

*"Making a difference through excellence of service"*



**CITY OF WARRENTON**

**CITY OF WARRENTON**

**Warrenton WTP Roof Modifications**



July 2022

Prepared for  
City of Warrenton

**STRONGWORK  
ARCHITECTURE**



## CITY OF WARRENTON

### **CALL FOR BIDS - PUBLIC WORKS IMPROVEMENT**

Sealed bids will be received up to the hour of **2:00 PM**, local time, on **August 25, 2022** by Collin Stelzig, Public Works Director, at the front desk of Warrenton City Hall, 225 South Main Street, Warrenton, OR. 97146:

### **WARRENTON WTP ROOF MODIFCATIONS**

#### **PROJECT DESCRIPTION**

The intent of this contract is to eliminate water intrusion through the roof. The following is a brief summary of the major elements of Work that are to be provided by the Contractor.

1. Replacement of the existing roof,
2. Addition of continuous insulation over the existing roof deck,
3. Replacement of existing roofing flashing,
4. Replacing existing skylight flashing and the addition of crickets.

Any bids received after the above specified time will not be considered. The carrier, including the United States Postal Service, is considered an agent of the bidder.

Solicitation Documents and plans may be reviewed on the City's website.

Questions regarding the project during the bid period shall be submitted to Collin Stelzig, P.E., City of Warrenton via phone at 503-861-0912 or email at [publicworks@ci.warrenton.or.us](mailto:publicworks@ci.warrenton.or.us)

Bids will be publicly opened and read by the Public Works Director at **2:00 PM**, local time on **August 25, 2022** in the Warrenton Fire Training Room. **All bids must be accompanied by a certified check, a cashier's check or bid bond in an amount equal to at least 5% of the total bid.**

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).

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.

By: Collin Stelzig, Public Works Director  
City of Warrenton, Oregon

PUBLISH: Daily Astorian, August 9 and August 16, 2022  
Daily Journal of Commerce, August 10 and August 17, 2022

## 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.

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 FORM**

**TO:** City of Warrenton  
225 South Main Street  
Warrenton, OR 97146

Date: \_\_\_\_\_

**Attn: Collin Stelzig, Public Works Director**

**FROM:** \_\_\_\_\_ (Name of Bidder)

Having carefully examined the Invitation to Bid, Instructions to Bidders, General Conditions of the Contract, Supplementary General Conditions, the Specifications and Drawings, titled Warrenton WTP Roof Modifications District as prepared by Strongwork Architecture., as well as the premises and conditions affecting the work, the undersigned proposes to furnish all services, labor and material called for in the documents for the basic bid sum with specified allowances of:

**BASIC BID:**

Stipulated Sum: \$ \_\_\_\_\_

\_\_\_\_\_ dollars.

**BID SECURITY:**

Enclosed is bid security as required, consisting of a \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, which is equal to five percent (5%) of the total amount of the proposal.

**STARTING TIME AND TIME OF COMPLETION:**

The undersigned agrees, if awarded the Contract, to start construction within five (5) calendar days after receiving written notice to proceed and will complete the work within \_\_\_\_\_ calendar days after receiving such notice.

**ADDENDA:**

Receipt is hereby acknowledged for Addenda Numbers: \_\_\_\_\_ (list all #).

**OWNER'S RIGHT RESERVED:**

The Owner reserves all rights at its sole discretion to reject all bids, to waive informalities, and to accept only such bids as may appear in the best interest of the Owner.

WARRENTON WTP ROOF MODIFICATIONS

City of Warrenton, Oregon

Bid Forms

Page 1

**CERTIFICATION:**

The undersigned certifies that this Proposal has been arrived at by the bidder independently and has been submitted without any collusion designed to limit independent bidding or competition.

Name of individual Business Owner,  
Partnership or Corporation:

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

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Telephone: \_\_\_\_\_

email: \_\_\_\_\_

Fax: \_\_\_\_\_

Signature of Owner, Partner, or Corporate Official:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed for Corporation

If Corporation, Attest:

\_\_\_\_\_  
Secretary of Corporation

\_\_\_\_\_  
State in which Incorporated

Required Attachments: (Seal)  
1 - Bid Security

END OF BID FORM

**CERTIFICATION OF NONDISCRIMINATION**

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.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
BIDDER

**NOTE: THIS STATEMENT MUST BE RETURNED WITH THE BID**

**FIRST TIER SUBCONTRACTOR'S DISCLOSURE FORM**

PROJECT NAME: WARRENTON WTP ROOF MODIFICATIONS

BID CLOSING: DATE: August 25, 2022 TIME: 2:00 PM Local Time

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  
WARRENTON WTP ROOF MODIFICATIONS  
FOR  
THE CITY OF WARRENTON**

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 OBLIGATIONS IS SUCH THAT:

WHEREAS the PRINCIPAL has submitted a Bid Proposal for the WARRENTON WTP ROOF  
MODIFICATIONS.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CONTRACTOR AS PRINCIPAL:

SURETY:

(Corp. Seal)

(Corp. Seal)

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

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

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

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

**(Attach Power of Attorney)**



## AGREEMENT

### 1.00 - GENERAL

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, 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:

WARRENTON WTP ROOF MODIFICATIONS

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 – \_\_\_\_Days from Notice to Proceed.
- Final Completion – \_\_\_\_Days from Notice to Proceed.

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 of 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 BUSINESS LICENSE**

**Prior to starting work, CONTRACTOR** shall pay the **CITY** business license tax and provide the Project Director with a copy of the business license receipt. **CONTRACTOR** shall, likewise, require all subcontractors to pay the **CITY** business license tax and provide a copy of the receipt to the Project Director prior to commencement of work.

APPROVED AS TO FORM:

**CITY OF WARRENTON**, a municipal of the State of Oregon

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

BY: \_\_\_\_\_  
Mayor Date

ATTEST:

\_\_\_\_\_  
Contractor Date

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

**PAYMENT BOND  
FOR  
WARRENTON WTP ROOF MODIFICATIONS  
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 \_\_\_\_\_, 2022 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:

WARRENTON WTP ROOF MODIFICATIONS  
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 \_\_\_\_\_, 2022.

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 for the City of Warrenton

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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 "2015 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 Architect.
- The following words, or words of equivalent meaning, refer to the actions of the Agency and/or the Architect, 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 Architect, 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 Architect".

**(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.

**Architect** - The Architect who represents the Agency and who is designated by the Agency to administer the Contract.

**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 bound paper version 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 Architect 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.

**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 Architect'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.

**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 Architect** - 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 Documents** - Solicitation Documents, Specifications, Plans, 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 Architect's recommendation for final payment.

**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 Architect may evaluate the durability visually.

**Emulsified Asphalt** - Emulsified asphalt cement.

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

**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 Architect to be necessary to complete the Project.

**Field Order** – A written order issued by the Architect 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 Architect 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 provided by the Architect.

**Force Account Work** - Items of Extra Work ordered by the Architect 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 Architect 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** - Standard and Supplemental Drawings, and approved unstamped and reviewed stamped Working Drawings. (see 00150.10 and 00150.35)

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

**Project Manager** - The Architect's representative directly responsible for administration of a Contract.

**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 Architect of the Substantial Completion 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 "2015 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 Architect, 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 Architect, 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 Architect 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 Drawings** - Supplemental Plans, not furnished by the Agency, that the Contractor is required to submit to the Architect. (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 clarification of Plans and Specifications needed by the Bidder shall be requested in writing by email through the Architect. Unless the procurement period is shorter than one week, 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. Notification of erroneous or incomplete Plans or Specifications shall also be submitted to the Architect. Such notification shall also be made in sufficient time for the Agency to make any necessary modifications and issue Addenda to Bidders prior to Bid Closing.

**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 Architect, the Contractor may use available property within the normal Right-of-Way limits for the purpose of constructing improvements under the Contract. Where the Agency owns, or has rights to, other adjacent properties in the Project area, "normal Right-of-Way" is limited to a line drawn across that property connecting the normal Right-of-Way limits on either side of the property.

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

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 Architect 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 Architect, but the Contractor will be assessed fair market value, as determined by the Architect, 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 or its consultant 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 reports. If reports have been prepared, such reports shall be included in the Solicitation Documents 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 Architect'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 or Architect, 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, electronic facsimile (FAX) or email sent to the Bidder's mail, street or email address or FAX number 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.

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.

**(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 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. 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 a Bidder's Bid on a public improvement Project exceeds \$100,000, the Bidder shall, within 2 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, Oregon 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 time set for receiving Bids 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 Revision or Withdrawal of Bids:**

**(a) Bids** - Information entered into the Bid Booklet by the Bidder may be changed after the Bid has been delivered to the Agency, provided that:

- Changes are prepared according to the instructions identified in the Bid Booklet; and
- Changes are received at the same offices, addresses, and times identified in the Bid Booklet for submitting Bids; and
- The changes are submitted in writing, signed by an individual authorized to sign the Bid.

A Bidder may withdraw its Bid after it has been delivered to the Agency, provided that:

- The written withdrawal request is submitted in person on the Bidder's letterhead; and
- The request is signed by an individual who is authorized to sign the Bid, and proof of authorization to sign the Bid accompanies the withdrawal request; and
- The request is received at the same offices, addresses, and prior to the time identified in the Bid Booklet for submitting Bids.

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.

**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 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 as 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, 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 30 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.

**00130.15 Right to Protest Award** - Adversely affected or aggrieved Bidders, limited to the three apparent lowest Bidders and any other Bidder directly in line for Contract Award, may submit to the Agency a written protest of the Agency's intent to Award within seven Calendar days following the date of the Notice of Intent to Award. The protest shall specify the grounds upon which it is based.

An aggrieved Bidder may protest an award only if the Bidder alleges, in its written protest, that it should have received the award because:

- (a) All lower Bids are non-responsive;
- (b) The Agency failed to conduct the Bid process as described in the Bid Document;
- (c) The Agency has abused its discretion in rejecting the protestor's Bid as non-responsive or non-responsible; or
- (d) The Agency's evaluation of Bids or subsequent determination of award is otherwise in violation of ORS Chapters 279A and 279C or the Agency's public contracting rules.

The written protest must describe the facts that support the protest. The Agency may not consider late protests or protests that do not describe facts that would support a finding that the Bidder is aggrieved for one of the reasons in clauses (a) through (d) above.

**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:

- Special Provisions
- 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. 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.

**(c) Workers' Compensation** - To certify compliance with the workers' compensation insurance coverage required by 00170.61(a) and 00170.70(d), the successful Bidder shall complete and sign the "Certification of Workers' Compensation Coverage" form bound in the Contract booklet.

**(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. 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 together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. No copies of these documents will be accepted by the Agency.

Proper execution requires that:

- If the Contractor is a partnership, limited liability partnership, joint venture, or limited liability company, an authorized representative of each Entity comprising it shall sign the Contract, Performance Bond, and Payment Bond, and an authorization to sign shall be attached.
- If the Contractor is a corporation, the President and the Secretary of that corporation shall sign the Contract, Performance Bond, and Payment Bond. However, if other corporate officers are authorized to execute contracts and bonds, the 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 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 go onto the Project Site on which the Work is to be done, nor move Materials, Equipment, or workers onto that Project Site.

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 than 60 Calendar Days elapse between the date the Bid is opened and the date the Agency sends the Contract to be executed, 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.

**00130.90 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 Architect.
- The Contractor shall perform all Work determined by the Architect to be necessary to complete the Project.
- The Contractor shall contact the Architect 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 Architect.

**00140.20 Thickness** - The thickness of Courses of Materials shown on the Plans, given in the Specifications, or established by the Architect 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 Architect.

**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, utilities 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 Architect 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 Architect'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 Architect

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 Architect by the procedures specified in Section 00199.

**00140.70 Cost Reduction Proposals** - The Contractor may submit written proposals to the Architect 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 Architect, 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 Architect. The request should contain a description of the proposal together with a rough estimate of anticipated dollar and time savings. The Architect 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 Architect 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 Architect issues a Change Order incorporating the cost reduction proposal. If the Architect fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.

**(c) Consideration of Proposal** - The Architect 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 Architect 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 Architect may disregard the Schedule of Items. The Architect 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 Architect. 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 Architect 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 submit to the Architect updated copies of the project “As-Builts” on a weekly basis. 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 full or partial payment 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 Architect.

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

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

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

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

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

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

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

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

**00150.02 Inspector's Authority and Duties** - To the extent delegated under 00150.01, Inspectors are authorized to represent the Architect 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 Architect'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 Architect 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 Architect'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 Architect.

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

**(a) Agency Responsibilities** - The Architect 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 Architect'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 Architect 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.

#### **00150.20 Inspection:**

**(a) Inspection by the Architect** - The Architect may test Materials furnished and inspect Work performed by the Contractor to ensure Contract compliance. The Contractor shall notify the Architect 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 Architect's inspection or uses Materials that the Architect has not approved, the Architect may order affected portions of the Work removed at the Contractor's expense.

At the Architect'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 Architect rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Architect, the Contractor shall bear all costs of uncovering and restoring the Work. If the Architect accepts the uncovered Work, and the Contractor performed the Work only after providing the Architect 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 Architect 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 Architect.

**(c) Sampling** - When directed by the Agency, the Contractor shall furnish the Architect with samples of Materials that the Architect 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 Architect 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 Architect 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 Architect determines that the Materials furnished or the Work performed are not in Close Conformance with the Contract Documents, the Architect 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 Architect's decisions concerning acceptability of Materials or Work will be final.

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

- In person;
- by electronically confirmed facsimile transmission;
- 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 or by facsimile transmission;
- 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 Architect 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 Architect, 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 or by facsimile transmission;
- 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 Workrelated 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 Architect 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) The Contractor shall certify on each submittal document that it has reviewed the submittal, verified field conditions, and complied with the contract documents.
- (4) The Contractor may authorize in writing a material or equipment supplier to deal directly with the Architect 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 Architect, the Contractor shall furnish to the Architect 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 Architect 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 Architect 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 Architect's standard submittal transmittal form, a reproducible copy of which is available from the Architect. 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 Architect 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 Architect will return prints of each submittal to the Contractor with comments noted thereon, within 21 Days following receipt by the Architect. It is considered reasonable that the Contractor will make a complete and acceptable submittal to the Architect by the first resubmittal on an item. The Owner reserves the right to withhold monies due to the Contractor to cover additional costs of the Architect's review beyond the first resubmittal. The Architect'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 Architect 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 Architect 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 Architect 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 Architect 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) Submittals shall be carefully reviewed by an authorized representative of the Contractor prior to submission to the Architect. 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 Architect and Agency. The Architect 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 Architect, and any delays caused thereby shall be the total responsibility of the Contractor.
- (14) 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 Architect 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
  - Receipt of regulatory approval

(3) The Architect 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 Architect 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 Architect for review for general conformance to the design of the structure. Neither the Agency nor the Architect 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 Architect. The Architect, 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 Architect 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 Architect 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 Architect. 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 Architect all data necessary to determine the actual cost of all or any part of the Work, added Work, or changed Work.
  - Allowing the Architect reasonable access to the Contractor's books and records at all times. To the extent permitted by public records laws, the Architect 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 Architect 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 Architect 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 Architect.
  - Have full authority and responsibility to promptly execute orders or directions of the Architect.
  - 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 Architect, Inspectors, and other contractors in performance of the Work.
  - Provide all assistance reasonably required by the Architect to obtain information regarding the nature, quantity, and quality of any part of the Work.

- Provide access, facilities and assistance to the Architect in establishing such lines, grades and points as the Architect requires.
- Carefully protect and preserve the Architect's benchmarks and horizontal control locations.

Any Superintendent or alternate Superintendent who repeatedly fails to follow the Architect'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 Architect 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 Architect may impose any remedies available under the Contract, including but not limited to Contract termination.

#### **00150.50 Cooperation with Utilities:**

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

**(b) 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 Architect; and
- Report to the Architect any Utility owner who fails to cooperate or fails to follow the planned Utility adjustment.

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

The Contractor shall comply with the rules of the Oregon Utility Notification Center, OAR 952-001-0010 through 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 plans will not normally show the new location of utilities that have been adjusted immediately prior to the project or will be adjusted as part of the project Work.

Except where the plans indicate, utilities have been field located during design or certain utility locations shall be exposed as part 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 Architect.

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 herein, 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 Architect 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 Architect 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 Architect, and provide a written report thereof promptly thereafter. The Contractor shall immediately notify the owner of the damaged utility. If directed by the Architect, 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 4 feet horizontally 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.
- (g) **Approval of Repairs** – All repairs to a damaged utility or improvement are subject to inspection and approval by an authorized representative of the utility or improvement owner before being concealed by backfill or other Work.
- (h) **Owner's Right of Access** – The right reserved to the Owner 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 Architect or the Agency, and shall perform it in the accepted sequence with the work of the other force.

The Architect 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 Architect'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 Architect. Before the Architect accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, the Architect 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 Architect. 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 Architect'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 Architect's permission to cross Bridges and other Structures, according to 00150.60(a) will not relieve the Contractor from responsibility for load-caused damages.

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

When any such damage occurs, the Architect will determine if it is to be corrected by repair, replacement, or compensatory payment by the Contractor. If compensatory payment is required, the Architect 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 Architect 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 Architect 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 Architect 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 Architect;
- Work that is contrary to the Architect's instructions; and
- Work that is conducted without the Architect's written authorization.

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

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

**00150.90 Final Inspection:**

**(a) On-site Construction Work** - The Architect 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 Architect will issue Second Notification as specified in 00180.50(g).

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

**(b) All Contract Work** - The Architect 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 Architect 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 Architect 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 Third 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)** Whether before or after the Agency's acceptance of the Work, the Contractor shall be responsible for:



- Correcting or repairing any defects in, or damage to, the Work which results from the use of improper or defective materials or workmanship; or
- Replacing, in its entirety, the Work affected by the use of improper or defective materials or workmanship to the extent provided by law; and
- Correcting or repairing any Work, Materials, Structures, Existing 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 Architect 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 Architect 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 Architect'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 Architect'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 Architect may approve for use a conditionally qualified product, or a product qualified for inclusion in a later edition of the QPL, if the Architect 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 Architect, 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 Architect with a Certificate of Materials Origin, on a form furnished by the Architect, before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the Architect, 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 Architect 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 Architect, 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 Architect.

**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 Architect.

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

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 Architect 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 Architect 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 Architect, until the Contractor has:

**(1)** Given to the Architect 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 Architect 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 Architect's approval.

**00160.70 Requirements for Plant Operations** - Before operating mixing plants, Rock crushers, or other Equipment, the Contractor shall provide the Architect 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

### Description

**00165.00 General** - The Contractor shall incorporate into the Work only Materials conforming to the Specifications and approved by the Architect. 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 Architect.

**00165.01 Rejected Materials** - The Architect 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 Architect has approved their use. The Architect may order the removal and replacement by the Contractor, at Contractor's expense, of any defective Materials. (refer also to 00150.20)

**00165.02 Materials Conformance and Quality Compliance Documents** - For purposes of this Section, "Materials Conformance Documents" means the Contractor's quality-control, the Agency's verification, and the independent assurance test results, and the identity of the testing facility, as specified in the ODOT Manual of Field Test Procedures (MFTP), unless otherwise specified in the Contract.

For purposes of this Section, "Quality Compliance Documents" means those documents specified in ODOT's Nonfield-Tested Materials Acceptance Guide, unless otherwise specified in the Contract.

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

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

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

### Provisions and Requirements

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

**(a) Field-Tested Materials** - Field-tested Materials will be accepted according to the ODOT Manual of Field Test Procedures (MFTP). The MFTP is 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 Contract. 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 Bid Opening.

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;
  - MFTP as modified by the Local Public Agency Quality Assurance Program; and
  - Standard Specifications.
  
- Nonfield Tested Materials:
  - ODOT;
  - WAQTC;
  - AASHTO;
  - ASTM;
  - Other recognized national organizations, such as ANSI, AWPA, IMSA, and UL; and
  - Industry standards in the location where the Work is being performed.

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

- Special Provisions;
- MFTP as modified by the Local Public Agency Quality Assurance Program; and
- Standard Specifications.

**00165.30 Field-Tested Materials:**

**(a) Contractor's Duties** - The Contractor shall:

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

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

**(c) Acceptance of Field-Tested Materials** The Contractor's test results for field-tested Materials will be verified by the Agency according to the Quality Assurance program outlined in the MFTP. Materials will be analyzed as determined by the Architect for acceptance before the Architect 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** - The Contractor shall furnish Materials meeting Specifications, along with all Materials Conformance and Quality Compliance Documents.

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

- Be from the manufacturer verifying that the Material furnished has been sampled and tested and the test results meet the Specifications.

- Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL or other).
- Identify the testing agency and the representative responsible for the test results.
- Permit positive determination that Material delivered to the Project is the same Material covered by the test results.
- Be delivered to the Architect 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 Architect 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 Architect 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 Architect so elects. The Architect 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 Architect for acceptance before the Architect will accept them for incorporation into the Work. When the Architect determines the Materials or Work does not conform to the Specifications the Architect may accept the Materials or Work with pay adjustments or reject the Materials or Work per 00150.25.

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

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

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

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

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



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

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

Stored Materials:

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

## Section 00170 - Legal Relations and Responsibilities

### Description

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

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

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.

### Provisions and Requirements

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

#### (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  
Minerals Management Service  
Office of Surface Mining, Reclamation, and Enforcement  
Minerals Management Service  
Solar Energy and Energy Conservation Bank  
U.S. Fish and Wildlife Service  
Labor, Department of  
    Mine Safety and Health Administration  
    Occupational Safety and Health Administration (OSHA)  
Transportation, Department of  
    Federal Highway Administration  
Water Resources Council

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

Administrative Services, Department of  
Agriculture, Department of  
    Natural Resources Division  
    Soil and Water Conservation District  
Columbia River Gorge Commission  
Consumer and Business Services, Department of  
    Insurance Division  
    Oregon Occupational Safety and Health Division (OR-OSHA)  
Energy, Office of  
Environmental Quality, Department of (DEQ)  
Fish and Wildlife, Department of  
Forestry, Department of  
Geology and Mineral Industries, Department of  
Human Resources, Department of  
Labor and Industries, Bureau of  
Land Conservation and Development Department  
Parks and Recreation, Department of  
State Lands, Department of  
Water Resources Department

**(c) Local Agencies:**

City Commissions  
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 Right-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 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, including 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 Architect to determine the extent of the effects on the cost and/or schedule. If the Architect agrees the cost and/or schedule will be affected by such changes, such effects will be handled in accordance with the General Conditions. The Architect 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 Architect 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 Architect, 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 Architect may request, and the Contractor shall provide, a copy of the data files and such other information or access to software to allow the Architect 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** - Before starting Work, the Contractor and subcontractors shall each file with the Construction Contractors Board, and maintain in full force and effect, a separate public works bond, in the amount of \$30,000 unless otherwise exempt, as required by ORS 279C.830(3) and ORS 279C.836. The Contractor shall verify subcontractors have filed a public works bond before the subcontractor begins Work.

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

The Contractor shall not interfere with waterway navigation or impair navigable depths or clearances, except as U.S. Coast Guard or Corps of 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 Architect 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 Architect 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.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 during the term of this contract, 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 during the term of this Contract, 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, or the maximum time period reasonably available in the marketplace. The Contractor shall furnish certification of "tail" coverage as described, or continuous "claims made" liability coverage for 24 months following Contract 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 Architect'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 CONTRACTOR 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 Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies, and when 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 Subsection.
- 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 negligent acts 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.
- 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 Architect, 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 accepted by the Agency. The Contractor shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Work, except as otherwise provided in this Section.

**(b) Repair of Damage to Work** - Until Final Acceptance, 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 Third Notification.

#### **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 Architect.

**(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 Architect 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 Architect, 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 Architect 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 Architect 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 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 Architect, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Agency.

The Manufacturer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Agency.

**(2) Trade Practice Guarantees** - For those Items installed on the Project that have customary trade practice guarantees, the Contractor shall furnish the guarantees to the Architect 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 Architect. 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 Architect'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 Architect. 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 Architect 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 Architect'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 Architect 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 Architect 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.

**(c) Rental of Operated Equipment** - For projects funded by FWHA, the Agency will not allow a Disadvantaged Business Enterprise (DBE) firm to provide services without a subcontract covering all Work to be performed by the DBE firm. For non-DBE firms, the use of Equipment rented with operators will be allowed without a subcontract only when the following requirements are met:

**(1) Written Request** - The Contractor has submitted to the Architect a written request describing the service to be provided, its estimated cost, and the estimated duration. The Architect must approve the request before the service is provided.

**(2) Limitations** - The use of Equipment rented with operators is limited to the following services:

- Truck hauling of Materials (If the trucking is by an owner/operator, in addition to the requirements of 00170.65(e), each truck shall have the name of the owner/operator clearly displayed on the side of the truck); or
- Performing minor, Incidental, short-duration work under the direct supervision of the Contractor or Subcontractor, with Equipment not customarily owned, leased, or operated by a Contractor, or with Equipment that is temporarily unavailable to the Contractor.

**(3) Submittals** - The Contractor shall provide the Architect with a copy of the rental agreement or purchase order covering the service to be provided. For owner/operator trucking, attach copies of the data required under 00170.65(e). The Contractor shall make certain that the provider of approved services submits payrolls required under Section 00170 and complies with applicable Contract provisions, including without limitation 00170.07. The service provider will not be considered a Subcontractor under the Contract, but will be considered an agent of the Contractor in the performance of Work.

**(4) Revocation of Approval** - The Architect may revoke approval for the services provided through rented, operated Equipment at any time the Architect determines that the work is outside that authorized under 00180.20(c-2). Unless the Contractor promptly submits to the Architect a subcontract agreement for consent under 00180.21, the service provider shall be immediately removed from the Project Site.

#### **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 Architect 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 Architect 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. In making payment to Subcontractors and to its other agents performing Work and furnishing Materials and Equipment to be incorporated into the Work, the Contractor shall assume all losses resulting from overpayment.

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 Architect's written order, the Contractor shall immediately remove, and not use again on the Project without the Architect's prior written approval, Equipment that, in the Architect'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 Architect's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Architect's prior written approval, any supervisor or employee of the Contractor or any subcontractor who, in the Architect'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 Architect may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Architect may terminate the Contract under the provisions of 00180.90(a).

**00180.31 Required Materials, Equipment, and Methods** - The Architect'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 Architect in writing.

**(b) Substitution of Materials and Equipment to be Incorporated into the Work** - After execution of the Contract, the Architect may approve substitution of Materials and Equipment to be incorporated into the Work as follows:

**(1) Reasons for Substitution** - The Architect will consider substitution only if:

- In the judgement of the Architect, 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 Architect, 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 Architect 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 Architect, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Architect 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 Architect at any time if, in the Architect'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 Architect directs, at no additional compensation.

**(d) Substitution of Methods** - The Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, the Contractor may submit a request for a change by following the provisions of 00140.70, "Cost Reduction Proposals".

**00180.32 Alternative Materials, Equipment, and Methods** - Whenever the Contract authorizes certain alternative Materials, Equipment, or methods of construction for the Contractor's use to perform portions of the Work, and leaves the selection to the Contractor, the Agency does not guarantee that all listed alternative Materials, Equipment, or methods of construction can be used successfully throughout all or any part of the Work.

The Contractor shall employ only those alternatives that can be used to satisfactorily perform the Work. No additional compensation will be paid for corrective work necessitated by the Contractor's use of an inappropriate alternative.

**00180.40 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 Architect 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 Architect. 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 Architect 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 Architect 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 Architect 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 each week 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 Architect each week to review the supplemental "look ahead" Project Work schedule. If the Architect 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 Architect 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 Architect 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 Architect and the Contractor shall meet to review the Project Work schedule as submitted. The Architect will review the schedule for compliance with all Contract Time limitations and other restraints. Review of this and subsequent schedules by the Architect 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 Architect four copies of the Project Work schedule, including required revisions.

**(2) Review by the Architect** - 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 Architect. If the Architect 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 Architect and the Contractor. At this meeting, the Contractor and the Architect 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 Architect 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 Architect 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 Architect 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 Architect.

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 Architect 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 Architect 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 Architect 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:

**a. Review with the Architect** - The Contractor shall perform ongoing review of the Project Work schedule and progress of the Work with the Architect. If the Architect 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 Architect and the Contractor. At this meeting, the Contractor and the Architect 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 Architect 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 Architect 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 Architect 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 Architect. 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 Architect 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 Architect. 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect** - The Contractor shall perform ongoing review of the accepted Project Work schedule and progress of the Work with the Architect. If the Architect 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 Architect and the Contractor. At this meeting, the Contractor and the Architect 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 Architect, 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 Architect 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 Architect. 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 Architect.

**00180.42 Preconstruction Conference** - Unless otherwise approved in writing by the Architect, before any Work is performed and within 7 Calendar Days of the Notice to Proceed, the Contractor shall meet with the Architect 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 Architect; and
- Not resume suspended Work without the Architect'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, Architect 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)** Architect 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)** Architect will invite agencies, utility companies or others when the Work affects their interests, and others necessary to agenda.
- (f)** Architect will record minutes of meeting and distribute copies of minutes within 7 days of meeting to participants and interested parties.

**(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 Architect.
- (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 Architect 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, Agency and Agency's surveyor shall meet with the Architect 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 Solicitation Documents, 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 at the date of the Notice to Proceed. When the Contract Time is stated in Work Days, counting of Contract Work Days will begin at 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 Architect 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. Architect will make recommendations to Agency to extend the Contract Times for completing the Work when, in Architect'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.

On Contracts with Calendar Day or Work Day counts, the Architect will furnish the Contractor a weekly statement of Contract Time charges. The statement will show the number of Calendar Days counted for the preceding week and the number of Calendar Days remaining prior to the established completion date.

For Contracts with fixed completion dates, or fixed completion dates for Pay Items or fixed milestone dates, the Architect will furnish the Contractor a weekly statement of Contract Time charges only after expiration of the Contract Time. The statement will show the number of Calendar Days of liquidated damages that have been assessed, if any.

These statements will include any exclusions from, or adjustments to, Contract Time.

**(e) Exclusions from Contract Time** - Regardless of the way Contract Time is expressed in the Contract, certain 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 Architect 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 Architect and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Architect within 7 Calendar Days of the date the Architect 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 Architect determines that the On-Site Work has been completed, except for the items listed below, the Architect will issue a Second Notification.

The Second Notification will list:

- The date the time charges stopped;
- Final trimming and cleanup tasks (see 00140.90);
- Equipment to be removed from the Project Site;
- Minor corrective work not involving additional payment to be completed; and



- Submittals, including without limitation all required certifications, bills, forms, warranties, certificate of insurance coverage (00170.70(b)), and other documents, required to be provided to the Architect before Third Notification will issue.

The Contractor shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame proposed by the Contractor and accepted by the Architect. Unless otherwise agreed by the Agency, failure of the Contractor to complete all tasks listed in the Second Notification within the time frame accepted, will result in the Agency rescinding the Second Notification. Counting of time charges will resume upon expiration of the accepted time frame.

**00180.60 Notice of Delay** - The Contractor shall notify the Architect 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 ending date of an anticipated delay is stated in the Special Provisions, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

**00180.70 Suspension of Work:**

**(a) General** - The Architect 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 Architect, 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 Architect'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 Architect.

**(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 Architect 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 Architect 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 Architect 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 in the Special Provisions, the Architect will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

**(c) Contractor's Request Required** - In the event the Contractor believes that additional Contract Time is due, the Contractor shall submit to the Architect a timely request for adjustment of Contract Time. The Architect 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 Architect 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 Architect 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 Architect on a form provided by, or in a format acceptable to, the Architect, 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect.
- 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 Architect will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Architect may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

The Architect may adjust Contract Time for causes not specifically identified by the Contractor in its request.

The Architect will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Architect's findings. If the Contractor disagrees with the Architect'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 Architect'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 Architect 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 Architect 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 Architect'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 Architect, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Architect, the Contract will not be terminated.

**(c) Termination for Public Convenience** - The Architect may terminate the Contract for convenience in whole or in part whenever the Architect determines that termination of the Contract is in the best interest of the public.

The Architect 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 Architect 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.

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 Architect 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 Architect'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, Architect will either proceed with inspection or advise Contractor of prerequisites not fulfilled. Following initial inspection, Architect 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 Architect's time, for all categories of labor required to complete the inspection for Substantial Completion at the Architect'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 Architect'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 Architect'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 Architect'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 Architect.
  - 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, Architect will re-inspect the work. Upon completion of re-inspection, Architect 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 Architect's time, for all categories of labor required to complete the inspection for final acceptance at the Architect'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 Architect'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.
- City of Warrenton Certificate of Compliance provided at the end of this Section

*"Making a difference through excellence of service"*



## CITY OF WARRENTON

### CERTIFICATE OF COMPLIANCE

City of Warrenton  
225 S Main Ave  
Warrenton, OR 97146

ATTN: Public Works Director

PROJECT NAME: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

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 \_\_\_\_\_



## Section 00190 - Measurement of Pay Quantities

### Description

**00190.00 Scope** - The Architect 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 Architect 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 Architect's verification. The Architect'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 Architect.

**(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 Architect.

**(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 Architect.

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 Architect. If estimated quantities of the Work to be performed are listed in the Special Provisions, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the Contract Documents. Computations based on the details and dimensions shown on the Contract Documents are not guaranteed to equal estimated quantities.

If the Agency issues no Change Order, the Agency will make no pay adjustment for quantities based on the Contractor's computations that overrun or underrun the estimated quantities.

If the Agency issues Change Orders for changes in the Work, the Architect will measure such changes according to the standards set by 00195.20 to determine adjustment of payment.

#### **00190.20 Contractor to Provide Vehicle Weigh Scales:**

**(a) General** - If the Specifications require measurement by weighing on vehicle weigh scales, the Contractor shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Architect'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 Architect'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 Architect will be subject to check weighing as the Architect 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 Architect 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 Architect.

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

If additional inspections directed by the Architect 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 Architect 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 Architect 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 Architect 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 Architect. 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect. 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 Architect 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 Architect, 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 Architect. 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 Architect'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 Architect'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

### Description

#### 00195.00 Scope and Limit:

**(a) General** - The Agency will pay only for measured Pay Item quantities incorporated into the Work or performed according to the terms of the Contract. The Contractor understands and agrees that Pay Item quantities listed in the Schedule of Items do not govern payment.

Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, 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.

### Provisions and Requirements

**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 ODOT each 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.shtm](http://www.oregon.gov/ODOT/HWY/ESTIMATING/asphalt_fuel.shtm)

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:

$$\text{Adjustment Factor (\%)} = ((\text{MACMP})/(\text{Base})) \times (100) - 5$$

- If the MACMP is less than 95% of the Base, then:

$$\text{Adjustment Factor (\%)} = ((\text{MACMP})/(\text{Base})) \times (100) + 5$$

**(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 price adjustment per a ton of HMAC incorporated that month will be the difference between the cost submitted by the Contractor in the bid schedule for "Asphalt Cement in HMAC Per Ton of HMAC Complete" and the adjusted cost found by multiplying the "Asphalt Cement in HMAC Per Ton Of HMAC Complete" by the Adjustment Factor. 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 or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

If the Work involved in the change is measured on a lump sum basis and its character is not significantly changed, payment for the Changed Work will be determined:

- As described in the applicable Section of the Specifications;
- If not described there, on a theoretical unit price determined by dividing the Contractor's lump sum price by the estimated quantity of the Pay Item listed in the Special Provisions; or
- If neither of the above apply, the Architect will make an equitable adjustment.

**(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 Architect 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 Architect will investigate the identified conditions. If the Architect 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 Architect 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 Architect will promptly evaluate a properly submitted request for additional compensation. If the Architect 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 Architect will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Architect 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 Architect receives the Contractor's properly submitted written request;
- For any portion of a delay that the Architect 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.

- (1) Progress Estimates** - At the same time each month, the Architect 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:

- The "theoretical unit price", when the Special Provisions contain an estimated number of units;
- A Contractor-submitted, Architect-approved Schedule of Values, when there is no theoretical unit price available; or
- Architect's determination, when there is neither an available theoretical unit price, nor an 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 Architect.

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 Architect 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 Accomplished** - The sum of the values in (1) and (2) above will be collectively referred to in this Subsection as the "value of Work accomplished", subject to (4) below.



**(4) Limitations on Value of Work Accomplished** - In determining the "value of Work accomplished", the Architect'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 Architect 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 Architect's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, the Architect 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 Architect may withhold such amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Contractor has:

- Complied with all orders issued by the Architect 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 Architect 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 Architect 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 Architect. 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 Architect (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 Architect:

- 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 Architect.

**(b) Proof of Payment** - The Contractor shall provide the Architect 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 Architect 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 Architect, to complete the Project.

Upon completion of the Project, the Architect 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 Architect 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 Architect.

**(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 Architect 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 Architect, 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 Architect 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 Architect 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 Architect'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.

#### **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 Architect according to 00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Architect detailing all proposed corrections.

This statement must be submitted to the Architect 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 Architect 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 Architect accepts the Contractor's request(s) in full or in part, the Architect 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 Architect rejects the request(s) in full, the Architect 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 Architect 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.

## Section 00196 - Payment for Extra Work

### Description

**00196.00 General** - Only work not included in the Contract as awarded but deemed by the Architect 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 Architect and performed as specified. Work performed before issuance of the Architect's written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Architect, according to 00196.10 and 00196.20.

### Provisions and Requirements

**00196.10 Negotiated Price** - If the Architect can reasonably determine a price estimate for Extra Work, the Architect 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 Architect's Extra Work price estimate by submitting to the Architect 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 Architect 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 Architect will review the price quote and advise the Contractor if it is accepted or rejected. The Architect will not accept a price quote that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Architect will issue a Change Order, and the Extra Work will be paid at the accepted price.

**00196.20 Force Account** - If the Architect and the Contractor cannot agree on a price for the Extra Work, the Architect 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 Architect to be performed as Force Account Work.

**00197.01 General** - Before ordering Force Account Work, the Architect 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 Architect 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 Architect orders the performance of Extra Work as Force Account Work, the Architect will record, on a daily basis, the Materials, Equipment and Labor used for the Force Account Work during that day. Architect 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 Architect, except those furnished and paid under rental rates for use of Equipment;
- Equipment which the Architect 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 Architect'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 Architect, 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 Architect, 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 Architect 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 Architect. 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 Architect 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 Architect sufficient information for each piece of Equipment and its attachments to enable the Architect 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 as per page iii of each section of the Blue Book.

**(4) Hourly Operating Rate** - The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.

**(5) Limitations** - The Blue Book "Regional Adjustment Factor" shall not apply.

If multiple attachments are included with the rental Equipment, and are not considered "standard Equipment", only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by the Architect 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 Architect 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 Architect, 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 1 week period.

**(f) Blue Book Omissions** - If a rental rate has not been established in the Blue Book, the Contractor may:

- If approved by the Architect, 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 Architect for approval; or
- Request that the Architect 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 Architect 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 Architect.

**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 Architect's approval on forms provided by the Agency or approved by the Architect. 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 Architect.

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

### Description

**00199.00 General** - This Section details the process through which the parties agree to resolve any disagreement concerning additional compensation or concerning a combination of 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.

### Provisions and Requirements

**00199.10 Procedure for Resolving Disagreements** - When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Architect 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 Architect 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 Architect, 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 Architect 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 Architect 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 Architect 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) Architect's Record and Response** – The Architect 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 Architect 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 Architect 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 Architect, 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 Architect 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 Architect.

**(g) Comparison of Records** - Provide the Architect adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Architect 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 Architect.

**(i) Evaluation of Protest** - The Architect 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 Architect. Provided the procedures above are followed, the Architect 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 Architect will notify the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Architect will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

The Architect has no responsibility for evaluating and may reject a protest that does not comply with 00199.20(b). If the protest is rejected, the Architect will notify the Contractor in writing of the reasons for rejection.

**(j) Protest Evaluation by Third Party Neutral** - If the Architect agrees that the Contractor has fully complied with the requirements described in 00199.20(b), and if the Architect 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 Architect's evaluation of the protest, or either the Contractor or Architect 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 Architect 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 Architect 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 Architect, 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 Architect'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 Architect determines that additional information, records or documentation is needed to allow proper evaluation of the claim submittal, the Architect will request the information, records or documentation. The Contractor shall submit to the Architect within 14 Calendar Days, or as otherwise agreed by the parties, the required additional information, records and documentation.

If the Architect determines that the claim submittal with the additional information, records and documentation submitted is incomplete and not accepted as a claim, the Architect 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 Architect will also determine whether multiple claims should be advanced separately or together.

If the Architect 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 Architect 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 Architect** - The Architect 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 Architect determines the Agency is in receipt of a properly submitted claim, the Architect 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 Architect determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Architect 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 Architect will provide a written decision to the Contractor within 30 Calendar Days of the last Architect-level meeting.

If the Contractor does not accept the Architect's decision, the Contractor may, within 10 Calendar Days of receipt of the written decision, request in writing that the Architect arrange a review at Step 1 (see (b) below).

**(b) Step 1: Public Works Director Level Review** - The Contractor shall request that the Architect 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.

## **SPECIAL PROVISIONS**

## SPECIAL PROVISIONS

### PART 00100 – GENERAL CONDITIONS

#### Section 00120 – Bidding Requirements and Procedures

**00120.01 Receipt of Bids; Opening** - Add the following:

Bids must be delivered to Collin Stelzig, Public Works Director, at the front desk of Warrenton City Hall, 225 South Main Street, Warrenton, OR. 97146, by **2:00 PM** local time on **August 25, 2022**. Bids will be publicly opened and read by the Public Works Director at 2:00 PM, local time on August 25, 2022 the Warrenton Fire Training Room. Bids may not be submitted by fax or electronic means.

**00120.02 Prequalification of Bidders** – Add the following: Prequalification of bidders is not required

**00120.03 Request for Solicitation Documents** – Add the following: Solicitation Documents may be reviewed on the City's website [www.ci.warrenton.or.us](http://www.ci.warrenton.or.us)

**00120.04 Pre-Bid Meeting** – Add the following: No pre-bid meeting will be held. Bidders may contact the City to schedule a time to visit the site.

#### Section 00150 – Control of Work

**00150.30 Deliver of Notices** – Contractor written notice to Architect or Agency shall be delivered to:

Collin Stelzig, Public Works Director  
P.O. Box 250  
Warrenton, OR 97146

## Section 00160 – Source of Materials

**00160.20(a) Buy America** – Federal highway funds are not involved on the project.

## Section 00170 – Legal Relations and Responsibilities

**00170.03 Furnishing Rights of Way and Permits** - The Agency will apply and pay for the City of Warrenton 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 of Warrenton a Right-of-Way 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 (Effective January 1, 2022) title page is included at the end of these Special Provisions.

**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 the 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 a.m. to 6:00 p.m. unless otherwise approved by the Architect.

**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 shall be \$1,200.00 per Calendar Day.

**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 Architect or Agency shall be delivered to:

Public Works Director  
P.O. Box 250  
Warrenton, OR 97146

**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.

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**END OF SECTION**



**SECTION 01 10 00  
SUMMARY**

**PART 1 GENERAL**

**1.01 PROJECT**

- A. Project Name: Warrenton WTP Roof Modifications.
- B. Owner's Name: City of Warrenton.
- C. Architect's Name: Strongwork Architecture.
- D. The Project consists of the Re-roof of the City of Warrenton's Existing Water Treatment Plant Filter Building.

**1.02 CONTRACT DESCRIPTION**

- A. Contract Type: A single prime contract based on a Stipulated Price as described in Division 0 - Agreement.

**1.03 DESCRIPTION OF ALTERATIONS WORK**

- A. Scope of demolition and removal work is indicated on drawings.

**1.04 OWNER OCCUPANCY**

- A. Owner intends to continue to occupy portions of the existing building during the entire construction period.
- B. Cooperate with Owner to minimize conflict and to facilitate Owner's operations.
- C. Schedule the Work to accommodate Owner occupancy.

**END OF SECTION**

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**SECTION 01 25 00  
SUBSTITUTION PROCEDURES**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Procedural requirements for proposed substitutions.

**1.02 DEFINITIONS**

- A. Substitutions: Changes from Contract Documents requirements proposed by Contractor to materials, products, assemblies, and equipment.

**1.03 REFERENCE STANDARDS**

- A. CSI/CSC Form 1.5C - Substitution Request (During the Bidding/Negotiating Stage) Current Edition.
- B. CSI/CSC Form 13.1A - Substitution Request (After the Bidding/Negotiating Phase) Current Edition.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION**

**3.01 GENERAL REQUIREMENTS**

- A. A Substitution Request for products, assemblies, materials, and equipment constitutes a representation that the submitter:
  - 1. Has investigated proposed product and determined that it meets or exceeds the quality level of the specified product, equipment, assembly, or system.
  - 2. Agrees to provide the same warranty for the substitution as for the specified product.
  - 3. Agrees to coordinate installation and make changes to other work that may be required for the work to be complete, with no additional cost to Owner.
  - 4. Waives claims for additional costs or time extension that may subsequently become apparent.
  - 5. Agrees to reimburse Owner and Architect for review or redesign services associated with re-approval by authorities.
- B. Document each request with complete data substantiating compliance of proposed substitution with Contract Documents. Burden of proof is on proposer.
- C. Content: Include information necessary for tracking the status of each Substitution Request, and information necessary to provide an actionable response.
  - 1. Forms indicated in the Project Manual are adequate for this purpose, and must be used.
- D. Limit each request to a single proposed substitution item.
  - 1. Submit an electronic document, combining the request form with supporting data into single document.

**3.02 SUBSTITUTION PROCEDURES DURING PROCUREMENT**

- A. Submittal Time Restrictions:
  - 1. Owner will consider requests for substitutions only if submitted at least 10 days prior to the date for receipt of bids.
- B. Submittal Form (before award of contract):
  - 1. Submit substitution requests by completing CSI/CSC Form 1.5C - Substitution Request. See this form for additional information and instructions. Use only this form; other forms of submission are unacceptable.

**3.03 SUBSTITUTION PROCEDURES DURING CONSTRUCTION**

- A. Submittal Form (after award of contract):
  - 1. Submit substitution requests by completing CSI/CSC Form 13.1A - Substitution Request (After Bidding/Negotiating). See this form for additional information and instructions. Use only this form; other forms of submission are unacceptable.

- B. Submit request for Substitution for Convenience immediately upon discovery of its potential advantage to the project, but not later than 14 days prior to time required for review and approval by Architect, in order to stay on approved project schedule.
  - 1. In addition to meeting general documentation requirements, document how the requested substitution benefits the Owner through cost savings, time savings, greater energy conservation, or in other specific ways.
  - 2. Document means of coordinating of substitution item with other portions of the work, including work by affected subcontractors.
  - 3. Bear the costs engendered by proposed substitution of:
    - a. Owner's compensation to the Architect for any required redesign, time spent processing and evaluating the request.
    - b. Other construction by Owner.
    - c. Other unanticipated project considerations.

#### **3.04 RESOLUTION**

- A. Architect may request additional information and documentation prior to rendering a decision. Provide this data in an expeditious manner.
- B. Architect will notify Contractor in writing of decision to accept or reject request.
  - 1. Architect's decision following review of proposed substitution will be noted on the submitted form.

#### **3.05 ACCEPTANCE**

- A. Accepted substitutions change the work of the Project. They will be documented and incorporated into work of the project by Change Order, Construction Change Directive, Architectural Supplementary Instructions, or similar instruments provided for in the Conditions of the Contract.

#### **3.06 CLOSEOUT ACTIVITIES**

- A. See Section 01 78 00 - Closeout Submittals, for closeout submittals.
- B. Include completed Substitution Request Forms as part of the Project record. Include both approved and rejected Requests.

**END OF SECTION**

**SECTION 01 30 00  
ADMINISTRATIVE REQUIREMENTS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. General administrative requirements.
- B. Preconstruction meeting.
- C. Progress meetings.
- D. Construction progress schedule.
- E. Contractor's daily reports.
- F. Progress photographs.
- G. Submittals for review, information, and project closeout.
- H. Number of copies of submittals.
- I. Requests for Interpretation (RFI) procedures.
- J. Submittal procedures.

**1.02 RELATED REQUIREMENTS**

- A. Section 01 60 00 - Product Requirements: General product requirements.

**1.03 GENERAL ADMINISTRATIVE REQUIREMENTS**

- A. Comply with requirements of Section 01 70 00 - Execution and Closeout Requirements for coordination of execution of administrative tasks with timing of construction activities.
- B. Make the following types of submittals to Architect:
  - 1. Requests for Interpretation (RFI).
  - 2. Requests for substitution.
  - 3. Shop drawings, product data, and samples.
  - 4. Test and inspection reports.
  - 5. Design data.
  - 6. Manufacturer's instructions and field reports.
  - 7. Applications for payment and change order requests.
  - 8. Progress schedules.
  - 9. Coordination drawings.
  - 10. Correction Punch List and Final Correction Punch List for Substantial Completion.
  - 11. Closeout submittals.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION**

**3.01 PRECONSTRUCTION MEETING**

- A. Attendance Required:
  - 1. Owner.
  - 2. Architect.
  - 3. Contractor.
- B. Agenda:
  - 1. Execution of Owner-Contractor Agreement.
  - 2. Submission of executed bonds and insurance certificates.
  - 3. Distribution of Contract Documents.
  - 4. Submission of list of subcontractors, list of products, schedule of values, and progress schedule.
  - 5. Designation of personnel representing the parties to Contract and Architect.
  - 6. Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal request, Change Orders, and Contract closeout procedures.

7. Scheduling.
- C. Record minutes and distribute copies within two days after meeting to participants, with copies to Architect, Owner, participants, and those affected by decisions made.

### **3.02 PROGRESS MEETINGS**

- A. Attendance Required:
  1. Contractor.
  2. Owner.
  3. Architect.
  4. Contractor's superintendent.
  5. Major subcontractors.
- B. Agenda:
  1. Review minutes of previous meetings.
  2. Review of work progress.
  3. Field observations, problems, and decisions.
  4. Identification of problems that impede, or will impede, planned progress.
  5. Review of submittals schedule and status of submittals.
  6. Maintenance of progress schedule.
  7. Corrective measures to regain projected schedules.
  8. Planned progress during succeeding work period.
  9. Maintenance of quality and work standards.
  10. Effect of proposed changes on progress schedule and coordination.
  11. Other business relating to work.
- C. Record minutes and distribute copies within two days after meeting to participants, with copies to Architect, Owner, participants, and those affected by decisions made.

### **3.03 CONSTRUCTION PROGRESS SCHEDULE**

- A. If preliminary schedule requires revision after review, submit revised schedule within 10 days.
- B. Within 20 days after review of preliminary schedule, submit draft of proposed complete schedule for review.
  1. Include written certification that major contractors have reviewed and accepted proposed schedule.
- C. Within 10 days after joint review, submit complete schedule.
- D. Submit updated schedule with each Application for Payment.

### **3.04 PROGRESS PHOTOGRAPHS**

### **3.05 REQUESTS FOR INTERPRETATION (RFI)**

- A. Definition: A request seeking one of the following:
  1. An interpretation, amplification, or clarification of some requirement of Contract Documents arising from inability to determine from them the exact material, process, or system to be installed; or when the elements of construction are required to occupy the same space (interference); or when an item of work is described differently at more than one place in Contract Documents.
  2. A resolution to an issue which has arisen due to field conditions and affects design intent.
- B. Preparation: Prepare an RFI immediately upon discovery of a need for interpretation of Contract Documents. Failure to submit a RFI in a timely manner is not a legitimate cause for claiming additional costs or delays in execution of the work.
  1. Prepare a separate RFI for each specific item.
  2. Combine RFI and its attachments into a single electronic file. PDF format is preferred.
- C. Reason for the RFI: Prior to initiation of an RFI, carefully study all Contract Documents to confirm that information sufficient for their interpretation is definitely not included.
  1. Unacceptable Uses for RFIs: Do not use RFIs to request the following:
    - a. Approval of submittals (use procedures specified elsewhere in this section).

- b. Approval of substitutions (see Section - 01 60 00 - Product Requirements)
  - c. Changes that entail change in Contract Time and Contract Sum (comply with provisions of the Conditions of the Contract).
- 2. Improper RFIs: Requests not prepared in compliance with requirements of this section, and/or missing key information required to render an actionable response. They will be returned without a response.
- D. Content: Include identifiers necessary for tracking the status of each RFI, and information necessary to provide an actionable response.
- E. Attachments: Include sketches, coordination drawings, descriptions, photos, submittals, and other information necessary to substantiate the reason for the request.
- F. RFI Log: Prepare and maintain a tabular log of RFIs for the duration of the project.
- G. Review Time: Architect will respond and return RFIs to Contractor within seven calendar days of receipt. For the purpose of establishing the start of the mandated response period, RFIs received after 12:00 noon will be considered as having been received on the following regular working day.
- H. Responses: Content of answered RFIs will not constitute in any manner a directive or authorization to perform extra work or delay the project. If in Contractor's belief it is likely to lead to a change to Contract Sum or Contract Time, promptly issue a notice to this effect, and follow up with an appropriate Change Order request to Owner.
  - 1. Response may include a request for additional information, in which case the original RFI will be deemed as having been answered, and an amended one is to be issued forthwith. Identify the amended RFI with an R suffix to the original number.
  - 2. Do not extend applicability of a response to specific item to encompass other similar conditions, unless specifically so noted in the response.
  - 3. Notify Architect within seven calendar days if an additional or corrected response is required by submitting an amended version of the original RFI, identified as specified above.

### **3.06 SUBMITTAL SCHEDULE**

- A. Submit to Architect for review a schedule for submittals in tabular format.
  - 1. Submit at the same time as the preliminary schedule specified in Section - 01 32 16 - Construction Progress Schedule.
  - 2. Coordinate with Contractor's construction schedule and schedule of values.
  - 3. Account for time required for preparation, review, manufacturing, fabrication and delivery when establishing submittal delivery and review deadline dates.

### **3.07 SUBMITTALS FOR REVIEW**

- A. When the following are specified in individual sections, submit them for review:
  - 1. Product data.
  - 2. Shop drawings.
  - 3. Samples for selection.
  - 4. Samples for verification.
- B. Submit to Architect for review for the limited purpose of checking for compliance with information given and the design concept expressed in Contract Documents.
- C. Samples will be reviewed for aesthetic, color, or finish selection.
- D. After review, provide copies and distribute in accordance with SUBMITTAL PROCEDURES article below and for record documents purposes described in Section 01 78 00 - Closeout Submittals.

### **3.08 SUBMITTALS FOR INFORMATION**

- A. When the following are specified in individual sections, submit them for information:
  - 1. Design data.
  - 2. Certificates.
  - 3. Test reports.

4. Inspection reports.
5. Manufacturer's instructions.
6. Manufacturer's field reports.
7. Other types indicated.

B. Submit for Architect's knowledge as contract administrator or for Owner.

### **3.09 SUBMITTALS FOR PROJECT CLOSEOUT**

- A. Submit Correction Punch List for Substantial Completion.
- B. Submit Final Correction Punch List for Substantial Completion.
- C. When the following are specified in individual sections, submit them at project closeout in compliance with requirements of Section 01 78 00 - Closeout Submittals:
  1. Project record documents.
  2. Operation and maintenance data.
  3. Warranties.
  4. Bonds.
  5. Other types as indicated.
- D. Submit for Owner's benefit during and after project completion.

### **3.10 NUMBER OF COPIES OF SUBMITTALS**

- A. Electronic Documents: Submit one electronic copy in PDF format; an electronically-marked up file will be returned. Create PDFs at native size and right-side up; illegible files will be rejected.
- B. Samples: Submit the number specified in individual specification sections; one of which will be retained by Architect.
  1. After review, produce duplicates.
  2. Retained samples will not be returned to Contractor unless specifically so stated.

### **3.11 SUBMITTAL PROCEDURES**

- A. General Requirements:
  1. Sequentially identify each item. For revised submittals use original number and a sequential numerical suffix.
  2. Identify: Project; Contractor; subcontractor or supplier; pertinent drawing and detail number; and specification section number and article/paragraph, as appropriate on each copy.
  3. Apply Contractor's stamp, signed or initialed certifying that review, approval, verification of products required, field dimensions, adjacent construction work, and coordination of information is in accordance with the requirements of the work and Contract Documents.
    - a. Submittals from sources other than the Contractor, or without Contractor's stamp will not be acknowledged, reviewed, or returned.
  4. Deliver each submittal on date noted in submittal schedule, unless an earlier date has been agreed to by all affected parties, and is of the benefit to the project.
    - a. Send submittals in electronic format via email to Architect.
  5. Schedule submittals to expedite the Project, and coordinate submission of related items.
    - a. For each submittal for review, allow 15 days excluding delivery time to and from the Contractor.
    - b. For sequential reviews involving Architect's consultants, Owner, or another affected party, allow an additional 7 days.
    - c. For sequential reviews involving approval from authorities having jurisdiction (AHJ), in addition to Architect's approval, allow an additional 30 days.
  6. Identify variations from Contract Documents and product or system limitations that may be detrimental to successful performance of the completed work.
  7. Provide space for Contractor and Architect review stamps.
  8. When revised for resubmission, identify all changes made since previous submission.
  9. Distribute reviewed submittals. Instruct parties to promptly report inability to comply with requirements.



10. Incomplete submittals will not be reviewed, unless they are partial submittals for distinct portion(s) of the work, and have received prior approval for their use.
  11. Submittals not requested will not be recognized or processed.
- B. Product Data Procedures:
1. Submit only information required by individual specification sections.
  2. Collect required information into a single submittal.
  3. Submit concurrently with related shop drawing submittal.
  4. Do not submit (Material) Safety Data Sheets for materials or products.
- C. Shop Drawing Procedures:
1. Prepare accurate, drawn-to-scale, original shop drawing documentation by interpreting Contract Documents and coordinating related work.
  2. Generic, non-project-specific information submitted as shop drawings do not meet the requirements for shop drawings.
- D. Samples Procedures:
1. Transmit related items together as single package.
  2. Identify each item to allow review for applicability in relation to shop drawings showing installation locations.
  3. Include with transmittal high-resolution image files of samples to facilitate electronic review and approval.

### **3.12 SUBMITTAL REVIEW**

- A. Submittals for Review: Architect will review each submittal, and approve, or take other appropriate action.
- B. Submittals for Information: Architect will acknowledge receipt, but will take no other action.
- C. Architect's actions will be reflected by marking each returned submittal using virtual stamp on electronic submittals.
1. Notations may be made directly on submitted items and/or listed on appended Submittal Review cover sheet.
- D. Architect's and consultants' actions on items submitted for review:
1. Authorizing purchasing, fabrication, delivery, and installation:
    - a. "Approved", or language with same legal meaning.
    - b. "Approved as Noted, Resubmission not required", or language with same legal meaning.
      - 1) At Contractor's option, submit corrected item, with review notations acknowledged and incorporated.
    - c. "Approved as Noted, Resubmit for Record", or language with same legal meaning.
      - 1) Resubmit corrected item, with review notations acknowledged and incorporated. Resubmit separately, or as part of project record documents.
      - 2) Non-responsive resubmittals may be rejected.
  2. Not Authorizing fabrication, delivery, and installation:
    - a. "Revise and Resubmit".
      - 1) Resubmit revised item, with review notations acknowledged and incorporated.
      - 2) Non-responsive resubmittals may be rejected.
    - b. "Rejected".
      - 1) Submit item complying with requirements of Contract Documents.
- E. Architect's and consultants' actions on items submitted for information:
1. Items for which no action was taken:
    - a. "Received" - to notify the Contractor that the submittal has been received for record only.
  2. Items for which action was taken:
    - a. "Reviewed" - no further action is required from Contractor.

**END OF SECTION**

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**SECTION 01 40 00  
QUALITY REQUIREMENTS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Submittals.
- B. References and standards.
- C. Testing and inspection agencies and services.
- D. Control of installation.
- E. Defect Assessment.

**1.02 REFERENCE STANDARDS**

**1.03 SUBMITTALS**

- A. See Section 01 30 00 - Administrative Requirements, for submittal procedures.

**1.04 REFERENCES AND STANDARDS**

- A. For products and workmanship specified by reference to a document or documents not included in the Project Manual, also referred to as reference standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
- B. Comply with reference standard of date of issue current on date of Contract Documents, except where a specific date is established by applicable code.
- C. Obtain copies of standards where required by product specification sections.
- D. Maintain copy at project site during submittals, planning, and progress of the specific work, until Substantial Completion.
- E. Should specified reference standards conflict with Contract Documents, request clarification from Architect before proceeding.
- F. Neither the contractual relationships, duties, or responsibilities of the parties in Contract nor those of Architect shall be altered from Contract Documents by mention or inference otherwise in any reference document.

**1.05 TESTING AND INSPECTION AGENCIES AND SERVICES**

- A. Owner will employ and pay for services of an independent testing agency to perform other specified testing.
- B. Employment of agency in no way relieves Contractor of obligation to perform Work in accordance with requirements of Contract Documents.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION**

**3.01 CONTROL OF INSTALLATION**

- A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce work of specified quality.
- B. Comply with manufacturers' instructions, including each step in sequence.
- C. Should manufacturers' instructions conflict with Contract Documents, request clarification from Architect before proceeding.
- D. Comply with specified standards as minimum quality for the work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Have work performed by persons qualified to produce required and specified quality.
- F. Verify that field measurements are as indicated on shop drawings or as instructed by the manufacturer.

- G. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, and disfigurement.

### **3.02 TESTING AND INSPECTION**

- A. See individual specification sections for testing and inspection required.
- B. Testing Agency Duties:
  - 1. Provide qualified personnel at site. Cooperate with Architect and Contractor in performance of services.
  - 2. Perform specified sampling and testing of products in accordance with specified standards.
  - 3. Ascertain compliance of materials and mixes with requirements of Contract Documents.
  - 4. Promptly notify Architect and Contractor of observed irregularities or non-compliance of Work or products.
  - 5. Perform additional tests and inspections required by Architect.
  - 6. Submit reports of all tests/inspections specified.
- C. Limits on Testing/Inspection Agency Authority:
  - 1. Agency may not release, revoke, alter, or enlarge on requirements of Contract Documents.
  - 2. Agency may not approve or accept any portion of the Work.
  - 3. Agency may not assume any duties of Contractor.
  - 4. Agency has no authority to stop the Work.
- D. Contractor Responsibilities:
  - 1. Deliver to agency at designated location, adequate samples of materials proposed to be used that require testing, along with proposed mix designs.
  - 2. Cooperate with laboratory personnel, and provide access to the Work and to manufacturers' facilities.
  - 3. Provide incidental labor and facilities:
    - a. To provide access to Work to be tested/inspected.
    - b. To obtain and handle samples at the site or at source of Products to be tested/inspected.
    - c. To facilitate tests/inspections.
    - d. To provide storage and curing of test samples.
  - 4. Notify Architect and laboratory 24 hours prior to expected time for operations requiring testing/inspection services.
  - 5. Employ services of an independent qualified testing laboratory and pay for additional samples, tests, and inspections required by Contractor beyond specified requirements.
  - 6. Arrange with Owner's agency and pay for additional samples, tests, and inspections required by Contractor beyond specified requirements.
- E. Re-testing required because of non-compliance with specified requirements shall be performed by the same agency on instructions by Architect.
- F. Re-testing required because of non-compliance with specified requirements shall be paid for by Contractor.

### **3.03 DEFECT ASSESSMENT**

- A. Replace Work or portions of the Work not complying with specified requirements.

**END OF SECTION**

**SECTION 01 60 00  
PRODUCT REQUIREMENTS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Transportation, handling, storage and protection.
- B. Product option requirements.
- C. Substitution limitations.

**1.02 RELATED REQUIREMENTS**

- A. Section 01 25 00 - Substitution Procedures: Substitutions made during procurement and/or construction phases.
- B. Section 01 61 16 - Volatile Organic Compound (VOC) Content Restrictions: Requirements for VOC-restricted product categories.
- C. Section 01 74 19 - Construction Waste Management and Disposal: Waste disposal requirements potentially affecting product selection, packaging and substitutions.

**1.03 SUBMITTALS**

- A. Product Data Submittals: Submit manufacturer's standard published data. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.
- B. Shop Drawing Submittals: Prepared specifically for this Project; indicate utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.
- C. Sample Submittals: Illustrate functional and aesthetic characteristics of the product, with integral parts and attachment devices. Coordinate sample submittals for interfacing work.
  - 1. For selection from standard finishes, submit samples of the full range of the manufacturer's standard colors, textures, and patterns.

**PART 2 PRODUCTS**

**2.01 NEW PRODUCTS**

- A. Provide new products unless specifically required or permitted by Contract Documents.
- B. Use of products having any of the following characteristics is not permitted:
- C. Where other criteria are met, Contractor shall give preference to products that:
  - 1. If used on interior, have lower emissions, as defined in Section 01 61 16.
  - 2. If wet-applied, have lower VOC content, as defined in Section 01 61 16.

**2.02 PRODUCT OPTIONS**

- A. Products Specified by Reference Standards or by Description Only: Use any product meeting those standards or description.
- B. Products Specified by Naming One or More Manufacturers: Use a product of one of the manufacturers named and meeting specifications, no options or substitutions allowed.
- C. Products Specified by Naming One or More Manufacturers with a Provision for Substitutions: Submit a request for substitution for any manufacturer not named.

**PART 3 EXECUTION**

**3.01 SUBSTITUTION LIMITATIONS**

- A. See Section 01 25 00 - Substitution Procedures.

**3.02 TRANSPORTATION AND HANDLING**

- A. Package products for shipment in manner to prevent damage; for equipment, package to avoid loss of factory calibration.

- B. If special precautions are required, attach instructions prominently and legibly on outside of packaging.
- C. Coordinate schedule of product delivery to designated prepared areas in order to minimize site storage time and potential damage to stored materials.
- D. Transport and handle products in accordance with manufacturer's instructions.
- E. Transport materials in covered trucks to prevent contamination of product and littering of surrounding areas.
- F. Promptly inspect shipments to ensure that products comply with requirements, quantities are correct, and products are undamaged.
- G. Provide equipment and personnel to handle products by methods to prevent soiling, disfigurement, or damage, and to minimize handling.
- H. Arrange for the return of packing materials, such as wood pallets, where economically feasible.

### **3.03 STORAGE AND PROTECTION**

- A. Designate receiving/storage areas for incoming products so that they are delivered according to installation schedule and placed convenient to work area in order to minimize waste due to excessive materials handling and misapplication. See Section 01 74 19.
- B. Store and protect products in accordance with manufacturers' instructions.
- C. Store with seals and labels intact and legible.
- D. Store sensitive products in weathertight, climate-controlled enclosures in an environment favorable to product.
- E. For exterior storage of fabricated products, place on sloped supports above ground.
- F. Protect products from damage or deterioration due to construction operations, weather, precipitation, humidity, temperature, sunlight and ultraviolet light, dirt, dust, and other contaminants.
- G. Comply with manufacturer's warranty conditions, if any.
- H. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to prevent condensation and degradation of products.
- I. Prevent contact with material that may cause corrosion, discoloration, or staining.
- J. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.
- K. Arrange storage of products to permit access for inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.

**END OF SECTION**

**SECTION 01 70 00  
EXECUTION AND CLOSEOUT REQUIREMENTS**

**PART 1 GENERAL**

**1.01 RELATED REQUIREMENTS**

- A. Section 01 10 00 - Summary: Limitations on working in existing building; continued occupancy; work sequence; identification of salvaged and relocated materials.

**1.02 SUBMITTALS**

- A. See Section 01 30 00 - Administrative Requirements, for submittal procedures.
- B. Cutting and Patching: Submit written request in advance of cutting or alteration that affects:
  - 1. Structural integrity of any element of Project.
  - 2. Integrity of weather exposed or moisture resistant element.
  - 3. Efficiency, maintenance, or safety of any operational element.
  - 4. Visual qualities of sight exposed elements.
  - 5. Work of Owner or separate Contractor.
- C. Project Record Documents: Accurately record actual locations of capped and active utilities.

**1.03 QUALIFICATIONS**

- A. For design of temporary shoring and bracing, employ a Professional Engineer experienced in design of this type of work and licensed in the State in which the Project is located.

**1.04 PROJECT CONDITIONS**

- A. Use of explosives is not permitted.
- B. Ventilate enclosed areas to assist cure of materials, to dissipate humidity, and to prevent accumulation of dust, fumes, vapors, or gases.
- C. Pollution Control: Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations. Comply with federal, state, and local regulations.

**1.05 COORDINATION**

- A. See Section 01 10 00 for occupancy-related requirements.
- B. Coordinate scheduling, submittals, and work of the various sections of the Project Manual to ensure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.
- C. Notify affected utility companies and comply with their requirements.
- D. Verify that utility requirements and characteristics of new operating equipment are compatible with building utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- E. Coordinate space requirements, supports, and installation of mechanical and electrical work that are indicated diagrammatically on drawings. Follow routing indicated for pipes, ducts, and conduit, as closely as practicable; place runs parallel with lines of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- F. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.
- G. Coordinate completion and clean-up of work of separate sections.
- H. After Owner occupancy of premises, coordinate access to site for correction of defective work and work not in accordance with Contract Documents, to minimize disruption of Owner's activities.

## **PART 2 PRODUCTS**

### **2.01 PATCHING MATERIALS**

- A. New Materials: As specified in product sections; match existing products and work for patching and extending work.
- B. Type and Quality of Existing Products: Determine by inspecting and testing products where necessary, referring to existing work as a standard.
- C. Product Substitution: For any proposed change in materials, submit request for substitution described in Section 01 60 00 - Product Requirements.

## **PART 3 EXECUTION**

### **3.01 EXAMINATION**

- A. Verify that existing site conditions and substrate surfaces are acceptable for subsequent work. Start of work means acceptance of existing conditions.
- B. Verify that existing substrate is capable of structural support or attachment of new work being applied or attached.
- C. Examine and verify specific conditions described in individual specification sections.
- D. Take field measurements before confirming product orders or beginning fabrication, to minimize waste due to over-ordering or misfabrication.
- E. Verify that utility services are available, of the correct characteristics, and in the correct locations.
- F. Prior to Cutting: Examine existing conditions prior to commencing work, including elements subject to damage or movement during cutting and patching. After uncovering existing work, assess conditions affecting performance of work. Beginning of cutting or patching means acceptance of existing conditions.

### **3.02 PREPARATION**

- A. Clean substrate surfaces prior to applying next material or substance.
- B. Seal cracks or openings of substrate prior to applying next material or substance.
- C. Apply manufacturer required or recommended substrate primer, sealer, or conditioner prior to applying any new material or substance in contact or bond.

### **3.03 GENERAL INSTALLATION REQUIREMENTS**

- A. Install products as specified in individual sections, in accordance with manufacturer's instructions and recommendations, and so as to avoid waste due to necessity for replacement.
- B. Make vertical elements plumb and horizontal elements level, unless otherwise indicated.
- C. Install equipment and fittings plumb and level, neatly aligned with adjacent vertical and horizontal lines, unless otherwise indicated.
- D. Make consistent texture on surfaces, with seamless transitions, unless otherwise indicated.
- E. Make neat transitions between different surfaces, maintaining texture and appearance.

### **3.04 ALTERATIONS**

- A. Drawings showing existing construction and utilities are based on casual field observation and existing record documents only.
  - 1. Verify that construction and utility arrangements are as indicated.
  - 2. Report discrepancies to Architect before disturbing existing installation.
  - 3. Beginning of alterations work constitutes acceptance of existing conditions.
- B. Maintain weatherproof exterior building enclosure except for interruptions required for replacement or modifications; take care to prevent water and humidity damage.
  - 1. Where openings in exterior enclosure exist, provide construction to make exterior enclosure weatherproof.



2. Insulate existing ducts or pipes that are exposed to outdoor ambient temperatures by alterations work.
- C. Remove existing work as indicated and as required to accomplish new work.
1. Remove rotted wood, corroded metals, and deteriorated masonry and concrete; replace with new construction specified.
  2. Remove items indicated on drawings.
  3. Relocate items indicated on drawings.
  4. Where new surface finishes are to be applied to existing work, perform removals, patch, and prepare existing surfaces as required to receive new finish; remove existing finish if necessary for successful application of new finish.
  5. Where new surface finishes are not specified or indicated, patch holes and damaged surfaces to match adjacent finished surfaces as closely as possible.
- D. Services (Including but not limited to HVAC, Plumbing, Fire Protection, Electrical, and Telecommunications): Remove, relocate, and extend existing systems to accommodate new construction.
1. Maintain existing active systems that are to remain in operation; maintain access to equipment and operational components; if necessary, modify installation to allow access or provide access panel.
  2. Where existing systems or equipment are not active and Contract Documents require reactivation, put back into operational condition; repair supply, distribution, and equipment as required.
  3. Where existing active systems serve occupied facilities but are to be replaced with new services, maintain existing systems in service until new systems are complete and ready for service.
    - a. Disable existing systems only to make switchovers and connections; minimize duration of outages.
    - b. See Section 01 10 00 for other limitations on outages and required notifications.
    - c. Provide temporary connections as required to maintain existing systems in service.
  4. Verify that abandoned services serve only abandoned facilities.
  5. Remove abandoned pipe, ducts, conduits, and equipment ; remove back to source of supply where possible, otherwise cap stub and tag with identification; patch holes left by removal using materials specified for new construction.
- E. Protect existing work to remain.
1. Prevent movement of structure; provide shoring and bracing if necessary.
  2. Perform cutting to accomplish removals neatly and as specified for cutting new work.
  3. Repair adjacent construction and finishes damaged during removal work.
- F. Adapt existing work to fit new work: Make as neat and smooth transition as possible.
- G. Patching: Where the existing surface is not indicated to be refinished, patch to match the surface finish that existed prior to cutting. Where the surface is indicated to be refinished, patch so that the substrate is ready for the new finish.
- H. Refinish existing surfaces as indicated:
1. Where rooms or spaces are indicated to be refinished, refinish all visible existing surfaces to remain to the specified condition for each material, with a neat transition to adjacent finishes.
  2. If mechanical or electrical work is exposed accidentally during the work, re-cover and refinish to match.
- I. Clean existing systems and equipment.
- J. Remove demolition debris and abandoned items from alterations areas and dispose of off-site; do not burn or bury.
- K. Do not begin new construction in alterations areas before demolition is complete.
- L. Comply with all other applicable requirements of this section.

### **3.05 CUTTING AND PATCHING**

- A. Whenever possible, execute the work by methods that avoid cutting or patching.
- B. See Alterations article above for additional requirements.
- C. Perform whatever cutting and patching is necessary to:
  - 1. Complete the work.
  - 2. Fit products together to integrate with other work.
  - 3. Provide openings for penetration of mechanical, electrical, and other services.
  - 4. Match work that has been cut to adjacent work.
  - 5. Repair areas adjacent to cuts to required condition.
  - 6. Repair new work damaged by subsequent work.
  - 7. Remove samples of installed work for testing when requested.
  - 8. Remove and replace defective and non-complying work.
- D. Execute work by methods that avoid damage to other work and that will provide appropriate surfaces to receive patching and finishing. In existing work, minimize damage and restore to original condition.
- E. Employ original installer to perform cutting for weather exposed and moisture resistant elements, and sight exposed surfaces.
- F. Cut rigid materials using masonry saw or core drill. Pneumatic tools not allowed without prior approval.
- G. Restore work with new products in accordance with requirements of Contract Documents.
- H. Fit work air tight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces.
- I. At penetrations of fire rated walls, partitions, ceiling, or floor construction, completely seal voids with fire rated material in accordance with Section 07 84 00, to full thickness of the penetrated element.
- J. Patching:
  - 1. Finish patched surfaces to match finish that existed prior to patching. On continuous surfaces, refinish to nearest intersection or natural break. For an assembly, refinish entire unit.
  - 2. Match color, texture, and appearance.
  - 3. Repair patched surfaces that are damaged, lifted, discolored, or showing other imperfections due to patching work. If defects are due to condition of substrate, repair substrate prior to repairing finish.

### **3.06 PROGRESS CLEANING**

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
- B. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, prior to enclosing the space.
- C. Broom and vacuum clean interior areas prior to start of surface finishing, and continue cleaning to eliminate dust.
- D. Collect and remove waste materials, debris, and trash/rubbish from site periodically and dispose off-site; do not burn or bury.

### **3.07 PROTECTION OF INSTALLED WORK**

- A. Protect installed work from damage by construction operations.
- B. Provide special protection where specified in individual specification sections.
- C. Provide temporary and removable protection for installed products. Control activity in immediate work area to prevent damage.
- D. Provide protective coverings at walls, projections, jambs, sills, and soffits of openings.

- E. Protect finished floors, stairs, and other surfaces from traffic, dirt, wear, damage, or movement of heavy objects, by protecting with durable sheet materials.
- F. Prohibit traffic or storage upon waterproofed or roofed surfaces. If traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
- G. Remove protective coverings when no longer needed; reuse or recycle coverings if possible.

### **3.08 ADJUSTING**

- A. Adjust operating products and equipment to ensure smooth and unhindered operation.

### **3.09 FINAL CLEANING**

- A. Use cleaning materials that are nonhazardous.
- B. Clean interior and exterior glass, surfaces exposed to view; remove temporary labels, stains and foreign substances, polish transparent and glossy surfaces,
- C. Remove all labels that are not permanent. Do not paint or otherwise cover fire test labels or nameplates on mechanical and electrical equipment.
- D. Clean equipment and fixtures to a sanitary condition with cleaning materials appropriate to the surface and material being cleaned.
- E. Clean filters of operating equipment.
- F. Clean debris from roofs, gutters, downspouts, scuppers, overflow drains, area drains, and drainage systems.
- G. Clean site; sweep paved areas, rake clean landscaped surfaces.
- H. Remove waste, surplus materials, trash/rubbish, and construction facilities from the site; dispose of in legal manner; do not burn or bury.

### **3.10 CLOSEOUT PROCEDURES**

- A. Make submittals that are required by governing or other authorities.
- B. Accompany Project Coordinator on preliminary inspection to determine items to be listed for completion or correction in the Contractor's Correction Punch List for Contractor's Notice of Substantial Completion.
- C. Notify Architect when work is considered ready for Architect's Substantial Completion inspection.
- D. Submit written certification containing Contractor's Correction Punch List, that Contract Documents have been reviewed, work has been inspected, and that work is complete in accordance with Contract Documents and ready for Architect's Substantial Completion inspection.
- E. Owner will occupy all of the building as specified in Section 01 10 00.
- F. Conduct Substantial Completion inspection and create Final Correction Punch List containing Architect's and Contractor's comprehensive list of items identified to be completed or corrected and submit to Architect.
- G. Correct items of work listed in Final Correction Punch List and comply with requirements for access to Owner-occupied areas.
- H. Notify Architect when work is considered finally complete and ready for Architect's Substantial Completion final inspection.
- I. Complete items of work determined by Architect listed in executed Certificate of Substantial Completion.

### **3.11 MAINTENANCE**

- A. Provide service and maintenance of components indicated in specification sections.
- B. Maintenance Period: As indicated in specification sections or, if not indicated, not less than one year from the Date of Substantial Completion or the length of the specified warranty,

whichever is longer.

- C. Examine system components at a frequency consistent with reliable operation. Clean, adjust, and lubricate as required.
- D. Include systematic examination, adjustment, and lubrication of components. Repair or replace parts whenever required. Use parts produced by the manufacturer of the original component.
- E. Maintenance service shall not be assigned or transferred to any agent or subcontractor without prior written consent of the Owner.

**END OF SECTION**

**SECTION 01 78 00  
CLOSEOUT SUBMITTALS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Project record documents.
- B. Operation and maintenance data.
- C. Warranties and bonds.

**1.02 RELATED REQUIREMENTS**

- A. Section 01 30 00 - Administrative Requirements: Submittals procedures, shop drawings, product data, and samples.
- B. Individual Product Sections: Specific requirements for operation and maintenance data.
- C. Individual Product Sections: Warranties required for specific products or Work.

**1.03 SUBMITTALS**

- A. Project Record Documents: Submit documents to Architect with claim for final Application for Payment.
- B. Operation and Maintenance Data:
  - 1. For equipment, or component parts of equipment put into service during construction and operated by Owner, submit completed documents within ten days after acceptance.
  - 2. Submit one copy of completed documents 15 days prior to final inspection. This copy will be reviewed and returned after final inspection, with Architect comments. Revise content of all document sets as required prior to final submission.
  - 3. Submit two sets of revised final documents in final form within 10 days after final inspection.
- C. Warranties and Bonds:
  - 1. For equipment or component parts of equipment put into service during construction with Owner's permission, submit documents within 10 days after acceptance.
  - 2. Make other submittals within 10 days after Date of Substantial Completion, prior to final Application for Payment.
  - 3. For items of Work for which acceptance is delayed beyond Date of Substantial Completion, submit within 10 days after acceptance, listing the date of acceptance as the beginning of the warranty period.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION**

**3.01 PROJECT RECORD DOCUMENTS**

- A. Maintain on site one set of the following record documents; record actual revisions to the Work:
  - 1. Drawings.
  - 2. Specifications.
  - 3. Addenda.
  - 4. Change Orders and other modifications to the Contract.
  - 5. Reviewed shop drawings, product data, and samples.
  - 6. Manufacturer's instruction for assembly, installation, and adjusting.
- B. Ensure entries are complete and accurate, enabling future reference by Owner.
- C. Store record documents separate from documents used for construction.
- D. Record information concurrent with construction progress.
- E. Specifications: Legibly mark and record at each product section description of actual products installed, including the following:
  - 1. Changes made by Addenda and modifications.

- F. Record Drawings and Shop Drawings: Legibly mark each item to record actual construction including:
  - 1. Field changes of dimension and detail.
  - 2. Details not on original Contract drawings.

### **3.02 OPERATION AND MAINTENANCE DATA**

- A. Product Data: Mark each sheet to clearly identify specific products and component parts, and data applicable to installation. Delete inapplicable information.
- B. Drawings: Supplement product data to illustrate relations of component parts of equipment and systems, to show control and flow diagrams. Do not use Project Record Documents as maintenance drawings.
- C. Typed Text: As required to supplement product data. Provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.

### **3.03 OPERATION AND MAINTENANCE DATA FOR MATERIALS AND FINISHES**

- A. Instructions for Care and Maintenance: Manufacturer's recommendations for cleaning agents and methods, precautions against detrimental cleaning agents and methods, and recommended schedule for cleaning and maintenance.
- B. Where additional instructions are required, beyond the manufacturer's standard printed instructions, have instructions prepared by personnel experienced in the operation and maintenance of the specific products.

### **3.04 WARRANTIES AND BONDS**

- A. Obtain warranties and bonds, executed in duplicate by responsible Subcontractors, suppliers, and manufacturers, within 10 days after completion of the applicable item of work. Except for items put into use with Owner's permission, leave date of beginning of time of warranty until Date of Substantial completion is determined.
- B. Verify that documents are in proper form, contain full information, and are notarized.
- C. Co-execute submittals when required.
- D. Retain warranties and bonds until time specified for submittal.

**END OF SECTION**

**SECTION 06 10 00  
ROUGH CARPENTRY**

**PART 2 PRODUCTS**

**1.01 GENERAL REQUIREMENTS**

- A. Dimension Lumber: Comply with PS 20 and requirements of specified grading agencies.
  - 1. Species: Douglas Fir-Larch, unless otherwise indicated.
  - 2. If no species is specified, provide species graded by the agency specified; if no grading agency is specified, provide lumber graded by grading agency meeting the specified requirements.
  - 3. Grading Agency: Grading agency whose rules are approved by the Board of Review, American Lumber Standard Committee at [www.alsc.org](http://www.alsc.org), and who provides grading service for the species and grade specified; provide lumber stamped with grade mark unless otherwise indicated.

**1.02 DIMENSION LUMBER FOR CONCEALED APPLICATIONS**

- A. Sizes: Nominal sizes as indicated on drawings, S4S.
- B. Moisture Content: S-dry or MC19.
- C. Miscellaneous Framing, Blocking, Nailers, Grounds, and Furring:
  - 1. Lumber: S4S, No. 2 or Standard Grade.
  - 2. Boards: Standard or No. 3.

**1.03 FACTORY WOOD TREATMENT**

- A. Treated Lumber and Plywood: Comply with requirements of AWPA U1 - Use Category System for wood treatments determined by use categories, expected service conditions, and specific applications.

**END OF SECTION**

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**SECTION 07 01 50.19  
PREPARATION FOR RE-ROOFING**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Replacement of existing roofing system in preparation for entire new roofing system.
- B. Removal of existing flashing and counterflashings.
- C. Temporary roofing protection.

**1.02 RELATED REQUIREMENTS**

- A. Section 07 21 00 - Thermal Insulation
- B. Section 07 41 13 - Metal Roof Panels: Roof system.
- C. Section 07 62 00 - Sheet Metal Flashing and Trim: Replacement of flashing and counterflashings.

**1.03 ADMINISTRATIVE REQUIREMENTS**

- A. Coordinate with affected mechanical and electrical work associated with roof penetrations.
- B. Preinstallation Meeting: Convene one week before starting work of this section.
  - 1. Attendees:
    - a. Architect.
    - b. Contractor.
    - c. Owner.
    - d. Installer.
  - 2. Meeting Agenda: Provide agenda to participants prior to meeting in preparation for discussions on the following:
    - a. Removal and installation schedule.
    - b. Necessary preparatory work.
    - c. Protection before, during, and after roofing system installation.
    - d. Removal of existing roofing system.
    - e. Installation of new roofing system.
    - f. Temporary roofing and daily terminations.
    - g. Transitions and connection to and with other work.

**1.04 SUBMITTALS**

- A. See Section 01 30 00 - Administrative Requirements for submittal procedures.
- B. Product Data: Submit for each type of material.
- C. Shop Drawings: Indicate size, configuration, and installation details.
- D. Installer's Qualification Statement.

**1.05 QUALITY ASSURANCE**

- A. Materials Removal Company Qualifications: Company specializing in performing work of type specified with at least three years of documented experience.

**1.06 DELIVERY, STORAGE, AND HANDLING**

- A. Ensure storage and staging of materials does not exceed static and dynamic load-bearing capacities of roof decking.

**1.07 FIELD CONDITIONS**

- A. Existing Roofing System: Pre-finished roofing.
- B. Do not remove existing roofing membrane when weather conditions threaten the integrity of building contents or intended continued occupancy.
- C. Maintain continuous temporary protection prior to and during installation of new roofing system.

- D. Provide notice at least three days before starting activities that will affect normal building operations.
- E. Verify that occupants have been evacuated from building areas when work on structurally impaired roof decking is scheduled to begin.
- F. Owner will occupy building areas directly below re-roofing area.
  - 1. Provide Owner with at least 48 hours written notice of roofing activities that may affect their operations and to allow them to prepare for upcoming activities as necessary.

#### **1.08 WARRANTY**

- A. See Section 01 78 00 - Closeout Submittals for additional warranty requirements.

### **PART 2 PRODUCTS**

#### **2.01 COMPONENTS**

- A. See the following sections for additional information on components relating to this work:
  - 1. Replacement and removal of existing roofing system in preparation for entire new roofing system, see Sections 07 21 00 Thermal Insulation and 07 41 13 Metal Roof Panels.
  - 2. Remove existing flashing and counterflashings in preparation for replacement of these materials as part of this work, see Section 07 62 00 for material requirements.

#### **2.02 MATERIALS**

- A. Temporary Roofing Protection Materials:
  - 1. Contractor's responsibility to select appropriate materials for temporary protection of roofing areas as determined necessary for this work.

#### **2.03 ACCESSORIES**

- A. Fasteners: Type and size as required and compatible with existing and new roofing system to resist local wind uplift.
- B. Roof Vent Pipe Extension: Solid-wall PVC fitting consisting of pipe and splice sleeve inserts, configured for insertion and sealing to existing plumbing vent piping, sized to fit inside diameter of plumbing vent piping, enabling extension of piping to field-determined height to meet local building code requirements for plumbing vent pipe height above existing roof level.

### **PART 3 EXECUTION**

#### **3.01 EXAMINATION**

- A. Verify that existing roof surface has been cleared of materials being removed from existing roofing system and ready for next phase of work as required.

#### **3.02 PREPARATION**

- A. Sweep roof surface clean of loose matter.
- B. Remove loose refuse and dispose of properly off-site.

#### **3.03 MATERIAL REMOVAL**

- A. Remove only existing roofing materials that can be replaced with new materials the same day.
- B. Remove damaged portions of roofing membrane, perimeter base flashings, flashings around roof protrusions, insulation vents.
- C. Remove insulation and fasteners, cant strips, and blocking.
- D. Remove vapor retarder, sheathing paper, and underlay.
- E. Repair existing metal deck surface to provide smooth working surface for new roof system.

#### **3.04 INSTALLATION**

- A. Coordinate scope of this work with requirements for installation of new roofing system, see Sections 07 21 00 Thermal Insulation and 07 41 13 Metal Roof Panels for additional requirements.

### **3.05 PROTECTION**

- A. Provide protection of existing roofing system that is not having work performed on it.
- B. Provide temporary protective sheeting over uncovered deck surfaces.
- C. Turn sheeting up and over parapets and curbing. Retain sheeting in position with weights.
- D. Provide for surface drainage from sheeting to existing drainage facilities.

**END OF SECTION**

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**SECTION 07 21 00  
THERMAL INSULATION**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Board insulation over roof deck.

**1.02 REFERENCE STANDARDS**

- A. ASTM C578 - Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation 2019.
- B. ASTM E84 - Standard Test Method for Surface Burning Characteristics of Building Materials 2021a.

**1.03 SUBMITTALS**

- A. See Section 01 30 00 - Administrative Requirements for submittal procedures.
- B. Product Data: Provide data on product characteristics, performance criteria, and product limitations.

**1.04 FIELD CONDITIONS**

- A. Do not install insulation adhesives when temperature or weather conditions are detrimental to successful installation.

**PART 2 PRODUCTS**

**2.01 APPLICATIONS**

- A. Insulation Over Roof Deck: Extruded polystyrene (XPS) board.

**2.02 FOAM BOARD INSULATION MATERIALS**

- A. Extruded Polystyrene (XPS) Board Insulation: Comply with ASTM C578 with either natural skin or cut cell surfaces.
  - 1. Type and Compressive Resistance: Type IV, 25 psi (173 kPa), minimum.
  - 2. Flame Spread Index (FSI): Class A - 0 to 25, when tested in accordance with ASTM E84.
  - 3. Smoke Developed Index (SDI): 450 or less, when tested in accordance with ASTM E84.
  - 4. Type and Thermal Resistance, R-value (RSI-value): Type IV, 5.0 (0.88), minimum, per 1 inch (25.4 mm) thickness at 75 degrees F (24 degrees C) mean temperature.
  - 5. Board Edges: Square.
  - 6. Type and Water Absorption: Type XII, 0.3 percent by volume, maximum, by total immersion.
  - 7. Board Thickness: 1-1/2 inch (38 mm)
  - 8. Products:
    - a. DuPont de Nemours, Inc; Styrofoam Brand Square Edge: [building.dupont.com/#sle](http://building.dupont.com/#sle).
    - b. Kingspan Insulation LLC; GreenGuard XPS Type IV, 25 psi: [www.kingspan.com/#sle](http://www.kingspan.com/#sle).
    - c. Owens Corning Corporation; FOAMULAR Type [ ] Extruded Polystyrene (XPS) Insulation: [www.ocbuildingspec.com/#sle](http://www.ocbuildingspec.com/#sle).
    - d. Or approved Equal.
    - e. Substitutions: See Section 01 60 00 - Product Requirements.

**PART 3 EXECUTION**

**3.01 EXAMINATION**

- A. Verify that substrate, adjacent materials, and insulation materials are dry and that substrates are ready to receive insulation.
- B. Verify substrate surfaces are flat, free of honeycomb, fins, irregularities, or materials or substances that may impede adhesive bond.

**3.02 FIELD QUALITY CONTROL**

- A. See Section 01 40 00 - Quality Requirements for additional requirements.

### **3.03 PROTECTION**

- A. Do not permit installed insulation to be damaged prior to its concealment.

**END OF SECTION**

**SECTION 07 25 00  
WEATHER BARRIERS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Water-resistive barriers.

**1.02 REFERENCE STANDARDS**

- A. ASTM D1970/D1970M - Standard Specification for Self-Adhering Polymer Modified Bituminous Sheet Materials Used as Steep Roofing Underlayment for Ice Dam Protection 2021.
- B. ASTM E84 - Standard Test Method for Surface Burning Characteristics of Building Materials 2021a.
- C. ASTM E96/E96M - Standard Test Methods for Gravimetric Determination of Water Vapor Transmission Rate of Materials 2022.
- D. ASTM E2178 - Standard Test Method for Determining Air Leakage Rate and Calculation of Air Permeance of Building Materials 2021a.
- E. ICC-ES AC38 - Acceptance Criteria for Water-Resistive Barriers 2016, with Editorial Revision (2019).

**PART 2 PRODUCTS**

**2.01 WATER-RESISTIVE BARRIER MATERIALS**

- A. Water-Resistive and Air Barrier, Multilayers: Outer layers of nonwoven, spunbonded polypropylene with vapor permeable, watertight polymeric middle layer.
  - 1. Air Permeance: 0.0011 cfm/sq ft (0.0058 L/(s sq m)), maximum, when tested in accordance with ASTM E2178.
  - 2. Water Vapor Permeance: 54 perms (3,078 ng/(Pa s sq m)), minimum, when tested in accordance with ASTM E96/E96M using Procedure A - Desiccant Method, at 73.4 degrees F (23 degrees C).
  - 3. Ultraviolet (UV) and Weathering Resistance: Approved by manufacturer for up to 3 months of weather exposure.
  - 4. Surface Burning Characteristics: Flame spread index of 25 or less, smoke developed index of 450 or less, Class A when tested in accordance with ASTM E84.
  - 5. Seam and Perimeter Tape: As recommended by sheet manufacturer.
- B. Water-Resistive Barrier, Composite: Tear-resistant polyester sheet with UV-resistant acrylic coating.
  - 1. Air Permeance: 0.18 cfm/sq ft (0.9 L/(s sq m)), maximum, when tested in accordance with ASTM E2178.
  - 2. Water Vapor Permeance: 200 perms (11,400 ng/(Pa s sq m)), minimum, when tested in accordance with ASTM E96/E96M using Procedure A - Desiccant Method, at 73.4 degrees F (23 degrees C).
  - 3. Ultraviolet (UV) and Weathering Resistance: Approved by manufacturer for up to 210 days of weather exposure.
  - 4. Surface Burning Characteristics: Flame spread index of 25 or less, smoke developed index of 450 or less, Class A when tested in accordance with ASTM E84.
  - 5. Water Resistance: Comply with applicable requirements in accordance with ICC-ES AC38.
  - 6. Seam and Perimeter Tape: As recommended by sheet manufacturer.

**2.02 ACCESSORIES**

- A. Sealants, Tapes, and Accessories Used for Sealing Water-Resistive Barrier and Adjacent Substrates: As indicated or complying with water-resistive barrier manufacturer's installation instructions.
- B. Flexible Flashing: Self-adhesive sheet flashing complying with ASTM D1970/D1970M, except slip resistance requirement is waived if not installed on a roof.

1. Width: 4 inches (102 mm).

### **PART 3 EXECUTION**

#### **3.01 EXAMINATION**

- A. Verify that surfaces and conditions comply with requirements of this section.

#### **3.02 PREPARATION**

- A. Remove projections, protruding fasteners, and loose or foreign matter that might interfere with proper installation.
- B. Clean and prime substrate surfaces to receive adhesives and sealants in accordance with manufacturer's installation instructions.

#### **3.03 INSTALLATION**

- A. Install materials in accordance with manufacturer's installation instructions.
- B. Water-Resistive Barriers: Install continuous water-resistive barrier over surfaces indicated, with sheets lapped to shed water but with seams not sealed.
- C. Mechanically Fastened Exterior Sheets:
  1. Install sheets shingle-fashion to shed water, with seams aligned horizontal.
  2. Overlap seams as recommended by manufacturer, 6 inches (152 mm), minimum.
  3. Overlap at outside and inside corners as recommended by manufacturer, 12 inches (305 mm), minimum.
  4. Install water-resistive barrier over jamb flashings.
  5. Install head flashings under water-resistive barrier.
  6. At framed openings with frames having nailing flanges, extend sheet into opening and over flanges; at head of opening, seal sheet over flange and flashing.
- D. Openings and Penetrations in Exterior Water-Resistive Barriers:
  1. Install flashing over sills, covering entire sill framing member, and extend at least 5 inches (127 mm) onto water-resistive barrier and at least 6 inches (152 mm) up jambs; mechanically fasten stretched edges.
  2. At openings filled with frames having nailing flanges, seal head and jamb flanges using a continuous bead of sealant compressed by flange and cover flanges with sealing tape at least 4 inches (100 mm) wide; do not seal sill flange.
  3. At openings filled with nonflanged frames, seal water-resistive barrier to each side of framing at opening using flashing at least 9 inches (230 mm) wide, and covering entire depth of framing.
  4. At head of openings, install flashing under water-resistive barrier extending at least 2 inches (50 mm) beyond face of jambs; seal water-resistive barrier to flashing.
  5. At interior face of openings, seal gaps between window and door frames and rough framing using appropriate joint sealant over backer rod.
  6. Service and Other Penetrations: Form flashing around penetrating items and seal to surface of water-resistive barrier.

**END OF SECTION**



**SECTION 07 30 12**  
**ROOFING UNDERLAYMENT, EXTENDED HIGH-TEMPERATURE**

**PART 1 GENERAL**

**1.01 SUMMARY**

- A. This Section specifies a self-adhering sheet membrane used as underlayment for sloped roofs.
  - 1. High temperature application, 300F resistance, extended period, Ultratm, or approved equal.
- B. Related Sections: Refer to the following specification sections for coordination:
  - 1. Section 06 10 00 – Rough Carpentry.
  - 2. Section 07 41 13 – Metal Roof Panels.
  - 3. Section 07 62 00 – Sheet Metal Flashing and Trim
  - 4. Section 07 92 00 – Joint Sealants
- C. Referenced Standards: Comply with the requirements of the following standards published by ASTM International to the extent referenced in this section.
  - 1. ASTM D412 - Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers - Tension.
  - 2. ASTM D461 - Standard Test Methods for Felt.
  - 3. ASTM D 903 - Standard Test Method for Peel or Stripping Strength of Adhesive Bonds.
  - 4. ASTM D1970 - Standard Specification for Self-Adhering Polymer Modified Bituminous Sheet Materials Used as Steep Roofing Underlayment for Ice Dam Protection.
  - 5. ASTM D3767 - Standard Practice for Rubber—Measurement of Dimensions.
  - 6. ASTM E96 - Standard Test Methods for Water Vapor Transmission of Materials.
  - 7. ASTM G90 – EMMAqua test.

**1.02 SUBMITTALS**

- A. Product Data: Submit manufacturer's product data and installation instructions.

**1.03 QUALITY ASSURANCE**

- A. Regulatory Requirements: Comply with requirements of authorities having jurisdiction and applicable codes at the location of the project.
- B. Manufacturer: Minimum 10 years experience producing roofing underlayment.
- C. Installer: Minimum 2 years experience with installation of similar underlayment.

**1.04 DELIVERY, STORAGE AND HANDLING**

- A. Deliver materials and products in unopened factory labeled packages. Protect from damage.
- B. Cover materials and store in dry condition between temperatures of 40 and 90 degrees F (5 and 32 degrees C). Use within one year of date of manufacture. Do not store at elevated temperatures as that will reduce the shelf life of the product.

**PART 2 PRODUCTS**

**2.01 MANUFACTURER**

- A. Manufacturer: GCP Applied Technologies, Inc, 62 Whittemore Avenue, Cambridge, MA 02140, Toll Free 866-333-3726, [www.gcpat.com](http://www.gcpat.com).
- B. Or approved Equal
- C. See 01 60 00 - Administrative Requirements for Substitutions

**2.02 MATERIALS**

- A. Basis of Design: Self-Adhering Sheet Membrane Roof Underlayment: Provide Ultra by GCP Applied Technologies, Inc with the following characteristics:
  - 1. Cold applied, self-adhering membrane composed of a high strength polyethylene film coated on one side with a layer of butyl rubber adhesive and interwound with a disposable release sheet. An embossed, slip resistant surface is provided on the polyethylene.
  - 2. Color: Gray-black.

3. Membrane Thickness: 30 mil (0.76 mm) ASTM D3767 method A.
  4. Tensile strength, Membrane: 250 psi (1720 kN/m<sup>2</sup>) ASTM D412 (Die C modified).
  5. Elongation, Membrane: 250% ASTM D412 (Die C modified).
  6. Low Temperature Flexibility: Unaffected @ -20°F (-29°C) ASTM D1970.
  7. Adhesion to Plywood: 3.0 lbs/in width (525 N/m) ASTM D903.
  8. Permeance (max): 0.05 Perms (2.9 ng/m<sup>2</sup>s Pa) ASTM E96.
  9. Material Weight Installed (max): 0.22 lb/ft<sup>2</sup> (1.1 kg/m<sup>2</sup>) ASTM D461.
  10. Service Temperature: 300 degrees F (148.8 degrees C) per ASTM D1204
  11. Primer: Water-based Perm-A-Barrier WB Primer by GCP Applied Technologies, Inc.
  12. Code and Standards Compliance: Ultra meets the following requirements:
    - a. ICC ESR-1677 approval according to AC-48 Acceptance Criteria for Self-Adhered underlayments used as Ice Barriers
    - b. Underwriters Laboratories, Inc. R13399 Class A fire classification under fiberglass shingles and Class C under organic felt shingles.
    - c. Underwriters Laboratories, Inc. Classified Sheathing Material Fire Resistance Classification Design Numbers P225, P227, P230, P237, P259, P508, P510, P512, P514, P701, P711, P717, P722, P723, P732, P734, P742, P824.
- B. Or Approved Equal
- C. See Section 01 60 00 Administrative Requirements for Substitutions

### **PART 3 EXAMINATION**

#### **3.01 INSTALLATION**

- A. Prior to start of installation, inspect existing conditions to ensure surfaces are suitable for installation of roofing underlayment. Verify flashing has been installed. Starting work indicates installers acceptance of existing conditions.
- B. Install roofing underlayment on sloped surfaces at locations indicated on the Drawings, but not less than at hips, ridges, eaves, valleys, sidewalls and chimneys, and surfaces over interior space within 36 inches (914 mm) from the inside face of the exterior wall. Strictly comply with manufacturer's installation instructions including but not limited to the following:
  1. Schedule installation such that underlayment is covered by roofing within the published exposure limit of the underlayment.
  2. Do not install underlayment on wet or frozen substrates.
  3. Install when surface temperature of substrate is a minimum of 40 degrees F (5 degrees C) and rising.
  4. Remove dust, dirt, loose materials and protrusions from deck surface.
  5. Install membrane on clean, dry, continuous structural deck. Fill voids and damaged or unsupported areas prior to installation.
  6. Prime concrete and masonry surfaces using specified primer at a rate of 500-600 square feet per gallon (12-15 sqm/L). Priming is not required for other suitable clean and dry surfaces.
  7. Install membrane such that all laps shed water. Work from the low point to the high point of the roof at all times. Apply the membrane in valleys before the membrane is applied to the eaves. Following placement along the eaves, continue application of the membrane up the roof. Membrane may be installed either vertically or horizontally after the first horizontal course.
  8. Side laps minimum 3-1/2 inches (89 mm) and end laps minimum 6 inches (152 mm) following lap lines marked on underlayment.
  9. Patch penetrations and damage using manufacturer's recommended methods.

#### **3.02 CLEANING AND PROTECTION**

- A. Protect from damage during construction operations and installation of roofing materials. Promptly repair any damaged or deteriorated surfaces.
- B. Repair minor damage to eliminate all evidence of repair. Remove and replace work which cannot be satisfactorily repaired in the opinion of the Architect.

- C. Provide temporary protection to ensure work being without damage or deterioration at time of final acceptance. Remove protective film and reclean as necessary immediately before final acceptance.

**END OF SECTION**

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**SECTION 07 41 13  
METAL ROOF PANELS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Metal roof panel system of preformed steel panels.

**1.02 RELATED REQUIREMENTS**

- A. Section 06 10 00 - Rough Carpentry: Blocking
- B. Section 07 21 00 - Thermal Insulation: Rigid roof insulation.
- C. Section 07 30 12 - Roofing Underlayment - Extended High Temperature
- D. Section 07 92 00 - Joint Sealants: Sealing joints between metal roof panel system and adjacent construction.

**1.03 REFERENCE STANDARDS**

- A. AAMA 2605 - Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels (with Coil Coating Appendix) 2020, with Errata (2022).
- B. ASTM E1592 - Standard Test Method for Structural Performance of Sheet Metal Roof and Siding Systems by Uniform Static Air Pressure Difference 2005 (Reapproved 2017).
- C. ASTM E1646 - Standard Test Method for Water Penetration of Exterior Metal Roof Panel Systems by Uniform Static Air Pressure Difference 1995 (Reapproved 2018).
- D. UL 580 - Standard for Tests for Uplift Resistance of Roof Assemblies Current Edition, Including All Revisions.

**1.04 SUBMITTALS**

- A. See Section 01 30 00 - Administrative Requirements for submittal procedures.
- B. Product Data: Manufacturer's data sheets on each product to be used, including:
  - 1. Storage and handling requirements and recommendations.
  - 2. Installation methods.
  - 3. Specimen warranty.
- C. Shop Drawings: Include layouts of roof panels, details of edge and penetration conditions, spacing and type of connections, flashings, underlayments, and special conditions.
  - 1. Show work to be field-fabricated or field-assembled.
- D. Verification Samples: For each roofing system specified, submit samples of minimum size 12 inches (305 mm) square, representing actual roofing metal, thickness, profile, color, and texture.
- E. Test Reports: Indicate compliance of metal roofing system to specified requirements.
- F. Warranty: Submit specified manufacturer's warranty and ensure that forms have been completed in Owner's name and are registered with manufacturer.

**1.05 QUALITY ASSURANCE**

- A. Manufacturer Qualifications: Company specializing in manufacturing products specified in this section and with at least three years of documented experience.
- B. Installer Qualifications: Company specializing in performing work of the type specified and with at least three years of documented experience.

**1.06 DELIVERY, STORAGE, AND HANDLING**

- A. See Section 01 74 19 - Construction Waste Management and Disposal for packaging waste requirements.
- B. Provide strippable plastic protection on prefinished roofing panels for removal after installation.

- C. Store roofing panels on project site as recommended by manufacturer to minimize damage to panels prior to installation.

### **1.07 FIELD CONDITIONS**

- A. Do not install metal roof panels, eave protection membrane or underlayment when surface, ambient air, or wind chill temperatures are below 45 degrees F (7 degrees C).

### **1.08 WARRANTY**

- A. See Section 01 78 00 - Closeout Submittals for additional warranty requirements.
- B. Finish Warranty: Provide 5-year manufacturer warranty against excessive degradation of exterior finish. Include provision for replacement of units with excessive fading, chalking, or flaking. Complete forms in Owner's name and register with warrantor.
- C. Special Warranty: Provide 2-year warranty for weathertightness of roofing system, including agreement to repair or replace metal roof panels that fail to keep out water commencing on the Date of Substantial Completion. Complete forms in Owner's name and register with warrantor.

## **PART 2 PRODUCTS**

### **2.01 MANUFACTURERS**

- A. Architectural Metal Roof Panel Manufacturers:
  - 1. Taylor Metal Products; Easy-Lock Standing Seam: [www.talormetal.com](http://www.talormetal.com)
    - a. Basis of Design: Taylor Metal Products; Easy-Lock Standing Seam
      - 1) Coverage: 12"
      - 2) Gauge: 24
      - 3) Profile: 1 1/8" vertical rib with 3/8" flat top. with 3 accent ribs
      - 4) Fasteners: Concealed with pre-slotted fastener flange to allow expansion/contraction of panel.
      - 5) Color: Medium Bronze SRI-33
  - 2. Or approved Equal
  - 3. Substitutions: See Section 01 60 00 - Product Requirements.
- B. Metal Soffit Panels Manufacturers:
  - 1. Taylor Metal Products; Lifetime Soffit: [www.talormetal.com](http://www.talormetal.com)
    - a. Basis of Design: Taylor Metal Products; Lifetime Soffit
      - 1) Coverage: 12"
      - 2) Gauge: 24
      - 3) Profile: 1" with double bead - non-perforated
      - 4) Fasteners: Concealed with pre-slotted fastener flange to allow expansion/contraction of panel.
      - 5) Color: Medium Bronze SRI-33
  - 2. Or approved Equal
  - 3. Substitutions: See Section 01 60 00 - Product Requirements.

### **2.02 PERFORMANCE REQUIREMENTS**

- A. Metal Roof Panels: Provide complete roofing assemblies, including roof panels, clips, fasteners, connectors, and miscellaneous accessories, tested for compliance with the following minimum standards:
  - 1. Structural Design Criteria: Provide panel assemblies designed to safely support design loads at support spacing indicated, with deflection not to exceed L/180 of span length(L) when tested in accordance with ASTM E1592.
  - 2. Overall: Complete weathertight system tested and approved in accordance with ASTM E1592.
  - 3. Wind Uplift: Minimum Class 90 wind uplift resistance of UL 580.
  - 4. Water Penetration: No water penetration when tested in accordance with procedures and recommended test pressures of ASTM E1646.
  - 5. Thermal Movement: Design system to accommodate without deformation anticipated thermal movement over ambient temperature range of 100 degrees F (56 degrees C).

### **2.03 ATTACHMENT SYSTEM**

- A. Concealed System: Provide manufacturer's standard stainless steel or nylon-coated aluminum concealed anchor clips designed for specific roofing system and engineered to meet performance requirements, including anticipated thermal movement.

### **2.04 FABRICATION**

- A. Panels: Provide factory or field fabricated panels with applied finish and accessory items, using manufacturer's standard processes as required to achieve specified appearance and performance requirements.
- B. Joints: Provide captive gaskets, sealants, or separator strips at panel joints to ensure weathertight seals, eliminate metal-to-metal contact, and minimize noise from panel movements.

### **2.05 FINISHES**

- A. Fluoropolymer Coil Coating System: Manufacturer's standard multi-coat metal coil coating system complying with AAMA 2605, including at least 70 percent polyvinylidene fluoride (PVDF) resin, and at least 80 percent of coil coated metal surfaces having minimum total dry film thickness (DFT) of 0.9 mil, 0.0009 inch (0.023 mm); color and gloss to match sample.

### **2.06 ACCESSORIES**

- A. Miscellaneous Sheet Metal Items: Provide flashings, gutters, downspouts, trim, moldings, closure strips, caps, and equipment curbs of the same material, thickness, and finish as used for the roofing panels. Items completely concealed after installation may optionally be made of stainless steel.
- B. Rib and Ridge Closures: Provide prefabricated, close-fitting components of steel with corrosion resistant finish or combination steel and closed-cell foam.
- C. Sealants:
  - 1. Exposed Sealant: Elastomeric; silicone, polyurethane, or silyl-terminated polyether/polyurethane.
  - 2. Concealed Sealant: Non-curing butyl sealant or tape sealant.
  - 3. Seam Sealant: Factory-applied, non-skinning, non-drying type.

## **PART 3 EXECUTION**

### **3.01 EXAMINATION**

- A. Do not begin installation of preformed metal roof panels until substrates have been properly prepared.
- B. If substrate preparation is the responsibility of another installer, notify Architect of unsatisfactory preparation before proceeding.

### **3.02 PREPARATION**

- A. Coordinate roofing work with provisions for roof drainage, flashing, trim, penetrations, and other adjoining work to ensure that completed roof will be free of leaks.
- B. Coordinate installation of waterproof membrane over roof sheathing with Section 06 10 00.
- C. Remove protective film from surface of roof panels immediately prior to installation; strip film carefully to avoid damage to prefinished surfaces.
- D. Separate dissimilar metals by applying a bituminous coating, self-adhering rubberized asphalt sheet, or other permanent method approved by metal roof panel manufacturer.
- E. Protect surrounding areas and adjacent surfaces from damage during execution of this work.
- F. At locations where metal will be in contact with wood or other absorbent material subject to wetting, seal joints with sealing compound and apply one coat of heavy-bodied bituminous paint.

### **3.03 INSTALLATION**

- A. Overall: Install roofing system in accordance with approved shop drawings and metal roof panel manufacturer's instructions and recommendations, as applicable to specific project conditions; securely anchor components of roofing system in place allowing for thermal and structural movement.
  - 1. Install roofing system with concealed clips and fasteners, except as otherwise recommended by manufacturer for specific circumstances.
  - 2. Minimize field cutting of panels. Where field cutting is required, use methods that will not distort panel profiles. Use of torches for field cutting is prohibited.
- B. Accessories: Install necessary components that are required for complete roofing assembly, including flashings, gutters, downspouts, trim, moldings, closure strips, preformed crickets, caps, equipment curbs, rib closures, ridge closures, and similar roof accessory items.
- C. Roof Panels: Install metal roof panels in accordance with manufacturer's installation instructions, minimizing transverse joints except at junction with penetrations.

### **3.04 CLEANING**

- A. Clean exposed sheet metal work at completion of installation. Remove grease and oil films, excess joint sealer, handling marks, and debris from installation, leaving the work clean and unmarked, free from dents, creases, waves, scratch marks, or other damage to the finish.

### **3.05 PROTECTION**

- A. Do not permit storage of materials or roof traffic on installed roof panels. Provide temporary walkways or planks as necessary to avoid damage to completed work. Protect roofing until completion of project.
- B. Touch-up, repair, or replace damaged roof panels or accessories before Date of Substantial Completion.

**END OF SECTION**



**SECTION 07 62 00  
SHEET METAL FLASHING AND TRIM**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Fabricated sheet metal items, including flashings, counterflashings, gutters, downspouts, exterior penetrations, and other items indicated in Schedule.
- B. Sealants for joints within sheet metal fabrications.
- C. Precast concrete splash pads.

**1.02 REFERENCE STANDARDS**

- A. AAMA 2605 - Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels (with Coil Coating Appendix) 2020, with Errata (2022).
- B. ASTM A653/A653M - Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process 2020.
- C. ASTM C920 - Standard Specification for Elastomeric Joint Sealants 2018.
- D. ASTM D4586/D4586M - Standard Specification for Asphalt Roof Cement, Asbestos-Free 2007 (Reapproved 2018).
- E. CDA A4050 - Copper in Architecture - Handbook current edition.
- F. SMACNA (ASMM) - Architectural Sheet Metal Manual 2012.

**1.03 SUBMITTALS**

- A. See Section 01 30 00 - Administrative Requirements for submittal procedures.
- B. Shop Drawings: Indicate material profile, jointing pattern, jointing details, fastening methods, flashings, terminations, and installation details.
- C. Samples: Submit two samples, 4 by 6 inches (102 by 152 mm) in size, illustrating metal finish color.

**1.04 QUALITY ASSURANCE**

- A. Perform work in accordance with SMACNA (ASMM) and CDA A4050 requirements and standard details, except as otherwise indicated.
- B. Fabricator and Installer Qualifications: Company specializing in sheet metal work with 5 years of experience.

**1.05 DELIVERY, STORAGE, AND HANDLING**

- A. See Section 01 74 19 - Construction Waste Management and Disposal for packaging waste requirements.
- B. Stack material to prevent twisting, bending, and abrasion, and to provide ventilation. Slope metal sheets to ensure drainage.
- C. Prevent contact with materials that could cause discoloration or staining.

**PART 2 PRODUCTS**

**2.01 SHEET MATERIALS**

- A. Pre-Finished Galvanized Steel: ASTM A653/A653M, with G90/Z275 zinc coating; minimum 24-gauge, 0.0239-inch (0.61 mm) thick base metal, shop pre-coated with PVDF coating.
  - 1. Polyvinylidene Fluoride (PVDF) Coating: Superior performing organic powder coating, AAMA 2605; multiple coat, thermally cured fluoropolymer finish system.

**2.02 FABRICATION**

- A. Form sections true to shape, accurate in size, square, and free from distortion or defects.
- B. Form pieces in longest possible lengths.

- C. Hem exposed edges on underside 1/2 inch (13 mm); miter and seam corners.
- D. Form material with flat lock seams, except where otherwise indicated; at moving joints, use sealed lapped, bayonet-type or interlocking hooked seams.
- E. Fabricate corners from one piece with minimum 18-inch (450 mm) long legs; seam for rigidity, seal with sealant.
- F. Fabricate flashings to allow toe to extend 2 inches (50 mm) over roofing gravel. Return and brake edges.
- G. Fabricate snow guards Per SMANCNA for Roof Type..

### **2.03 GUTTER AND DOWNSPOUT FABRICATION**

- A. Gutters: SMACNA (ASMM) Rectangular profile.
- B. Downspouts: Rectangular profile.
- C. Gutters and Downspouts: Size for rainfall intensity determined by a storm occurrence of 1 in 10 years in accordance with SMACNA (ASMM).
- D. Accessories: Profiled to suit gutters and downspouts.
  - 1. Anchorage Devices: In accordance with SMACNA (ASMM) requirements.
  - 2. Gutter Supports: Brackets.
  - 3. Downspout Supports: Brackets.
- E. Splash Pads: Precast concrete type, of size and profiles indicated; minimum 3,000 psi (21 MPa) at 28 days, with minimum 5 percent air entrainment.
- F. Downspout Splash Blocks: Concrete.
- G. Seal metal joints.

### **2.04 ACCESSORIES**

- A. Fasteners: Galvanized steel, with soft neoprene washers.
- B. Primer: Zinc chromate type.
- C. Concealed Sealants: Non-curing butyl sealant.
- D. Exposed Sealants: ASTM C920; elastomeric sealant, with minimum movement capability as recommended by manufacturer for substrates to be sealed; color to match adjacent material.
- E. Asphalt Roof Cement: ASTM D4586/D4586M, Type I, asbestos-free.

## **PART 3 EXECUTION**

### **3.01 EXAMINATION**

- A. Verify roof openings, curbs, pipes, sleeves, ducts, and vents through roof are solidly set, reglets in place, and nailing strips located.
- B. Verify roofing termination and base flashings are in place, sealed, and secure.

### **3.02 PREPARATION**

- A. Install starter and edge strips, and cleats before starting installation.
- B. Back paint concealed metal surfaces with protective backing paint to a minimum dry film thickness of 15 mil, 0.015 inch (0.4 mm).

### **3.03 INSTALLATION**

- A. Comply with drawing details.
- B. Secure flashings in place using concealed fasteners.
- C. Apply plastic cement compound between metal flashings and felt flashings.
- D. Fit flashings tight in place; make corners square, surfaces true and straight in planes, and lines accurate to profiles.
- E. Install snow guards 16 inch (406 mm) upslope from eaves and valleys.
- F. Secure gutters and downspouts in place with concealed fasteners.

- G. Slope gutters 1/4 inch per 10 feet (2.1 mm per m), minimum.
- H. Connect downspouts to existing downspout boots, and grout connection watertight. (Replace existing downspout boot if existing is damaged.)
- I. Set splash blocks under downspouts.

**3.04 FIELD QUALITY CONTROL**

- A. See Section 01 40 00 - Quality Requirements for field inspection requirements.
- B. Inspection will involve surveillance of work during installation to ascertain compliance with specified requirements.

**END OF SECTION**

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## **SECTION 07 92 00 JOINT SEALANTS**

### **PART 1 GENERAL**

#### **1.01 SECTION INCLUDES**

- A. Nonsag gunnable joint sealants.
- B. Joint backings and accessories.

#### **1.02 REFERENCE STANDARDS**

- A. ASTM C661 - Standard Test Method for Indentation Hardness of Elastomeric-Type Sealants by Means of a Durometer 2015 (Reapproved 2022).
- B. ASTM C794 - Standard Test Method for Adhesion-in-Peel of Elastomeric Joint Sealants 2018.
- C. ASTM C920 - Standard Specification for Elastomeric Joint Sealants 2018.
- D. ASTM C1087 - Standard Test Method for Determining Compatibility of Liquid-Applied Sealants with Accessories Used in Structural Glazing Systems 2016.
- E. ASTM C1193 - Standard Guide for Use of Joint Sealants 2016.
- F. ASTM C1248 - Standard Test Method for Staining of Porous Substrate by Joint Sealants 2018.
- G. ASTM C1311 - Standard Specification for Solvent Release Sealants 2014.
- H. ASTM C1330 - Standard Specification for Cylindrical Sealant Backing for Use with Cold Liquid-Applied Sealants 2018.
- I. SCAQMD 1168 - Adhesive and Sealant Applications 1989, with Amendment (2017).

#### **1.03 SUBMITTALS**

- A. See Section 01 30 00 - Administrative Requirements for submittal procedures.
- B. Product Data: Submit manufacturer's technical datasheets for each product to be used; include the following:
  - 1. Physical characteristics, including movement capability, VOC content, hardness, cure time, and color availability.
  - 2. List of backing materials approved for use with the specific product.
  - 3. Substrates that product is known to satisfactorily adhere to and with which it is compatible.
  - 4. Substrates the product should not be used on.
- C. Color Cards for Selection: Where sealant color is not specified, submit manufacturer's color cards showing standard colors available for selection.
- D. Preconstruction Laboratory Test Reports: Submit at least four weeks prior to start of installation.
- E. Executed warranty.

#### **1.04 QUALITY ASSURANCE**

- A. Preconstruction Laboratory Testing: Arrange for sealant manufacturer(s) to test each combination of sealant, substrate, backing, and accessories.
  - 1. Adhesion Testing: In accordance with ASTM C794.
  - 2. Compatibility Testing: In accordance with ASTM C1087.
  - 3. Allow sufficient time for testing to avoid delaying the work.
  - 4. Deliver sufficient samples to manufacturer for testing.
  - 5. Report manufacturer's recommended corrective measures, if any, including primers or techniques not indicated in product data submittals.

#### **1.05 WARRANTY**

- A. See Section 01 78 00 - Closeout Submittals for additional warranty requirements.
- B. Manufacturer Warranty: Provide 2-year manufacturer warranty for installed sealants and accessories that fail to achieve a watertight seal, exhibit loss of adhesion or cohesion, or do not cure. Complete forms in Owner's name and register with manufacturer.

## **PART 2 PRODUCTS**

### **2.01 JOINT SEALANT APPLICATIONS**

- A. Scope:
  - 1. Exterior Joints: Seal open joints, whether or not the joint is indicated on drawings, unless specifically indicated not to be sealed. Exterior joints to be sealed include, but are not limited to:
    - a. Wall expansion and control joints.
    - b. Joints between door, window, and other frames and adjacent construction.
    - c. Joints between different exposed materials.
    - d. Openings below ledge angles in masonry.
    - e. Other joints indicated below.
  - 2. Do not seal the following types of joints:
    - a. Intentional weep holes in masonry.
    - b. Joints indicated to be treated with manufactured expansion joint cover, or some other type of sealing device.
    - c. Joints where sealant is specified to be provided by manufacturer of product to be sealed.
    - d. Joints where installation of sealant is specified in another section.
    - e. Joints between suspended panel ceilings/grid and walls.
- B. Exterior Joints: Use nonsag nonstaining silicone sealant, unless otherwise indicated.
  - 1. Lap Joints in Sheet Metal Fabrications: Butyl rubber, noncuring.

### **2.02 JOINT SEALANTS - GENERAL**

- A. Sealants and Primers: Provide products having lower volatile organic compound (VOC) content than indicated in SCAQMD 1168.

### **2.03 NONSAG JOINT SEALANTS**

- A. Nonstaining Silicone Sealant: ASTM C920, Grade NS, Uses M and A; not expected to withstand continuous water immersion or traffic.
  - 1. Movement Capability: Plus and minus [ ] percent, minimum.
  - 2. Nonstaining to Porous Stone: Nonstaining to light-colored natural stone when tested in accordance with ASTM C1248.
  - 3. Dirt Pick-Up: Reduced dirt pick-up compared to other silicone sealants.
  - 4. Color: Match adjacent finished surfaces.
- B. Silicone Sealant: ASTM C920, Grade NS, Uses M and A; not expected to withstand continuous water immersion or traffic.
  - 1. Movement Capability: Plus and minus 25 percent, minimum.
  - 2. Hardness Range: 15 to 35, Shore A, when tested in accordance with ASTM C661.
  - 3. Color: Match adjacent finished surfaces.
  - 4. Cure Type: Single-component, neutral moisture curing
  - 5. Service Temperature Range: Minus 65 to 180 degrees F (Minus 54 to 82 degrees C).
- C. Type [ ] - Polymer Sealant: ASTM C920; single component, cured sealant is paintable and mold/mildew resistant, low odor and VOC, and ultraviolet (UV) resistant.
  - 1. Color: White.
- D. Hybrid Urethane Sealant: ASTM C920, Grade NS, Uses M and A; single component; not expected to withstand continuous water immersion or traffic.
  - 1. Movement Capability: Plus and minus 35 percent, minimum.
  - 2. Hardness Range: 20 to 40, Shore A, when tested in accordance with ASTM C661.
  - 3. Color: Match adjacent finished surfaces.
  - 4. Service Temperature Range: Minus 40 to 180 degrees F (Minus 40 to 82 degrees C).
- E. Type [ ] - Noncuring Butyl Sealant: Solvent-based, single component, nonsag, nonskinning, nonhardening, nonbleeding; non-vapor permeable; intended for fully concealed applications.

## **2.04 ACCESSORIES**

- A. Backer Rod: Cylindrical cellular foam rod with surface that sealant will not adhere to, compatible with specific sealant used, and recommended by backing and sealant manufacturers for specific application.
  - 1. Type for Joints Not Subject to Pedestrian or Vehicular Traffic: ASTM C1330; Type O - Open Cell Polyurethane.
  - 2. Open Cell: 40 to 50 percent larger in diameter than joint width.

## **PART 3 EXECUTION**

### **3.01 EXAMINATION**

- A. Verify that joints are ready to receive work.
- B. Verify that backing materials are compatible with sealants.
- C. Verify that backer rods are of the correct size.

### **3.02 PREPARATION**

- A. Remove loose materials and foreign matter that could impair adhesion of sealant.
- B. Clean joints, and prime as necessary, in accordance with manufacturer's instructions.
- C. Perform preparation in accordance with manufacturer's instructions and ASTM C1193.
- D. Mask elements and surfaces adjacent to joints from damage and disfigurement due to sealant work; be aware that sealant drips and smears may not be completely removable.

### **3.03 INSTALLATION**

- A. Install this work in accordance with sealant manufacturer's requirements for preparation of surfaces and material installation instructions.
- B. Provide joint sealant installations complying with ASTM C1193.
- C. Install sealant free of air pockets, foreign embedded matter, ridges, and sags, and without getting sealant on adjacent surfaces.
- D. Do not install sealant when ambient temperature is outside manufacturer's recommended temperature range, or will be outside that range during the entire curing period, unless manufacturer's approval is obtained and instructions are followed.
- E. Nonsag Sealants: Tool surface concave, unless otherwise indicated; remove masking tape immediately after tooling sealant surface.

**END OF SECTION**