

SP170 (06-2511-12-09)

## SECTION 00170 - LEGAL RELATIONS AND RESPONSIBILITIES

*(Follow all instructions. If there are no instructions above a subsection, paragraph, or sentence, then use the subsection, paragraph, or sentence on all projects. All other modifications to this Section will require Department of Justice approval. (See the Specification Manual, Chapter 3.) Remove all instructions before preparing the final document.)*

Comply with Section 00170 of the Standard Specifications modified as follows:

*(Use the following lead-in paragraph and subsection .01(e) on projects with railroad involvement. Use of this subsection requires SP\_RR\_BNSF\_RR, SP\_RR\_INPRUP\_RR, SP\_RR\_NECR, SP\_RR\_PNWR, or SP\_RR\_UPRROTHER\_RR.)*

Add the following subsection:

**00170.01(e) Railways** - ~~The Contractor shall comply with the Contractor railway requirements and agreement that are in effect for this Project. A copy of the required requirements and agreement is included near the front of this Special Provision booklet. An agreement between the Contractor and the railway to work on and within railway property is required for this Project. A copy of the railway agreement and corresponding requirements is included near the front of this Special Provision booklet. The railway agreement and requirements are subject to change by the railway. The railway will provide the actual agreement and requirements for execution. The Contractor shall obtain all necessary permits and licenses and pay all fees (see 00170.02). The Contractor shall obtain a fully executed copy of the agreement and requirements between the Contractor and the railway and provide a copy of it to the Engineer before beginning work on or within the railway property or right-of-way.~~

*(Use the following paragraph when railway flagger services are required. Obtain the information from ODOT's Railroad Engineer Liaison.)*

When railway flagger services are required, the Agency will pay the flagger services costs up to a total of \_\_\_\_\_ (enter number of hours or days) \_\_\_\_\_. If this value is exceeded and additional flagging services are needed, the Contractor shall pay the Agency an amount of \_\_\_\_\_ (enter dollar amount) \_\_\_\_\_ per \_\_\_\_\_ (enter "hour" or "day") \_\_\_\_\_ for each \_\_\_\_\_ (enter "hour" or "day") \_\_\_\_\_ in excess of the total value identified above.

*(Use one of the following options for the lead-in paragraph and subsection .06 as instructed below. Delete the option that does not apply.)*

*[ Option 1 - Use this lead-in paragraph and subsection .06 on all ARRA funded projects, regardless of amount. ]*

*[ Begin Option 1 subsection .06 ]*

Add the following subsection:

**00170.06 Federal-Aid and American Recovery and Reinvestment Act Participation** - This Project is to be conducted according to the regulations applying to Federal-Aid Highway Projects and to American Recovery and Reinvestment Act (ARRA) Projects.

According to Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 the U.S. Comptroller General and his representatives have the authority to:

- To examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- To interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this Contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Also, according to Section 1515(a) of the ARRA, any representatives of the Inspector General have authority to examine any records or interview any employee or officers working on this Contract. The Contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the Contractor, its Subcontractors or other firms working on this Contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

*[ End Option 1 subsection .06 ]*

*[ Option 2 - Use this lead-in paragraph and subsection .06 on all Federal funded projects without ARRA funds. ]*

*[ Begin Option 2 subsection .06 ]*

Add the following subsection:

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

*[ End Option 2 subsection .06 ]*

*(Use one of the following options for subsection .65(b) on Federal funded projects when the project is a Functional Classification of 08 rural minor collector, 09 rural local, or 19 urban local. Obtain the functional classification from the project risk assessment summary. Delete both options if they do not apply or, if one does apply, delete the option that does not apply.)*

*[ Option 1 - Use these two subsection .65(b)'s on Federal funded projects when the project is a Functional Classification of 08 rural minor collector, 09 rural local, or 19 urban local AND DOES NOT contain any ARRA funds. ]*

*[ Begin Option 1 subsection .65(b) ]*

**00170.65(b) When Federal Funds Are Involved** - Replace this subsection with the following subsection:

**00170.65(b) When Local Road or Rural Minor Collector Federal Funds Are Involved** - For this local road or rural minor collector Federal-Aid Project, the Contractor shall comply with 00170.65(c) and the provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts," except Sections IV and V do not apply.

*[ End Option 1 subsection .65(b) ]*

*[ Option 2 - Use this subsection .65(b) on Federal funded projects when the project is a Functional Classification of 08 rural minor collector, 09 rural local, or 19 urban local AND DOES contain ARRA funds, regardless of amount. ]*

*[ Begin Option 2 subsection .65(b) ]*

**00170.65(b) When Federal Funds Are Involved** - Replace the paragraph that begins "For Federal-Aid projects..." with the following paragraph and bullets:

For ARRA Federal-Aid funded projects, the Contractor shall comply with the following:

- The provision of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts with the exception that the introductory paragraph of Sections IV and V which states "(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)" is replaced with the following introductory paragraph:

*(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts.)*

- ORS 279C.520 (see (a) of this subsection) and ORS 279C.540

*[ End Option 2 subsection .65(b) ]*

*(Use the following subsection .65(c) on rock production projects.)*

*[ Begin subsection .65(c) ]*

**00170.65(c) When No Federal Funds Are Involved** - Replace this subsection, except for subsection number and title, with the following:

Wage rate and fringe benefit schedules are not required for this rock production Project.

*[ End subsection .65(c) ]*

Add the following subsection:

**00170.67 Fees** - The fee required by ORS 279C.825(1) will be paid by the Agency to the Commissioner of the Oregon Bureau of Labor and Industries under the administrative rules of the Commissioner.

*(Complete the following subsection .70(a) based on the project risk assessment. Obtain risk assessment information from the following:*

- *For Region designed projects, contact the Project Team Leader*
- *For Consultant designed projects, contact the ODOT Consultant Project Manager*
- *For Local Agency designed projects, contact the ODOT Local Agency Liaison)*

**00170.70(a) Insurance Coverages** - The following insurance coverages and dollar amounts are required pursuant to this subsection:

<b>Insurance Coverages</b>	<b>Combined Single Limit per Occurrence</b>	<b>Annual Aggregate Limit</b>
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*(Fill in the blanks with the dollar amounts from the project risk assessment summary.)*

Commercial General Liability	\$ _____	\$ _____
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Commercial Automobile Liability	\$ _____	(aggregate limit not required)
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*(Include the following pollution liability item only when it is required by the risk assessment summary, otherwise delete it.)*

Pollution Liability	\$ _____	\$ _____
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*(Include one or both of the following bullets only when they are required by the risk assessment summary. Delete them if they are not required.)*

- With Asbestos Liability Endorsement or separate coverage
- With Lead Liability Endorsement or separate coverage

*(Include the following commercial automobile liability with pollution liability item only when it is required by the risk assessment summary, otherwise delete it.)*

Commercial Automobile Liability with Pollution Coverage	\$ _____	(aggregate limit not required)
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*(Use the following subsection .70(c) when project management is performed by other than ODOT forces. Fill in the blanks. Delete what does not apply.)*

**00170.70(c) Additional Insured** - Add the following paragraph and bullets to the end of this subsection:

Add the following as Additional Insureds under the Contract:

- The City of \_\_\_\_\_ and its officers, agents, and employees
- \_\_\_\_\_ City Council
- \_\_\_\_\_ County and its officers, agents, and employees
- \_\_\_\_\_ County Board of Commissioners
- \_\_\_\_\_ (Consultant)

*(Use the following subsection .70(g) on projects that include work on building(s) that have a market value or replacement cost of at least \$100,000. In the first sentence, fill in the buildings' estimated market value or complete replacement cost in the blank. Use the second sentence, when ODOT is not the owner of the building and fill in the blank with the building owner. Except for the building owner, do not make any additions to this sentence. If ODOT is the owner of the building, delete the second sentence.)*

**00170.70(g) Builders' Risk** - Add the following to the end of this subsection:

Provide Builders' Risk insurance for an amount equal to at least \$\_\_\_\_\_. The policy shall include as loss payee, the Agency and \_\_\_\_\_ (County or City Owner of Building).

*(Use the following subsection .72 only when project management is performed by other than ODOT forces. Fill in the blanks. Delete what does not apply.)*

**00170.72 Indemnity/Hold Harmless** - Add the following paragraph and bullets to the end of this subsection:

Extend indemnity and hold harmless to the Agency and the following:

- The City of \_\_\_\_\_ and its officers, agents, and employees
- \_\_\_\_\_ City Council
- \_\_\_\_\_ County and its officers, agents, and employees
- \_\_\_\_\_ County Board of Commissioners
- \_\_\_\_\_ (Include on the Project site Consultant only)

**00170.80 Responsibility for Damage to Work** - Replace this subsection, except for the subsection number and title, with the following:

(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, except to the extent the Agency has assumed responsibility according

to the provisions of (c) below. 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) Responsibility for Damage to Work Caused by Public Traffic - The Contractor may apply for relief of responsibility for damage to Work caused by public traffic by submitting a signed Contractor's Request for Relief of Responsibility, form 734-2768, to the Engineer by mail, personal delivery or courier, by FAX, or other agreed-upon method.**

The Engineer will process a maximum of two forms per month and return the forms within seven Calendar Days indicating each item as "approved" or "denied".

The approval of the Engineer is limited, and is made only for the purposes of determining relief of responsibility for damage to completed portions of the Work caused by public traffic. The completed portions of the Work are not considered complete, and are not finally accepted for any other purposes under the Contract.

If the Contractor disagrees with the Engineer's findings, the Contractor may request a Region level review according to 00199.40(b).

**(1) Request for Relief - The Agency will only accept a request for relief from and will only assume responsibility for damages caused by public traffic, to the following completed portions of the Work:**

- A segment of Roadway, drainage facilities, Slopes, lighting, traffic control devices and access facilities;
- A Bridge or other Structure within a segment of Roadway;
- Traffic signals and appurtenances at an intersection;
- Permanent, passive traffic control devices;
- Complete circuits of a highway lighting system; and
- Portions of a building open to public use.

The Agency will approve a request for the Agency to assume responsibility for damages to the completed portions of the Work caused by public traffic only under the following conditions:

- The completed portions of the Work are completed according to Contract Change Orders, the Contract Plans or approved stage construction Plans;
- The traffic control complies with approved traffic control Plans; and
- All required Materials conformance and quality compliance documents pertaining to the completed portions of the Work are on file with the Engineer (see Section 00165).

(2) Scope of Relief - When the Agency assumes responsibility for damage to completed portions of the Work caused by public traffic any damages will be repaired by the Contractor on an Extra or Changed Work basis, or by Agency forces, or by other means as determined by the Engineer. If completed portions of the Work are damaged by public traffic before Final Inspection, and the Agency requires the Contractor to repair the damages, the Engineer will reimburse the Contractor for the Extra or Changed Work at 75% of the total amount calculated according to Section 00197.

If completed portions of the Work are damaged by public traffic after Final Inspection, and the Agency requires the Contractor to repair the damages, the Engineer will reimburse the Contractor for the Extra or Changed Work at 100% of the total amount calculated according to Section 00197.

If any additional Work is performed by the Contractor on completed portions of the Work for which the Agency has assumed responsibility for damages caused by public traffic, and the Work is performed outside of the approved stage construction Plans or approved traffic control Plans, the Contractor shall become fully responsible and liable, and shall make good all damages caused by public traffic at no additional cost to the Agency.

(d) Vandalism - The Contractor shall provide reasonable protection of the Work from vandalism until Third Notification. If reasonable protection has been provided, the Contractor's responsibility for damage resulting from vandalism will be limited to \$5,000.00 per occurrence. Requests for reimbursement of amounts in excess of \$5,000.00 shall be in writing and directed to the Engineer. Upon receipt, the Engineer will investigate, evaluate the amount of damages and their cause, and determine whether, and how much, the Contractor will be recompensed.