by the Contractor immediately at no additional cost to Agency and tested again until passing.

Areas showing failing compaction results shall receive further attention without undue delay. Further attention may involve additional compaction efforts, other compaction methods, removal and recompaction of material or removal and replacement of material as required to obtain passing results.

No additional compensation will be made to the Contractor for down-time incurred as a result of testing or waiting for test results.

All additional Agency testing costs as a result of failing tests shall be borne entirely by the Contractor. All associated costs arising from any necessary additional work due to failing compaction test results, including removal and replacement of material, shall be borne by the Contractor.

Any subsequent settlement of any backfilled area during the Correction Period shall be considered to be the result of improper compaction and shall be promptly corrected by the Contractor at no cost to the Agency.

**00165.04 Costs of Testing** – Delete the second and third sentences of the first paragraph and add the following:

The Contractor shall conduct source-review tests of Aggregates for submittal to the Agency.

## Section 00170 – Legal Relations and Responsibilities

**00170.03 Furnishing Rights of Way and Permits** - The Agency will apply and pay for the City Grading/Erosion Control Permit. The Permit shall be picked up by and be in the Contractor's name. Prior to construction, the Contractor shall obtain, from the City, a Right-of-Way Permit and a Sidewalk and Driveway Permit. Permit fees shall be waived by the City.

**00170.10(a) Commercial Automobile Liability** – Combined single limit per occurrence shall be not less than \$1,000,000.

**00170.65(b)(1) Minimum Wage Rates** – BOLI Prevailing Wage Rates title page is included at the end of these Special Provisions.

BOLI Prevailing Wage Rates: Effective January 1, 2021

**00170.70(a) Commercial General Liability** – Combined single limit per occurrence shall not be less than \$1,000,000. Annual aggregate limit shall not be less than \$2,000,000.

**00170.70(c) Additional Insured** - The liability insurance coverages of 00170.70(a) shall include: Agency, the Agency's governing body, board, or Commission and its members, and the Agency's officers and employees as Additional Insureds, but only with respect to the Contractor's activities to be performed under the Contract. When federal transportation funding is involved, the liability coverages of 00170.70(a) shall also include the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers, members and employees as additional insureds, but only with respect to the Contractor's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of 00170.70(a) that are permitted by the Agency to be obtained by an appropriate subcontractor shall include all of the foregoing as Additional Insureds and shall also include Contractor and its officers and employees as Additional Insureds.

## Section 00180 – Prosecution and Progress

**00180.20(a) General** – The Contractor's own organization shall perform work amounting to at least 50% of the original Contract Amount.

**00180.40(a) In General** – Add the following to subsection:

Work hours shall be: 7:00 am - 6:00 pm

unless otherwise approved by the Engineer.

**00180.41 Project Work Schedules** – A Type "A" Schedule shall be required for the Project.

**00180.41(a) Type "A" Schedule** – A Type "A" Schedule is required for this Project.

**00180.85(b) Liquidated Damages** – The amount of liquidated damages, per Calendar Day, shall be: \$300

**Section 00190 – Measurement of Pay Quantities**

**00190.00 Scope** – This section is supplemented with Section 00190 – Measurement of Pay Quantities included after the Bid Schedule in the Bid Form section of the Contract Documents.

**Section 00199 – Disagreements, Protests, and Claims**

**00199.30(b) Claims Requirements** – Contractor written claims to Engineer or Agency shall be delivered to:

Adam Dailey, PE  
Design Engineer Consultant  
A.M. Engineering  
PO Box 973 Seaside OR. 97138  
503-468-8600

**PART 00200 – TEMPORARY FEATURES AND APPURTENANCES**

**Section 00205 - Field Laboratory, Weighhouse, Etc.**

Delete section in its entirety.

**Section 00210 Mobilization**

**00210.00 Scope** – Add the following to the subsection:

- Obtaining required bonds, insurance, permits, and licenses.
- Preparing and submitting shop drawings, "As-Built" drawings and other submittals.
- Removing equipment and extra materials from site upon completion of Work.
- All other work not identified in a separate bid item.

**Section 00220 – Accommodations for Public Traffic**

**00220.02 Public Safety and Mobility** - In the eighth "bulletized" item, delete the words "as shown on the Plans".

**00220.03(a) Over-Dimensional Vehicle Restrictions** - Delete subsection in its entirety.

**00220.40(d) Adjacent to Excavations** - In the first "bulletized" item, delete the words "as shown on the standard drawings".

**00220.40(e)(1) Closed Lanes** - Add the following to the subsection:

Unless otherwise authorized in writing by the Engineer, the Contractor shall maintain two lanes of traffic on all streets adjacent to street affected by construction at all times.

Unless otherwise authorized in writing by the Engineer, the Contractor shall maintain two lanes of traffic on all streets affected by construction between the hours of: 6:00 pm - 7:00 am

Detours and closures will be allowed, but must be approved in writing by the Engineer in advance.

**00220.70 Opening Sections to Traffic** - In the second paragraph, delete the phrase "except watering ordered to protect the work or to alleviate dust will be paid as provided in Section 00340".



**Section 00225 – Work Zone Traffic Control**

**00225.00 Scope** - Delete the phrase "according to the standard drawings, the traffic control plan (TCP) for the Project, these Specifications, or as directed" and replace with the phrase "traffic control plan (TCP) for the Project submitted by the Contractor and accepted by the Agency, these Specifications, or as directed".

**00225.05 Contractor Traffic Control Plan** - Delete the subsection in its entirety and replace with the following:

The Contractor shall submit a proposed TCP prepared by an engineer currently licensed in Oregon for the Agency's review and acceptance at least 14 days prior to start of any construction. The proposed TCP shall address all operational aspects of the Contractor's work, and shall include provisions for areas used by the Contractor for staging and storage of materials and equipment. The proposed TCP shall include order and duration of the TCP, all TCMs, TCDs, lane and street closures, and detours. If additional modifications are proposed by the Contractor to the Contractor's TCP as accepted by the Agency, submit modifications prepared by an engineer currently licensed in Oregon at least 7 days before beginning the construction activities that require the TCP changes.

The following parameters shall apply to the Contractor's Traffic Control Plan:

- Constraints, restrictions and coordination requirements as per 00220(e)(1), 00220(e)(2)(b) and 00220.40(f).
- Traffic control shall be designed to move traffic past the area smoothly, with proper and adequate advance signing.
- Wherever the existing roadway surface is disturbed by construction, and except where temporary paving is required, the Contractor shall regularly grade and maintain a smooth gravel surface for vehicular traffic traveling through and within the project area until the project is complete. Gravel will be swept from adjacent asphalt at the end of each working day.
- Access for Emergency vehicles shall be accommodated at all times.
- The Contractor shall have the responsibility of coordinating the needs of the abutting residents and businesses for parking and access.
- The Contractor shall coordinate its schedule of Work, operations and traffic control with the following organizations and agencies as applicable:

Warrenton School Buses,	503-325-4550
Sunset Empire Transit	503-861-7433
Warrenton Police	503-861-2235
Recology Warrenton Regional Office	503-861-0578

- The Contractor shall retain a Traffic Control Supervisor for the project, with responsibility and authority to continuously monitor and direct traffic control operations at all times on the project. The Traffic Control Supervisor shall have specific training in temporary traffic control for construction. The Contractor shall provide the Traffic Control Supervisor's name and phone number and training credential documentation to the Agency at the pre-construction conference. The Traffic Control Supervisor shall not be changed by the Contractor without prior written notification to the Agency and providing the same information for the new Traffic Control Supervisor and receiving Agency acceptance of the change.

**00225.90(a) Method "B" - Lump Sum Basis** – Delete subsection and replace with the following:

Work zone traffic control will be paid for at the Contract lump sum amount for the item "Temporary Work Zone Traffic Control, Complete".

Payment will be payment in full for all work covered under this Section.

**Section 00280 – Erosion and Sediment Control:**

**00280.00 Scope** – Add the following to the subsection:

An Oregon NPDES 1200-C Permit is not required for this project. Erosion control measures are included in the contract documents. The Contractor shall be responsible for full implementation of the erosion control measures and shall take proper actions to prevent contaminants, including sediment, from entering the storm drain system or otherwise being conveyed to Waters of the State. Take immediate corrective action if directed by the Agency or Engineer, or if the Contractor observes contaminants, including sediment entering the storm drain system.

(a) Notify the Agency of the need to prepare additional erosion control measures, whenever there is a change in construction activities or operations that may affect the discharge of significant quantities or pollutants to surface waters, ground waters, storm drainage systems. The erosion control measures shall be amended if they do not effectively achieved the objective of reducing pollutants in stormwater discharges.

**00280.04 Erosion and Sediment Control Plan on Agency Controlled Lands** - In the last sentence of the first paragraph, delete "before" and replace with "after".

**00280.05 Erosion and Sediment Control Plan on Non-Agency Controlled Lands** - In the last sentence of the first paragraph, delete "before" and replace with "after".

**00280.30 Erosion and Sediment Control Manager** - Add the following to the first sentence:

ESCM shall assume the duties as included in this subsection as well as those identified for the Permittee's Site Inspector as per the ESCP in the Supplemental Drawings including inspection frequency and reporting.

In the second paragraph, delete "10 days before" and replace with "at".

**Section 00290 – Environmental Protection**

**00290.20(b) Fuel Storage** – Delete the second sentence of the second paragraph.

**00290.30(b) Pollution Control Plan:** In the first paragraph, delete “10 days before” and replace with “at”.

Delete the last paragraph which begins “A Pollution Control Plan Contractor Packet...”

**PART 00300 – ROADWORK**

**Section 00310 – Removal of Structures and Obstructions**

**00310.44 Earthwork in Connection with Removal** – Add the following to subsection:

Catch basins and manholes removed shall be backfilled with compacted Class B Backfill in accordance with 00405.14 from the bottom of the excavation to the top of the street subgrade.

**00310.92 Separate Item Basis** – Replace “(g) Asphalt Pavement Saw Cutting ..... Foot” with

“(g) Asphalt Pavement and Concrete Saw Cutting ..... Foot”

**Section 00390 – Riprap Protection**

**00390.90 Payment** – Add the following to subsection:

(f) Riprap Basins with Geotextile..... Cubic Yard

## PART 00400 – DRAINAGE AND SEWERS

### Section 00405 – Trench Excavation, Bedding, and Backfill

**00405.00 Scope** – In the first paragraph delete " This Work consists of excavating trenches, constructing trench foundations, and placing bedding, pipe zone material and backfill." And replace with "This Work consists of potholing for determination of existing utilities, excavating trenches, constructing trench foundations, and placing bedding, pipe zone material and backfill."

#### 00405.02 Definitions

**Pipe Bedding:** Add the following:

The total bedding depth shall be a minimum of 6 inches below the bottom outside surface of the barrel of the pipe for the full width of the trench.

**Pipe Zone:** Delete "8 inches" and replace with "12 inches".

**Trench Excavation:** Add the following:

Trench excavation shall be classified as common excavation/with the exception of rock excavation.

**Trench Backfill:** Delete: "Furnishing, placing, and compacting material other than Controlled Low-Strength Material (CLSM) in the trench, between the top of the pipe zone material and the bottom of the pavement base Rock, ground surface or surface material." And replace with "Furnishing, placing, and compacting imported crushed aggregate material, other than Controlled Low-Strength Material (CLSM), free from wood waste, organic material, and other extraneous or objectionable materials, in the trench, between the top of the pipe zone material and the bottom of the pavement base Rock, ground surface or surface material."

**Lateral Restraint Shoring System:** Add the following:

Lateral Restraint Shoring System is defined as a shoring system with full face braced shields tightly against the trench sidewalls throughout trench excavation and pipe installation to maintain lateral stability.

**00405.11 Trench Foundation** - Delete the four "bulleted" items and replace with the following: 2-1/2"-0 base aggregate in conformance with 02630.10.

**00405.12 Bedding** – Add the following to subsection:

Pipe Bedding material shall be 3/4" – 0 base aggregate material in conformance with 02630.10.

**00405.13 Pipe Zone Material** – Add the following to subsection:

Pipe Zone Material shall be 3/4" – 0 base aggregate material in conformance with 02630.10.

**00405.14 Trench Backfill** - Remove the following from the subsection:

(a) **Class A Backfill** - Use native or common material that, in the opinion of the Engineer, meets the characteristics required for the specific surface loading or other criteria of the backfill zone.

(c) **Class C Backfill** - Use clean sand with no particle size larger than 1/4 inch.

(d) **Class D Backfill** - Use pit run or bar run material, well-graded from coarse to fine. The maximum dimension shall be 3 inches.

(e) **Class E Backfill** - Use CLSM conforming to Section 00442.

**00405.16 Pipe Zone Locate Wire** – Add this subsection:

The Contractor shall install 12 gauge located directly over pipe centerline and on top of the pipe zone material (no more than 8" above the pipe crown) for all non-ferrous pipe. Wire color in conformance with 00445.11(e). Run wires into valve, cleanout and meter boxes, manholes and other structures to a point accessible from the cover. Locate wires to not hinder access into manholes. All tracer wire splices shall be with a "Protrace TW" connector or approved equal.

**00405.30 Quality Control Personnel** – Delete subsection in its entirety.

**00405.41(c) Trench Width** – Delete third and fourth sentences of subsection.

**00405.43 Dewatering** - This section is supplemented as follows:

Dewatering equipment shall be provided to remove and dispose of all surface water and groundwater entering excavations, trenches, or other parts of the work.

1. The Contractor is solely responsible to design, furnish, install, maintain, and operate all necessary dewatering wells, sump/pumps and other devices for dewatering all excavations. The Contractor's plan for the dewatering system shall be submitted to the Engineer at the preconstruction conference for review.
2. At all times have on the project sufficient dewatering devices for immediate use, including standby pumps in case other pumps become inoperable.
3. Provide a sufficient number of dewatering devices so as to hold the groundwater level at an elevation of not less than 1 foot below the lowest elevation of the pipe or other material to be placed. When groundwater is encountered, the Contractor shall assess the situation and develop a plan to accommodate dewatering. The Contractor shall be solely responsible for control of groundwater through dewatering and trench excavation control Plan. All costs for pumping, piping, settling and discharging of trench groundwater shall be considered incidental to the work for groundwater control pumping of up to 250 gpm. If conditions are such that additional pumps are required to remove water in excess of 250 gpm, the Contractor shall use the number and size of additional pumps, as required, to maintain a water-free trench.

If pumping in excess of 250 gpm is required, a change order will be negotiated to provide compensation to the Contractor shall be per 1140.40 of the Standard Specifications.

4. The dewatering operation shall be continuous, so that the excavated areas shall be kept free from water during subgrade preparation, while pipes are installed, and until backfill has been placed to the extent that no damage from hydrostatic pressure, flotation, or other cause will result.
5. Continue dewatering during backfilling operations such that the groundwater is at least 1 foot below the level of the compaction effort at all times. No compaction of saturated materials will be allowed.
6. If pumping is required on a 24 hour basis, requiring engine drives, then engines shall be equipped in a manner to keep noise to a minimum.
7. Dewatering devices must be adequately filtered to prevent the removal of fines from the soil.
8. Settle and/or filter all dewatering system collected flow through Contractor provided settling tanks and systems in order to meet Water Quality Standards; Beneficial Uses, Policies, and Criteria for Oregon (OAR 340-041-0036) prior to discharging.
9. Dispose of water in such a manner as to cause no injury or nuisance to public or private property, or be a menace to the public health.
10. The Contractor shall be responsible for any damage to existing structures, pavement, utilities, or of the new works caused by Contractor's dewatering activities or failure of any part of the Contractor's dewatering activities.

The Contractor shall be responsible for furnishing temporary drainage facilities to convey and dispose of surface water falling on or passing over the site.

**00405.44 Trench Foundation** - Delete the third sentence of the second paragraph and replace with the following: Place the trench foundation material in no more than 12-inch layers and compact according to 00330.43.

**00405.45 Pipe Bedding** - Add the following paragraph to subsection:

The Contractor shall place subsequent lifts of not more than 6-inches in thickness up to one foot above the top of the pipe, bringing lifts up together on both sides of the pipe.

Bedding material shall be compacted to 95% of the Standard Proctor maximum dry density (ASTM D698, AASHTO T-99). For the case that bedding material is not density testable, procedures in accordance with 00405.46(c) (2) shall be followed. In this case, the bedding materials should be compacted using suitable compaction equipment until non-yielding.

Bedding disturbed by pipe movement, by removal of shoring, or by movement of a trench box or shield shall be recompacted prior to backfill. Special care shall be taken to provide adequate bedding support at wye or tee connections, at Fernco connections and adjacent to other structures so as to avoid bending or shearing stresses at these critical points. The Contractor shall prevent pipe movement either horizontally or vertically during placement and compaction of pipe bedding material.

**00405.46(b) Pipe Zone** - Add the following to the subsection:

Pipe zone material shall be compacted to 95% of the Standard Proctor maximum dry density (ASTM D698, AASHTO T-99).

**00405.46(c)(1) General** - This subsection is modified as follows:

Delete second paragraph. Excavated material shall not be used for backfill material.

**00405.46(c)(2) Class A, B, C, or D Backfill** – Delete the second paragraph of the subsection and add the following:

Within rights of way and paved surfaces, trench backfill shall be compacted to 98% of the Standard Proctor maximum dry density within two feet of final pavement subgrade elevation and to 95% of the Standard Proctor maximum dry density below two feet of final pavement subgrade elevation. Water jetting is not acceptable as a method of compaction.

In-place compaction tests will be made by the Agency. Contractor shall remove and recompact material that does not meet specified requirements. The Agency will charge the Contractor for the time and expenses to re-test non-compliant trench backfill.

For materials where a compaction curve cannot be developed in accordance with ASTM D698 or AASHTO T-99, compaction and field verification procedures for non-testable soils in ODOT Section 00330.43(c) should be followed. Deflection testing is not required.

When the backfilling is complete, the Contractor shall finish the surface area as specified. In paved areas, the Contractor shall maintain the surface of the trench backfill level with the existing grade, until final pavement replacement is completed and accepted by the Agency.

Add the following at the end of the subsection:

When crossing below an existing natural gas pipeline main or service of any size, the Contractor shall provide and install sand drainage material conforming to 00360.10 to provide a 12-inch envelope in all directions around the existing gas piping.

**00405.48(c) Pavement, Curb and Sidewalk**

Add the following to the first paragraph, after the second sentence:

Saw cut to nearest joint, panel or as indicated in the Supplemental Drawings.

In second paragraph, delete "6 inches" and replace with "12 inches" and add the following:

The Contractor is responsible for any damage to the sawcut trench edges between the time of excavation and paving. Trenches excavated for paving may not be left open for more than one day without steel plates or backfilling.



**Section 00415 – Video Pipe Inspection**

**00415.40(c) Inspection** -- Delete the last sentence of the first paragraph and replace with the following:  
Stop and inspect the full circumference of all pipe joints.

**Section 00440 – Commercial Grade Concrete**

**00440.14(a) General** - In last sentence, delete "a QCT" and replace with "Agency".

**00440.30 Quality Control Personnel** - Delete this subsection in its entirety.

**Section 00442 – Controlled Low Strength Materials**

**00442.00 Scope** - Controlled Low Strength Material shall be used to plug abandoned pipe and for the construction of trench dams.

**Section 00445 – Sanitary, Storm, Culvert, Siphon, and Irrigation Pipe**

**00445.11(e) Tracer Wire**

Delete the second sentence and replace with the following:

The HMW-PE insulated cover shall be 45 mil thick. Wire color in conformance with 00445.11(e).

**00445.11(h) Sanitary Sewer Laterals – Add this subsection:**

Construct sanitary sewer laterals per the Supplemental Drawings. Tee's consisting of a PVC hub, rubber sleeve and stainless steel band are not acceptable.

**00445.48 Tracer Wire - Add the following to the first paragraph:**

Run wires into cleanouts, manholes and other structures to a point accessible from the cover and not to impede access.

**Section 00470 – Manholes, Catch Basins and Inlets**

**00470.00 Scope – Add the following to subsection:**

This Work shall consist of installing storm sewer and sanitary sewer manholes.

Storm sewer manholes shall be constructed per the Supplemental Drawings.

Sanitary sewer manholes shall be constructed per Supplemental Drawings.

Catch basins shall be constructed per the Supplemental Drawings.

**00470.11 Precast Concrete Manholes and Bases – Storm sewer manholes shall be core drilled in the field for catch basin lateral and interceptor drain connections.**

**00470.71(b) Vacuum Testing - This subsection shall also apply to storm drain manholes.**

**00470.72 Adjusting Manholes and Catch Basins to Grade – Add this subsection:**

Manhole structures and catch basins shall be set to grade of preliminary asphalt surface and adjusted to final grade of surface at the time of final asphalt paving.

### **Section 00490 – Work on Existing Sewers and Structures**

**00490.40 General** – Add the following to subsection:

Contractor shall be solely responsible for safety during the performance of the Work. No one shall enter into any sewer segment, or structure, where hazardous conditions may exist until such time as the source of these conditions is identified and eliminated by the Contractor and/or Agency. The Contractor shall perform all tests that may be required to identify and assess unsafe conditions and shall perform all work in accordance with the latest OSHA confined space entry regulations. Contractor will coordinate its work with local fire, police and emergency rescue units so they are aware of his working conditions. Access for cleaning purposes shall be via existing manhole openings.

**00490.43 Abandoning Pipe in Place** – Replace subsection with "Abandoned pipes shall be completely filled with controlled low-strength material in accordance with Section 00442 and capped."

**00490.50 Sanitary Sewer and Storm Drain Connections** – Add this subsection:

Connecting new sanitary sewer or storm drain pipe larger than 6-inch diameter to existing sanitary sewer or storm drain pipe shall be with a Romac 501 coupling, Romac Macro HP coupling or approved equal.

### **Section 00495 – Trench Resurfacing**

**00495.10 Materials** - Permanent trench surfacing materials in existing paved areas shall be Asphalt Concrete Pavement (ACP) to in accordance with Section 00744.

**PART 00600 – BASES**

**Section 00641 – Aggregate Subbase, Base, and Shoulders**

**00641.10(a) Base and Shoulder Aggregate** - After the second sentence, add the following:

Base aggregate shall consist of both leveling rock and base rock as shown on the Supplemental Drawings. Leveling rock and base rock shall conform to Section 02630.10 for 3/4"-0.

**00641.80(b) Volume Basis** – Remove "When measurement is by volume, quantities will be measured in the hauling vehicle." and replace with "When measurement is by volume, quantities will be in-place measure. Quantities will be limited to the Neat Lines shown or as verified by the engineer."

**PART 00700 – WEARING SURFACES**

**Section 00744 – Asphalt Concrete Pavement**

**00744.12(a) Mix Type** - Mix Type shall conform to 1/2" ACP.

**00744.13 Job Mix Formula Requirements** - JMF shall conform to Level 2.

**00744.16 Sampling and Testing** - Agency will provide sampling and testing including type and frequency of tests.

**00744.42 Tack Coat** - Delete the last sentence of the first paragraph and replace with the following:

Tack coat asphalt shall be approved by the Engineer prior to application.

**00744.43(c) Placing** - In last paragraph of subsection, delete the third sentence and replace with the following:

Where 4-inches of ACP is required for trench pavement patching or street section, place in two separate 2-inch lifts.

**00744.49 Compaction** - Agency will conduct compaction testing including determination of testing frequency.

**Section 00759 – Miscellaneous Portland Cement Concrete Structures**

**00759.12 Sidewalk Ramp Treatment** - Detectable warning surfaces shall be cast in place, brick red.

**00759.41 Earthwork** - Excavation for curb shall be performed at the same time as excavation for roadway section, and shall extend to 1-foot beyond the back of curb.

**00759.42 Foundations** - Delete the words "using selected granular backfill material according to Section 00330 or".

**PART 00800 – PERMANENT TRAFFIC SAFETY AND GUIDANCE DEVICES**

**Section 00850 – Common Provisions for Pavement Markings**

**00850.50 General** – Add the following to subsection:

Temporary pavement markings shall be maintained in serviceable condition throughout the project until permanent pavement markings are installed. Temporary pavement markings that are damaged shall be repaired or replaced by the Contractor immediately at no additional cost to Agency.

**00850.75 Manufacturer's Warranty** – In the first sentence, delete "on Agency supplied warranty forms". Delete the last sentence.

**Section 00865 – Longitudinal Pavement Markings – Durable**

**00865.00 Scope** – Add the following to subsection:

Continental style crosswalks shall be High Skid Resistant Pre-formed Thermoplastic.

Crosswalks with standard bars and diagonal striping shall be constructed with an Agency provided legend using white paint with reflective glass beads.

If any portion of a crosswalk marking is removed or damaged during construction, the entire crosswalk marking shall be replaced with thermoplastic or paint as noted on the Supplemental Drawings. All four sides of the crosswalk marking are to remain consistent.

**Section 00867 – Transverse Pavement Markings – Legends and Bars**

**00867.45 Installation** - Type B-HS: Preformed, Fused Thermoplastic Film High Skid material shall apply to this project.

**PART 00900 - PERMANENT TRAFFIC CONTROL AND ILLUMINATION SYSTEMS**

**00940.90 Payment** – Add the following to subsection:

(g) Signs with post, \_\_\_\_\_, \_\_\_\_\_..... Lump Sum

Item (g) includes payment for sign posts as shown in the supplemental drawings.

In item (g), the type of sheeting will be inserted in the first blank; the type of material will be inserted in the second blank.

**PART 01000 – RIGHT OF WAY DEVELOPMENT AND CONTROL**

**Section 01040 - Planting**

**01040.00 Scope** – Add the following to this subsection:

All planting, including sod lawn installation, shall be completed by a professional/licensed landscape company.

**01040.55(k) Site Specific Restoration** – Add this subsection:

At any point of connections to private storm drain catch basins, storm drain lines, water or sewer services, or other facilities, restore the site of connection to existing conditions or better. Lawn sod shall be used for all grass restoration.

## PART 01100 – WATER SUPPLY SYSTEMS

### Section 01140 – Potable Water Pipe and Fittings

**01140.10 Materials** – Modify this subsection as follows:

All water lines shall be ductile iron thickness Class 52 meeting the requirements of Section 02470.20 or as directed in the Supplemental Drawings.

All ductile iron pipe and fittings and all brass fittings shall be manufactured within the U.S.

**01140.40(a) Dewatering Trenches** – This section is supplemented with the following:

See subsection 00405.43 Dewatering for additional requirements.

**01140.41(a) General** – Add the following to subsection:

Pipe shall be installed with 30 inches minimum and 42 inches maximum cover from the top of the pipe to finished grade unless otherwise shown on the Supplemental Drawings or as approved by the Engineer.

**01140.41(c) Polyethylene Encasement** – Delete this subsection in its entirety.

**01140.43 Polyethylene Encasement** – Delete this subsection in its entirety.

**01140.44(b) Restrained Joints** – Delete the first sentence and replace with the following:

In addition to concrete thrust blocks as required in subsection 01140.44(a), mechanically restrain all joints at bends, tees, dead ends and crosses.

**01140.47(b) Permission** – Delete and replace with the following:

The Contractor shall notify the Agency at least 2 working days in advance of each requested shutdown. Shutdowns shall not be scheduled on Friday or the day before a holiday and shall be planned to take place early in the day. Shutdowns may also have to be scheduled during times other than normal working hours. To minimize the inconvenience to water customers, the Contractor shall plan carefully for the installation of the new pipe by exposing the existing pipe in advance and making sure to have all necessary fittings, tools, equipment and personnel to make the connection in as short a time period as possible. The Contractor shall notify the Agency of any changes to the schedule prior to customer notification. If the schedule is changed after Agency staff has spent time or resources preparing for the shutdown, the Contractor will reimburse the Agency for personnel and equipment time and other expenses. Reimbursement will not be required if circumstances beyond the control of the Contractor cause the schedule change.

**01140.51 Hydrostatic Testing** – Delete and replace with the following:

Hydrostatic Testing shall be performed in accordance with the most recent edition of AWWA C600

**01140.52 Disinfecting** – Delete and replace with the following:

Prior to placing new water mains in service, the Contractor shall disinfect new mains, and any repaired portions of, or extensions to, existing mains, and obtain two satisfactory bacteriological reports. Disinfection shall be performed in accordance with AWWA C651, or as directed by the Engineer. The first sample will be collected and bacteriological tests obtained by the Agency at its cost. The second sample shall be collected by the Contractor and the Contractor shall be responsible for having the bacteriological test conducted by a State of Oregon certified laboratory at the Contractor's cost. The Contractor shall notify the Engineer at least 24 hours in advance to schedule bacteriological testing.

No connections will be made to the existing water system until the Contractor has successfully passed specified pressure and bacteriological testing. Temporary piping, valves and connections may be required to maintain water service and complete testing. Contractor is responsible for detailing and providing all temporary piping, valves and connections required.



## **Section 01170 – Potable Water Service Connections, 2 inch and Smaller**

**01170.40 General** – Add the following to subsection:

Connect to all water mains, including Class 52 ductile iron, using saddles. Direct taps are prohibited.

The existing water meters shall be left in the water meter box for the Agency to disconnect and reinstall if applicable. The Agency will perform the required documentation for updating property account information related to the water meter.

**01170.40(b) Installation** – Add the following to subsection:

When copper tubing is used for service connections, the tubing shall only be bent by using a suitable copper tubing tool to bend. Any divots for bends found in the copper tubing upon installation will be unacceptable. The Contractor will replace the tubing at no additional charge to the Agency.

**01170.41 Reconnecting Existing Services** – Add the following to subsection:

Where relocated/replaced water meter and service is shown on the drawings, the existing water service line, meter box, fittings, appurtenances and other miscellaneous materials shall be removed and disposed of by the Contractor.

## **PART 02000 – MATERIALS**

### **Section 02470 – Potable Water Pipe Materials**

**02470.20(a) General** - Delete the last sentence of the subsection and replace with the following:

Ductile iron pipe shall be Standard Thickness Class 52. All ductile iron pipe and fittings shall be manufactured within the United States.

### **Section 02475 - Potable Water Fitting Materials**

**02475.20 Ductile Iron Pipe Fittings** – Delete the first sentence and replace with the following:

All ductile iron fittings shall meet the requirements of AWWA C153.

### **Section 02485 – Hydrant and Appurtenance Materials**

**02485.10 Fire Hydrants** – Add the following to subsection:

Gate valves on the hydrant assembly as shown in the Supplemental Drawings are considered incidental to the hydrant and no additional payment will be made. The fire hydrant tee shall be flanged or mechanical joint as shown on the Supplemental Drawings.

### **Section 02490 – Potable Water Service Connection Materials, 2 Inch and Smaller**

**02490.70 Meter Boxes** - Delete subsections (a) and (b) and replace with the following:

Meter boxes shall be in conformance with the Supplemental Drawings.



## AGENDA MEMORANDUM

TO: The Warrenton City Commission  
FROM: Collin Stelzig, P.E., Public Works Director  
DATE: May 11, 2021  
SUBJ: Spring Clean-up Resolution 2598

### SUMMARY

This is the second reading of Resolution 2598 establishing fees for Spring Clean-up and updating Section 1 to include a one-day event on a week-end day to accommodate scheduling by Recology.

### RECOMMENDATION/SUGGESTED MOTION

Public Works recommends the City Commission conduct the second reading and adoption of Resolution 2598 amending the Spring Clean-Up Collection Policy.


### ALTERNATIVE

- 1) Other action as deemed appropriate by the City Commission
- 2) None recommended

### FISCAL IMPACT

The City Commission budgeted \$12,000.00 for Spring Clean-Up.

Approved by City Manager:



All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

**RESOLUTION No. 2598**

**AMENDING RATES AND SCHEDULES TO THE SPRING CLEAN-UP COLLECTION  
POLICY AND REPEALING RESOLUTION 2072**

**WHEREAS**, the City of Warrenton has found that Spring Clean-Up Day is a benefit of the citizens of Warrenton, and;

**WHEREAS**, the success of Spring Clean-Up Day has continued to be a popular event with widespread participation, and;

**WHEREAS**, the City Commission has found it necessary to adopt a formal Spring Clean-Up Day collection policy as a means of controlling the cost to Warrenton's rate payers.

**NOW THEREFORE, THE CITY OF WARRENTON RESOLVES AS FOLLOWS:**

**SECTION 1:** Spring Clean-Up Day will be a one-day event held on a weekend day.

**SECTION 2:** Participants will be required to show that they are a City of Warrenton garbage ratepayers in the City of Warrenton by showing a current City utility bill in the name of the participant.

**SECTION 3:** The City will collect \$5.00 per vehicle and/or trailer load to offset the costs of Spring Clean-Up Day to the ratepayers of Warrenton.

**SECTION 4:** The City retains the ability to collect additional fees for items that impose extra cost on the City as a result of their disposal and sets new rates for the following items.

Tires Off Rim	\$ 3.00	Tires On Rim	\$ 6.00
Refrigerator/Freezers	\$ 35.00	Large Appliances	\$ 8.00

**SECTION 5:** The City maintains the right to reject any materials deemed inappropriate or hazardous.

FIRST READING: April 27, 2021

SECOND READING: May 11, 2021

ADOPTED by the City Commission of the City of Warrenton this 11<sup>th</sup> day of May, 2021.

APPROVED

---

Henry A. Balensifer III, Mayor

ATTEST

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Dawne Shaw, City Recorder



## AGENDA MEMORANDUM

TO: The Warrenton City Commission

FROM: Dawne Shaw, City Recorder

DATE: May 11, 2021

SUBJ: STREET VACATION PETITION NO. 155 – RESOLUTION SETTING  
A PUBLIC HEARING

### SUMMARY

The City received a petition from Jetty Street, LLC, and Stephanie and/or Gerald Poe proposing to vacate a portion of 4<sup>th</sup> Avenue in Hammond. The purpose of the vacation is for setbacks. The petition is attached. I find the petition complete having attached in writing the consent of owners of two-thirds in area of property embraced within the real property affected. The City's consent would be required in order to be complete. I have prepared a resolution for your consideration to consent to move forward with a Public Hearing and to set a public hearing date of June 8, 2021.

Public Works, Planning, Marina and Fire departments have reviewed the petition; their comments are attached. If there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

### RECOMMENDATION/SUGGESTED MOTION

I move to adopt Resolution No. 2599, setting a Public Hearing date of June 8, 2021, for vacation petitioners Jetty Street, LLC, and Stephanie and/or Gerald Poe, for a portion of 4<sup>th</sup> Avenue (Hammond).

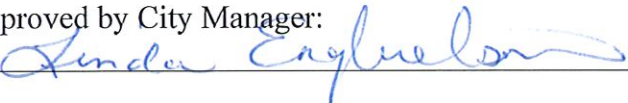
**ALTERNATIVE**

Other action as deemed appropriate by the City Commission

**FISCAL IMPACT**

The cost of the vacation is paid for by the petitioners.

Approved by City Manager:



A handwritten signature in blue ink, reading "Linda Engelson", is written over a horizontal line. The signature is cursive and includes a long, sweeping flourish at the end.

RESOLUTION NO. 2599

Introduced by All Commissioners

A RESOLUTION SETTING A PUBLIC HEARING DATE OF JUNE 8, 2021, TO CONSIDER STREET VACATION PETITION NO. 155, THE VACATION OF A PORTION OF 4<sup>TH</sup> AVENUE IN THE HAMMOND DISTRICT OF THE CITY OF WARRENTON, OREGON

**WHEREAS**, the petitioner, Jetty Street, LLC and Stephanie and/or Gerald Poe have petitioned the Warrenton City Commission to vacate a portion of 4<sup>th</sup> Avenue (Hammond) in the Plat of "First Addition to Kindred Park", more particularly described in the attached legal description; and

**WHEREAS**, the Warrenton City Commission has found no reason why the petition should be allowed in whole or in part; and

**NOW, THEREFORE, BE IT RESOLVED** that a public hearing on said petition is hereby set for June 8, 2021, at the hour of 6:00 p.m. at Warrenton City Hall, 225 S. Main Avenue, Warrenton, Oregon.

**BE IT FURTHER RESOLVED** that the City Recorder will provide notice of the public hearing as required by Oregon Statutes regarding the proposed vacation petition.

**PASSED** by the City Commission of the City of Warrenton this 11<sup>th</sup> day of May 2021.

This resolution shall take effect immediately upon its passage.

APPROVED

\_\_\_\_\_  
Henry A. Balensifer III, Mayor

ATTEST

\_\_\_\_\_  
Dawne Shaw, CMC, City Recorder

**STREET VACATION PETITION**  
**City of Warrenton**

Fee: \$600.00

<u><b>Petitioner</b></u>	<u><b>Petitioner's Representative</b></u>
Name: <b>Jetty Street, LLC, Gerald and/ or Stephanie Poe</b>	Name: <b>Jordan Winters</b>
Mailing Address: <b>9879 Buena Vista Dr. Independence, OR 97351</b>	Mailing Address: <b>1220 20th St SE, Suite 310 Salem, OR 97302</b>
Phone Number: <b>503-871-1319</b>	Phone Number: <b>503-209-6034</b>
Email Address: <b>hansen@santepartners.com</b>	Email Address: <b>winters@santepartners.com</b>
<b>1. A description of the right-of-way area to be vacated. (<i>Don't forget to include a map highlighting the area. A survey or professionally developed legal description is required.</i>)</b>  <b>Attached</b>	
<b>2. Reason for the Vacation Request. (<i>Advise if any buildings/structures will be in the area to be vacated.</i>)</b> <p>4th Avenue along the Petitioners' frontage has been designated by the City of Warrenton as a Local Road. Table 16.136.010 of the City of Warrenton Street Design Standards requires the Right-of-Way width for a Local Road to be 60 feet. The current right-of-way for 4th Avenue along the Petitioners' frontage is a 70 foot right of way. As such, 10 feet of the existing right-of-way is not necessary based on the design standards for a Local Road. Petitioner requests additional space in order to make current building size fit within the property and required setbacks. Because the units are town home, which are longer and narrower, the added 10' will allow applicant to fit desired size home and still maintain open space for communal landscaping and recreation within the property. The reduction in 10' will still allow for the required half-street improvements per city code. Petitioner intends to provide these half street improvements as part of their development.</p> <p style="text-align: center;">Note: If additional room is necessary, please attach extra pages.</p>	
<b>3. Required affidavits.</b> <ul style="list-style-type: none"><li>a. 100% of abutting property owners.</li><li>b. Two-thirds in area of real property affected by proposal. Refer to <i>ORS Chapter 271</i> (attached).</li><li>c. List of all abutting and affected property owners, mailing addresses, and corresponding square footage of property owned.</li></ul>	



Petitioner



Date

9/20/21  
2/20/21

Return To:

City of Warrenton  
P.O. Box 250  
225 S. Main Street  
Warrenton, OR 97146

For Questions – Contact:

Kevin Cronin, City Planner  
Phone: 503- 861-0920  
Email: [cityplanner@ci.warrenton.or.us](mailto:cityplanner@ci.warrenton.or.us)

APR 21 2021

RECEIVED  
WARRENTON, OR 97146

**RIGHT OF WAY VACATION**  
Street Vacation Check List

**DISCLAIMER: Completion of this application does not constitute approval of the street vacation. The ultimate decision will be made by the Warrenton City Commission.**

To help facilitate the street vacation process, you must complete the steps below in the order presented.

I have read the "Vacating A Street" brochure.

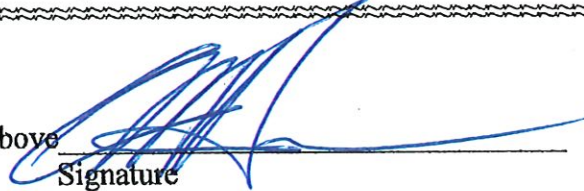
I have called and spoken to Eileen Ystad at Clatsop County's Cartography Department (503-325-8522) to see who will own the right-of-way area after the vacation is completed. (In most cases the vacated area is split down the middle and reverts back to the adjacent property owner.) **Please list who receives property:** Jetty Street, LLC and Gerald Poe

I have talked with all owners of the properties that abut all sides and corners of the portion of right-of-way to be vacated and they will support the vacation request (**objecting property owners will complicate or stop the process**).

I have contacted private utilities to determine if the companies will support the vacation, with or without special conditions. To ensure that you have a complete understanding of affected utilities, a utility locate should be requested by calling: 800-332-2344.

**SIGN TO CONFIRM:**

I have completed all of the above

  
Signature

4/20/21  
Date

**After you have done all of the above and it appears that a right-of-way vacation may be feasible**, a written right-of-way vacation petition (attached) and a Six Hundred Dollar (~~\$600.00~~ 750.00) application fee is required. If multiple streets are involved, or it affects multiple lots, a land use review by the Planning Department and Planning Commission is required. The petition fee is Eight Hundred Dollars (~~\$800~~) when it's required to go before the Planning Commission.

Upon receipt of this checklist, the petition, the required fee and all necessary signatures, (see ORS 271.080 – attached), the City Planner shall review the petition. If petition is deemed incomplete, it will be returned to the petitioner for additional signatures or other required information. If required percentages of consent is confirmed, the matter will be placed on the City Commission's Agenda to consider setting a public hearing or referred to the Planning Commission, if required. Please allow four weeks for the review of the petition.

**LEGAL DESCRIPTION**  
**Right of Way Vacation**  
**EXHIBIT "A"**  
**4<sup>th</sup> Avenue (Myler Avenue)**

A portion of land located in the Southeast one quarter and the Southwest one quarter of Section 5, Township 8 North, Range 10 West, Willamette Meridian, City of Warrenton, Clatsop County, Oregon, more particularly described as follows:

The South 10.00 feet of that certain 70.00 feet street, adjoining and coincident, with Lots 1 to 9, inclusive, in Block 9, Plat of "First Addition to Kindred Park", Book 1, Page 60, records of Clatsop County, Oregon.

Subject to any public or private easements that may exist.

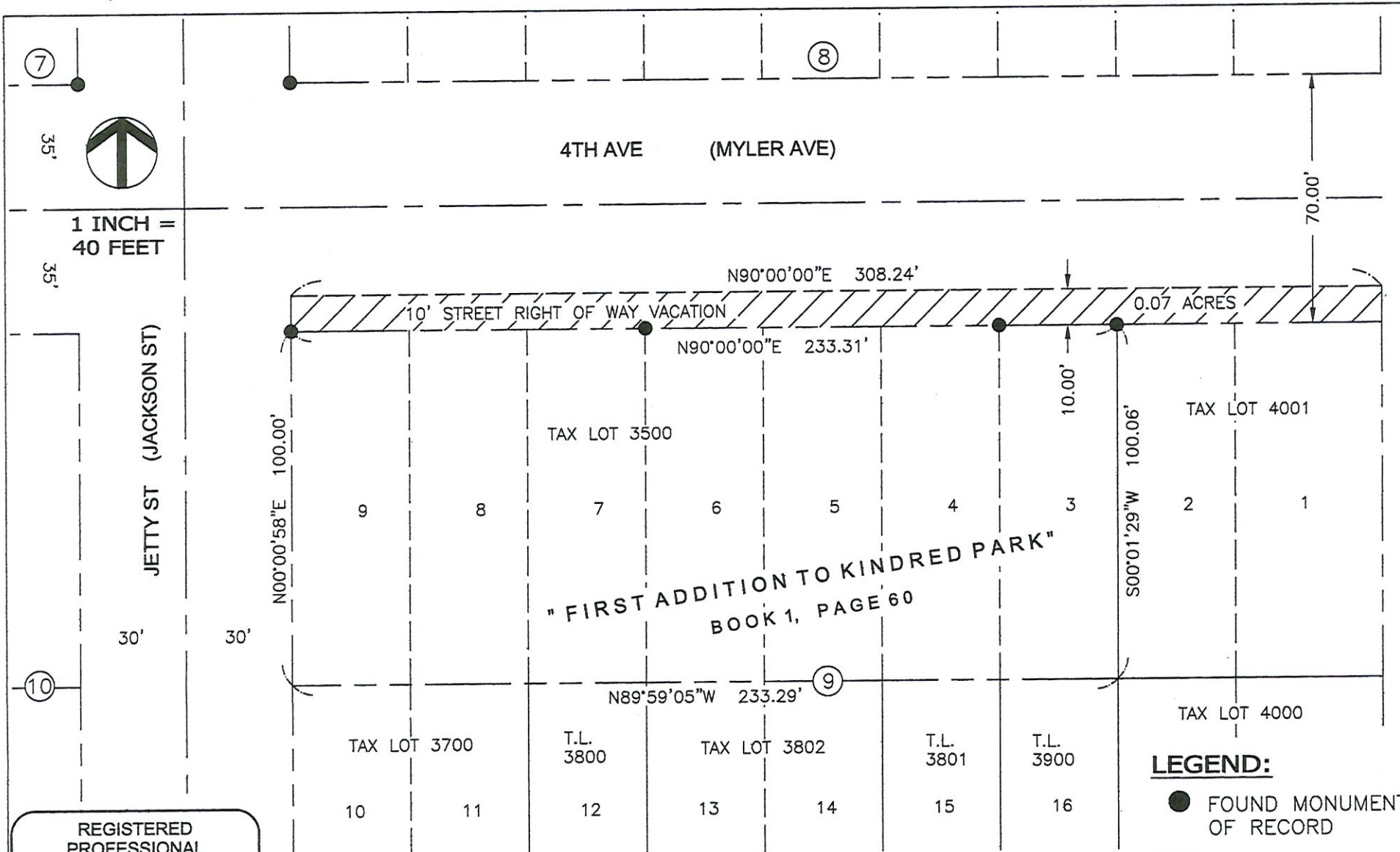
Containing 0.07 acres more or less.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Jack L. White II*

OREGON  
SEPTEMBER 10, 2019  
JACK L WHITE II  
91987PLS





7

8

70.00'

4TH AVE (MYLER AVE)

35'



1 INCH = 40 FEET

35'

JETTY ST (JACKSON ST)

N00°00'58"E 100.00'

N90°00'00"E 308.24'

10' STREET RIGHT OF WAY VACATION

0.07 ACRES

N90°00'00"E 233.31'

TAX LOT 3500

10.00'

TAX LOT 4001

S00°01'29"W 100.06'

"FIRST ADDITION TO KINDRED PARK"  
BOOK 1, PAGE 60

30'

30'

10

N89°59'05"W 233.29'

9

TAX LOT 4000

TAX LOT 3700

T.L. 3800

TAX LOT 3802

T.L. 3801

T.L. 3900

10

11

12

13

14

15

16

**LEGEND:**

● FOUND MONUMENT OF RECORD

▨ VACATION AREA

REGISTERED PROFESSIONAL LAND SURVEYOR

**STREET VACATION EXHIBIT SKETCH**

LOCATED IN THE SE 1/4 AND THE SW 1/4 OF SECTION 5, TOWNSHIP 8 NORTH, RANGE 10 WEST W.M. CITY OF WARRENTON, CLATSOP COUNTY, OREGON



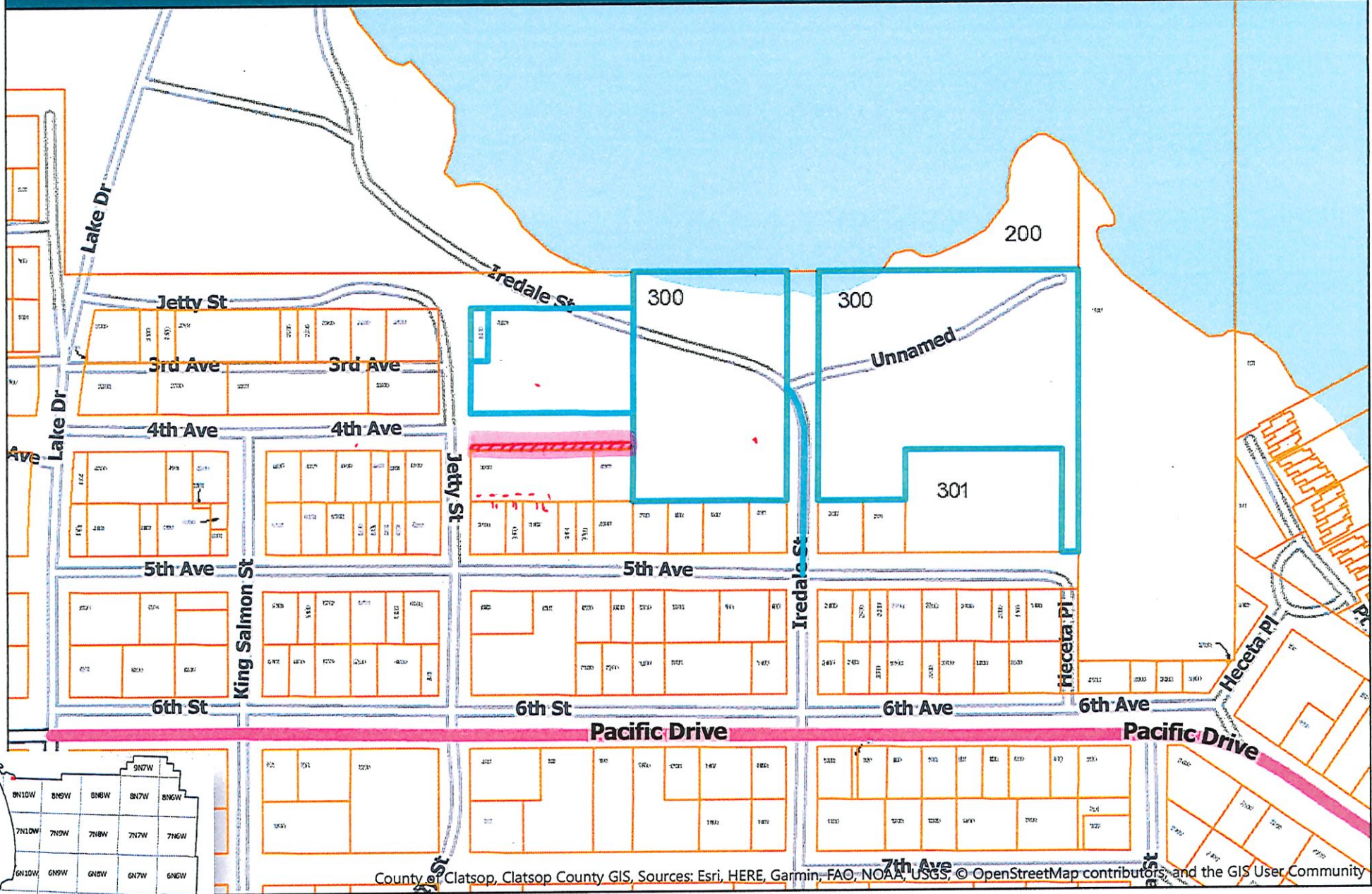
*Jack L. White II*

OREGON  
SEPTEMBER 10, 2019  
JACK L WHITE II  
91987PLS

Date: 4/16/2021 1725 N ROOSEVELT DR, STE B, SEASIDE, OR 97138  
Proj No: 21G35101 (503) 738-3425  
www.sflands.com info@sflands.com



# Clatsop County, OR

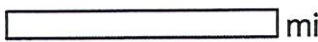


County of Clatsop, Clatsop County GIS, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



## Clatsop County

0.1



*This map was produced using Clatsop County GIS data. The data is maintained by Clatsop County to support its governmental activities. Clatsop County is not responsible for any map errors, possible misuse, or misinterpretation.*

## Dawne Shaw

---

**From:** Scott Hess  
**Sent:** Thursday, April 22, 2021 11:46 AM  
**To:** Dawne Shaw  
**Cc:** Linda Engbretson  
**Subject:** 4th Street Vacation - Hammond Area

Dawne,

Planning has reviewed the 10' Street Vacation request on 4<sup>th</sup> Street in Hammond, and has no objections or concerns.

Thank you,

Scott A. Hess  
Community Development Director  
(503) 861-0920  
CITY OF WARRENTON

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## Dawne Shaw

---

**From:** Richard Stelzig  
**Sent:** Monday, May 3, 2021 2:18 PM  
**To:** Dawne Shaw  
**Subject:** RE: Fourth Street widths

Dawne,

Public Works does not oppose this 10' partial street vacation. It appears that a 36' wide road will still fit within the remaining ROW and can be aligned with the existing Fourth Avenue roadway.

Thank you,

Collin Stelzig, PE | Public Works Director | City of Warrenton  
45 SW 2nd St. | P.O. Box 250 | Warrenton, OR 97146  
Office: (503) 861-0912 | Fax: (503) 861-9661  
[rstelzig@ci.warrenton.or.us](mailto:rstelzig@ci.warrenton.or.us) | [www.ci.warrenton.or.us](http://www.ci.warrenton.or.us)

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---

**From:** Dawne Shaw <dshaw@ci.warrenton.or.us>  
**Sent:** Monday, May 03, 2021 9:54 AM  
**To:** Richard Stelzig <rstelzig@ci.warrenton.or.us>  
**Subject:** FW: Fourth Street widths

Hi Collin,

I forwarded this late Friday and just want to make sure you have received. Please review and let me know as soon as possible if this is acceptable and reply to the original email that I sent (April 22) for feedback on the street vacation. I need to include your comments with the agenda memo.

Thanks!

*Dawne Shaw*, CMC  
City of Warrenton  
City Recorder | Asst. to the City Manager |  
Human Resources Coordinator  
(503) 861-0823



## Dawne Shaw

---

**From:** Jane Sweet  
**Sent:** Wednesday, April 28, 2021 11:49 AM  
**To:** Dawne Shaw  
**Subject:** RE: Street Vacation - 4th Avenue Hammond

No I think it would be just fine – unless they use our garbage dumpster

---

**From:** Dawne Shaw  
**Sent:** Wednesday, April 28, 2021 11:48 AM  
**To:** Jane Sweet  
**Subject:** RE: Street Vacation - 4th Avenue Hammond

Thanks Jane. So you do not see any issues in regards to the adjacent marina property?  
(just to clarify)

*Dawne Shaw, CMC*  
City of Warrenton  
City Recorder | Asst. to the City Manager |  
Human Resources Coordinator  
(503) 861-0823



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**From:** Jane Sweet <[jsweet@ci.warrenton.or.us](mailto:jsweet@ci.warrenton.or.us)>  
**Sent:** Wednesday, April 28, 2021 11:46 AM  
**To:** Dawne Shaw <[dshaw@ci.warrenton.or.us](mailto:dshaw@ci.warrenton.or.us)>  
**Subject:** RE: Street Vacation - 4th Avenue Hammond

I do not have any feedback other than he seems like a nice guy

Thanks Dawne!!!



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From: Dawne Shaw  
Sent: Thursday, April 22, 2021 1:45 PM  
To: Richard Stelzig <[rstelzig@ci.warrenton.or.us](mailto:rstelzig@ci.warrenton.or.us)>; Fire Chief <[firechief@ci.warrenton.or.us](mailto:firechief@ci.warrenton.or.us)>; Jane Sweet <[jsweet@ci.warrenton.or.us](mailto:jsweet@ci.warrenton.or.us)>  
Subject: Street Vacation - 4th Avenue Hammond

Hello,

We have received a street vacation petition for a 10' section of right-of-way along 4<sup>th</sup> Avenue in Hammond (aka Mylar Ave). Please see that attached map and advise if you have any concerns or objections to granting this vacation. The 10' portion is highlighted in pink. Let me know if you have any questions.

Dawne Shaw, CMC  
City of Warrenton  
City Recorder | Asst. to the City Manager |  
Human Resources Coordinator  
(503) 861-0823



*This message may contain confidential and/or proprietary information, and is intended for the person/entity to which it was originally addressed. If you have received this email by error, please contact the City and then shred the original document. Any use by others is strictly prohibited.*

## Dawne Shaw

---

**From:** Fire Chief  
**Sent:** Monday, May 3, 2021 11:15 AM  
**To:** Dawne Shaw  
**Subject:** RE: Street Vacation - 4th Avenue Hammond

Dawne,

I don't see any issues, looks like we will gain some road width for our access.

Thanks,

**Brian Alsbury**  
**Fire Chief**  
**(503) 861-2494**  
**CITY OF WARRENTON**

*This message may contain confidential and/or proprietary information and is intended for the person/entity to which it was originally addressed. If you have received this email by error, please contact the City and then shred the original document. Any use by others is strictly prohibited.*

**From:** Dawne Shaw  
**Sent:** Thursday, April 22, 2021 1:45 PM  
**To:** Richard Stelzig <[rstelzig@ci.warrenton.or.us](mailto:rstelzig@ci.warrenton.or.us)>; Fire Chief <[firechief@ci.warrenton.or.us](mailto:firechief@ci.warrenton.or.us)>; Jane Sweet <[jsweet@ci.warrenton.or.us](mailto:jsweet@ci.warrenton.or.us)>  
**Subject:** Street Vacation - 4th Avenue Hammond

Hello,

We have received a street vacation petition for a 10' section of right-of-way along 4<sup>th</sup> Avenue in Hammond (aka Mylar Ave). Please see that attached map and advise if you have any concerns or objections to granting this vacation. The 10' portion is highlighted in pink. Let me know if you have any questions.

Dawne Shaw, CMC  
City of Warrenton  
City Recorder|Asst. to the City Manager|  
Human Resources Coordinator  
(503) 861-0823



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## AGENDA MEMORANDUM

**TO:** The Honorable Mayor and Warrenton City Commission  
**FROM:** Linda Engbretson, City Manager *LME*  
**DATE:** For the Agenda of May 11, 2021  
**SUBJ:** **Street Vacation Amendment – Ordinance No. 1251**

### SUMMARY

Clatsop County reached out to the city regarding a street vacation for SE Galena in Chelsea Gardens done in 2016. Because the legal description states, “in Block 2” and not “between Blocks 1 and 2” only half the street was vacated, when the intention was clearly to vacate the entire width of the right of way. I am sure this was discovered as part of the apartment project currently being considered on these lots. Looking at the map, you can see how the Block 1 was missed.

This is considered a scrivener’s error and a full hearing is not required to correct the legal description.

### RECOMMENDATION/SUGGESTED MOTION

*“I move to conduct the first reading, by title only, of Ordinance No. 1251, to correct the legal descriptions of Street Vacation No. 147.”*

*Title:* ORDINANCE NO. 1251, INTRODUCED BY ALL COMMISSIONERS, VACATING A PORTION OF SE GALENA AVENUE IN WARRENTON, OREGON, and REPEALING ORDINANCE NO. 1210A

### ALTERNATIVE

None recommended.

### FISCAL IMPACT

Recording costs considered in FY 2020-2021 budget.

ORDINANCE NO. 1251

INTRODUCED BY ALL COMMISSIONERS

VACATING A PORTION OF SE GALENA AVENUE  
IN WARRENTON, OREGON, and REPEALING ORDINANCE NO. 1210A

WHEREAS, The Warrenton City Commission previously vacated a portion of SE Galena Avenue under Ordinance No. 1210A; and

WHEREAS, all legal proceedings were followed for the vacation; and

WHEREAS, the Clatsop County Assessor's Office has informed the City of a legal description error in the original vacation;

NOW, THEREFORE, the City of Warrenton ordains as follows:

**Section 1.** The public right-of-way in the City of Warrenton, Clatsop County, State of Oregon, described as:

That portion of SE Galena Avenue that runs from SE 14<sup>th</sup> Place south for a distance of 361.2 feet between Block 1 and Block 2, Sub Tract 3 of Chelsea between tax lots 81027BC 01700 81027 BC 01600; 81027BC 02100, 81027BC 02200 and 81027BC 01500

is hereby vacated. Nothing contained herein shall cause or require the removal or obstruction of any drainage ditch, abandonment of any sewer, water main conduit, utility line, pole or any other thing used or intended to be used for any public service.

**Section 2.** The City Recorder of the City of Warrenton is hereby ordered to make this vacation a matter of public record; and it is expressly provided that the petitioner shall forthwith pay the costs of the necessary changes of public records, as required by law, and it is hereby provided that the City Recorder shall file with the clerk, the assessor, and the surveyor of Clatsop County, a certified copy of this ordinance.

**Section 3.** This ordinance will take effect 30 days after its adoption by the Warrenton City Commission.

Adopted by the City Commission of the City of Warrenton, Oregon this \_\_\_\_\_ day of May 2021.

First Reading: May 11, 2021

Second Reading: May 25, 2021

APPROVED:

\_\_\_\_\_  
Henry A. Balensifer, III, Mayor

ATTEST:

\_\_\_\_\_  
Dawne Shaw, CMC,  
City Recorder





## AGENDA MEMORANDUM

TO: The Warrenton City Commission  
FROM: Dawne Shaw, City Recorder  
DATE: May 11, 2021  
SUBJ: Amendment to Warrenton Municipal Code – Homestay Lodging and  
Vacation Rental Dwellings; Homestay Lodging Standards; Ordinances 1248  
and 1250

### SUMMARY

At its April 27, 2021 meeting, the City Commission held a public hearing on the amendments to the Warrenton Municipal Code (WMC), Title 16 Development Code, Division 2 Land Use Districts to include Homestay Lodging and Vacation Rental Dwellings (Ordinance No. 1248), and amendments to WMC Title 8.24, Homestay Lodging Standards (Ordinance No. 1250). The first readings of the ordinances were conducted after the public hearing and are presented today for the second readings and adoption.

### RECOMMENDATION/SUGGESTED MOTION

"I move to conduct the second reading, by title only, of Ordinance No. 1248, an Ordinance Amending WMC Title 16, Development Code, Division 1, Chapter 16.12 Definitions; Division 2, Land Use Districts, Chapters: 16.24, 16.28, 16.32, 16.36, 16.40, 16.44, 16.56; and Division 3, Chapter 16.180."

"I move to conduct the second reading, by title only, of Ordinance No. 1250, an Ordinance Amending WMC Title 8, Health and Safety, Chapter 24 Homestay Lodging Safety Standards."

"I move to adopt Ordinance No. 1248 and Ordinance No. 1250."

1) None recommended

FISCAL IMPACT

N/A

Approved by City Manager:

A handwritten signature in blue ink, reading "Linda Egleston", is written over a horizontal line.

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

**Ordinance 1248**  
**Introduced by All Commissioners**

**AN ORDINANCE AMENDING WARRENTON MUNICIPAL CODE TITLE 16,  
DEVELOPMENT CODE, DIVISION 1, CHAPTER 16.12 DEFINITIONS; DIVISION 2,  
LAND USE DISTRICTS, CHAPTERS: 16.24, 16.28, 16.32, 16.36, 16.40, 16.44, 16.56; AND  
DIVISION 3, CHAPTER 16.180**

**WHEREAS**, the City Commission finds it appropriate to amend the Development Code's reference to Homestay Lodging and Vacation Rental Dwellings to meet the City's needs; and

**WHEREAS**, the City of Warrenton is best served by land use decisions that are clear in their intent within the Development Code; and

**WHEREAS**, the City Commission conducted a public hearing on this amendment on April 27, 2021, to receive public testimony and to consider the Planning Commission's recommendation;

**NOW, THEREFORE**, the City of Warrenton ordains as follows:

**Section 1.** Amend Warrenton Municipal Code Division 1, Introduction, Chapter 16.12 Definitions to insert the following definitions as written:

[new language; ~~deleted language~~]

**Homestay Lodging.** A short-term rental in an owner-occupied, single-family detached dwelling unit using up to five bedrooms, including bedrooms in accessory dwellings.

**Vacation Rental Dwelling.** A single-family dwelling or accessory dwelling that is nonowner occupied and is rented for terms of less than 30 days.

**Section 2.** Amend Warrenton Municipal Code Division 2, Land Use Districts (various chapters) to read as follows:

[new language; ~~deleted language~~]

16.24.020 Permitted Uses.

P. Homestay Lodging subject to the standards in Chapter 8.24.

16.28.020 Permitted Uses.

Q. Homestay Lodging subject to the standards in Chapter 8.24.

16.32.020 Permitted Uses.

R. Homestay Lodging subject to the standards in Chapter 8.24.

16.36.020 Permitted Uses.

R. Homestay Lodging subject to the standards in Chapter 8.24.

16.40.020 Permitted Uses.

A. Only the following uses and their accessory uses are permitted along Highway 101, SE Marlin, SE Ensign Drive, SE Discovery Lane, and SE Dolphin Avenues and shall comply with the above noted sections as well as Chapter 16.132:

21. Homestay Lodging subject to the standards in Chapter 8.24.

22. Vacation Rental Dwelling subject to the Safety Regulations in Chapter 8.24.030.

~~21,23.~~ Similar uses as those stated above.

B. For all other C-1 zoned areas within the City limits of Warrenton, the following uses and their accessory uses are permitted and shall comply with the above noted sections:

24. Homestay Lodging subject to the standards in Chapter 8.24.

25. Vacation Rental Dwelling subject to the Safety Regulations in Chapter 8.24.030.

~~24,26.~~ Similar uses as those stated in this section. (*retain ordinance references*)

16.44.020 Permitted Use

A. Residential.

6. Homestay Lodging subject to the standards in Chapter 8.24.

~~6,7.~~ Similar uses as those listed in this section.

16.44.030 Conditional Uses.

H. Vacation Rental Dwelling subject to the Safety Regulations in Chapter 8.24.030.

~~H,I.~~ Similar uses as those listed in this section. (*retain ordinance references*)

16.56.030 Conditional Uses.

M. Vacation Rental Dwelling subject to the Safety Regulations in Chapter 8.24.030.

~~M,N.~~ Similar uses as those listed in this section.

**Section 3.** Amend Warrenton Municipal Code Division 3, Design Standards, Chapter 16.180 Accessory Structure, Accessory Dwelling, Garage, and Carport Design Standards, Section 16.180.040 to read as follows:

[new language; ~~deleted language~~]

An accessory dwelling is a small, secondary housing unit located on a legal lot with an established single-family residence. Accessory dwellings are typically the size of a studio apartment. The additional unit can be a detached cottage, a unit attached to a garage, or in a portion of an existing house. Accessory dwellings provide cost-effective and independent living spaces for family members, such as in-laws, retired parents, etc. Accessory dwellings can also



provide semi-independent living spaces for physically or mentally disabled family members requiring partial supervision or assistance with activities of daily living. ~~Accessory dwellings are never suited for rental dwellings and use of an accessory dwelling as a rental or income-producing unit is strictly prohibited and is subject to enforcement and penalties as prescribed by this Code.~~ Accessory dwellings may be rented long term as a permitted use. Accessory dwellings may be rented as part of a permitted Homestay Lodging use so long as the main structure of the property is owner-occupied. The housing density standard of residential zones does not apply to accessory dwellings, due to the small size and low occupancy level of the use. The following standards are intended to control the size and number of accessory dwellings on individual lots, so as to promote compatibility with adjacent land uses. Accessory structures shall comply with the following standards:

C. ~~Rental Unit Prohibited.~~ ~~Accessory dwellings are never appropriate for use as a rental unit or other income-producing unit.~~ Accessory dwellings may be rented long term as a permitted use. Accessory dwellings may be rented as part of a permitted Homestay Lodging use so long as the main structure of the property is owner-occupied. Accessory dwellings shall not be used as servants' quarters or as lodging (temporary or permanent) for housekeepers, gardeners, etc. Use of an accessory dwelling for purposes other than what is expressly permitted in this section is strictly prohibited and shall be subject to the enforcement and penalty provisions of Chapter 16.16.

**Section 4.** This Ordinance shall take full force and effect 30 days upon its adoption by the Commission of the City of Warrenton.

**First Reading: April 27, 2021**

**Second Reading: May 11, 2021**

**ADOPTED by the City Commission of the City of Warrenton, Oregon this May 11, 2021.**

Approved

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Henry A. Balensifer III, Mayor

Attest

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Dawne Shaw, City Recorder

**Ordinance 1250**  
**Introduced by All Commissioners**

**AN ORDINANCE AMENDING WARRENTON MUNICIPAL CODE TITLE 8, HEALTH  
AND SAFETY, CHAPTER 24 HOMESTAY LODGING SAFETY STANDARDS**

**WHEREAS**, the City Commission finds it appropriate to amend the Warrenton Municipal Code to update Safety Standard for Homestay Lodging and Vacation Rentals to meet the City's needs; and

**WHEREAS**, the City of Warrenton is best served by land use decisions that mitigate detrimental impacts to surrounding property owners; and

**WHEREAS**, the City Commission conducted a public hearing on this amendment on April 27, 2021, to receive public testimony and to consider the Planning Commission's recommendation;

**NOW, THEREFORE**, the City of Warrenton ordains as follows:

**Section 1.** Amend Warrenton Municipal Code Section 8.24.030, to read as follows:

[new language; deleted language]

8.24.030 Safety regulations.

12. Provide one off-street parking space per guest bedroom. The approved off-street parking space must remain available for renters. A parking diagram of the approved parking spaces must be provided to renters and be available in a prominent location within the dwelling. Parking stalls shall meet the minimum standards of Section 16.128.030.

17. 24-hour Representative: The vacation rental owner and designated representative's name, physical address, email address and phone number must be provided to the City upon permit application and renewal. The information shall be kept current at all times. The owner or representative shall be available by phone (24 hours a day, seven days a week) to ensure a response to complaints regarding emergencies and the condition, operation, or conduct of the occupants. A 24-hour representative must be able to physically respond to the vacation rental site within 30 minutes, and if requested they must respond. If there is a change in the designated representative the property owner must submit to the City the name of the new representative.

**Section 2.** This Ordinance shall take full force and effect 30 days upon its adoption by the Commission of the City of Warrenton.

**First Reading: April 27, 2021**

**Second Reading: May 11, 2021**

**ADOPTED by the City Commission of the City of Warrenton, Oregon this May 11, 2021.**

Approved

---

Henry A. Balensifer III, Mayor

Attest

---

Dawne Shaw, City Recorder



## AGENDA MEMORANDUM

TO: The Warrenton City Commission  
FROM: Dawne Shaw, City Recorder  
DATE: May 11, 2021  
SUBJ: Amendment to Warrenton Municipal Code – Marijuana Businesses in  
General Commercial (C-1) and General Industrial (I-1) to Conditional Uses  
as Opposed to Permitted Uses; Ordinance 1249

### SUMMARY

At its April 27, 2021 meeting, the City Commission held a public hearing on the amendments to the Warrenton Municipal Code (WMC), Title 16 Development Code Division 2. The amendment moves medical marijuana dispensaries and recreational marijuana retail outlets in General Commercial (C-1) from Permitted Use to Conditional Use. The amendment also moves recreational marijuana production, recreational marijuana processing or recreational marijuana wholesale activities in General Industrial (I-1) from Permitted Use to Conditional Use (Ordinance No. 1249). The development standards maintain the location limitations to the east side of Hwy 101, as outlined in 16.60.040. The first reading of the ordinance was conducted after the public hearing and is presented today for its second reading and adoption.

### RECOMMENDATION/SUGGESTED MOTION

"I move to conduct the second reading, by title only, of Ordinance No. 1249, an Ordinance Amending WMC Title 16, Development Code, Division 2, Land Use Districts, Chapter 16.40, General Commercial (C-1), and Chapter 16.60, General Industrial (I-1)."

"I move to adopt Ordinance No. 1249."

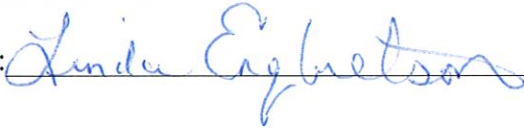
ALTERNATIVE

1) None recommended

FISCAL IMPACT

N/A

Approved by City Manager:

A handwritten signature in blue ink, reading "Linda Engbretson", is written over a horizontal line. The signature is cursive and includes a small loop at the end of the last name.

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

**Ordinance 1249**  
**Introduced by All Commissioners**

**AN ORDINANCE AMENDING WARRENTON MUNICIPAL CODE TITLE 16,  
DEVELOPMENT CODE, DIVISION 2, LAND USE DISTRICTS, CHAPTER 16.40,  
GENERAL COMMERCIAL (C-1), AND CHAPTER 16.60, GENERAL  
INDUSTRIAL (I-1)**

**WHEREAS**, the City Commission finds it appropriate to amend the Development Code's procedural requirements for Marijuana Businesses to assure that the land use decision making process continues to meet the City's needs; and

**WHEREAS**, the City of Warrenton is best served by land use decisions that mitigate detrimental impacts to surrounding property owners; and

**WHEREAS**, the City Commission conducted a public hearing on this amendment on April 27, 2021, to receive public testimony and to consider the Planning Commission's recommendation;

**NOW, THEREFORE**, the City of Warrenton ordains as follows:

**Section 1.** Amend Warrenton Municipal Code Section 16.40, to read as follows:

[new language; deleted language]

16.40.020 Permitted Uses.

~~19. Medical marijuana dispensaries and recreational marijuana retail outlets licensed by the State of Oregon and subject to Section 16.040.060.I.~~

16.40.030 Conditional Uses.

7. Medical marijuana dispensaries and recreational marijuana retail outlets licensed by the State of Oregon and subject to Section 16.40.060.I.

**Section 2.** Amend Warrenton Municipal Code Section 16.60, to read as follows:

[new language; deleted language]

16.60.020 Permitted Uses.

~~T. Recreational marijuana production, recreational marijuana processing, or recreational marijuana wholesale activities, subject to Section 16.60.040.N.~~

16.60.030 Conditional Uses.

D. Recreational marijuana production, recreational marijuana processing, or recreational marijuana wholesale activities, subject to Section 16.60.040.N.

16.60.040 Development Standards.

N. Recreational marijuana production, recreational marijuana processing, and recreational marijuana wholesale activities shall be located only east of Highway 101 and at least 1,000 feet from any public or private school, church, public park or child care center, and shall operate exclusively as a single building occupant or with other licensed medical marijuana dispensaries or recreational marijuana retail outlets. (Ord. 1196-A § 4, 2015)

**Section 3.** This Ordinance shall take full force and effect 30 days upon its adoption by the Commission of the City of Warrenton.

**First Reading: April 27, 2021**

**Second Reading: May 11, 2021**

**ADOPTED by the City Commission of the City of Warrenton, Oregon this May 11, 2021.**

Approved

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Henry A. Balensifer III, Mayor

Attest

---

Dawne Shaw, City Recorder



## Agenda Memorandum

To: The Honorable Mayor and Members of the Warrenton City Commission

From: April Clark, Finance Director

Date: May 11, 2021

**Regarding: Review of Reserve Funds  
ORS 294.346**

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**SUMMARY:**

Oregon Revised Statute 294.346 requires that Reserve Funds be reviewed by the governing body every 10 years after establishment. This only requires that the governing body have a discussion regarding the purpose of the fund and whether it is still meeting its intended function and then decide if the fund should be continued or abolished.

The Community Center Capital Reserve Fund and the Facilities Maintenance Fund require review this year. These funds are active and serving the purpose for which they were intended. These funds are considered Special Revenue Funds and receive revenues mostly from transfers from the Community Center Fund and the General Fund, respectively. The Community Center Capital Reserve Fund has paid for approximately \$12,000 in improvements over the last 10 years and the Facilities Maintenance Fund has paid for approximately \$560,000 in the same time period.

Both funds were established on May 21, 2003 and re-established July 1, 2011 by Resolution #2328 and #2329. The current balance in the Community Center Capital Reserve Fund is \$7,587. The current balance in the Facilities Maintenance Fund is \$93,026.

The Community Center Advisory Board is also in support of continuing the Community Center Capital Reserve Fund in the hopes that a portion of future fund-raising revenues will be transferred to that fund for major maintenance and improvements.

**RECOMMENDATION:**

Staff recommends continuing both of these Funds.



Recommended Motion: I move to continue the Community Center Capital Reserve Fund and the Facilities Maintenance Fund.

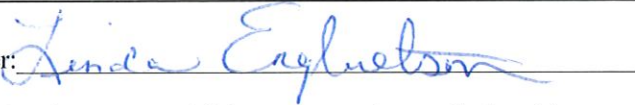
**ALTERNATIVE:**

Abolish one or both funds. Staff would bring back a resolution.

**FISCAL IMPACT:**

The Community Center Capital Reserve Fund will enable the City to accumulate funds to purchase equipment and capital improvements for the Community Center. The Facilities Maintenance Fund will enable the City to accumulate funds for the maintainance and improvement of the Municipal Building, Head Start Building, Park Facilities, Library, and Community Center without having to pull from current year revenues.

Approved by City Manager:

A handwritten signature in blue ink, reading "Linda Egelundson", is written over a horizontal line.

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

RESOLUTION NO. 2328

Introduced by All Commissioners

ESTABLISHMENT OF A RESERVE FUND

(Repealing Resolution No. 2054)

Whereas, the Budget Committee adopted appropriations for the Community Center Capital Reserve Fund beginning in the fiscal year 2003-2004 and the fund was established on May 21, 2003.

Whereas, reserve funds must be reviewed, every 10 years by the governing body to determine whether the fund is still meeting the objectives and purpose for which it was established.

NOW, THEREFORE, BE IT RESOLVED that the City Commission of the City of Warrenton hereby authorizes the establishment of the Community Center Capital Reserve Fund as follows:

Section 1. This fund will be used to accumulate funds for maintenance and capital improvements of the Warrenton Community Center.

Section 2. All revenues, which are mostly transfers from the Community Center Fund, are committed, by the governing body, for the purpose of funding maintenance and capital improvements of the Warrenton Community Center.

Section 3. This fund functions as a savings account and transfers are not allowed from this fund unless the fund is dissolved. Upon dissolution, as acted upon by the governing body, all residual funds will be transferred to the Community Center Fund.

Section 4. This fund is a special revenue fund for financial reporting purposes.

Section 5. This resolution repeals resolution no. 2054.

Section 6. This resolution is effective on July 1, 2011.

PASSED by the City Commission of the City of Warrenton this 22<sup>nd</sup> day of February, 2011

APPROVED by the Mayor of the City of Warrenton this 22<sup>nd</sup> day of February, 2011

Mark Kujala  
Mayor

ATTEST:

Linda Engstrom  
City Recorder

RESOLUTION NO. 2329

Introduced by All Commissioners

ESTABLISHMENT OF A RESERVE FUND  
(Repealing Resolution No. 2056)

Whereas, the Budget Committee adopted appropriations for the Facilities Maintenance Fund in the fiscal year 2003-2004 and the fund was then established on May 21, 2003. This fund was formerly the Building and Replacement Reserve Fund, established on June 21, 1989 and then repealed on June 11, 2003.

Whereas, reserve funds must be reviewed every 10 years by the governing body to determine whether the fund is still meeting the objectives and purpose for which it was established.

NOW, THEREFORE, BE IT RESOLVED that the City Commission of the City of Warrenton hereby authorizes the establishment of the Facilities Maintenance Fund as follows:

Section 1. This fund will be used to accumulate funds for maintenance and capital improvements of the Municipal Building, Head Start Building, Park Facilities, Library, and the Community Center.

Section 2. All revenues, which are mostly transfers from the General Fund, are committed, by the governing body, for the purpose of funding maintenance and capital improvements of the Municipal Building, Head Start Building, Park Facilities, Library, and the Community Center.

Section 3. This fund functions as a savings account and transfers are not allowed from this fund unless the fund is dissolved. Upon dissolution, as acted upon by the governing body, all residual funds will be transferred to the General Fund.

Section 4. This fund is a special revenue fund for financial reporting purposes.

Section 5. This resolution repeals resolution no. 2056.

Section 6. This resolution is effective on July 1, 2011.

PASSED by the City Commission of the City of Warrenton this 22<sup>nd</sup> day of February, 2011

APPROVED by the Mayor of the City of Warrenton this 22<sup>nd</sup> day of February, 2011

Mark Kupik  
Mayor

ATTEST:

Linda Engelmann  
City Recorder