

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 and Writing Style Manual, Chapter 3.) Remove all instructions before preparing the final document.)

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

00170.00 General - Add the following two paragraphs after the paragraph that begins "In any litigation, the entire...":

The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

All rights and remedies available to the Agency under applicable Laws are incorporated herein by reference and are cumulative with all rights and remedies under the Contract.

00170.01(a) Federal Agencies - Add the following to the list of Federal Agencies:

National Oceanic and Atmospheric Administration

(Use the following lead-in paragraph and subsection .01(e) on projects with railroad involvement. Obtain information from ODOT's Railroad Engineer Liaison. Use of this subsection requires SP00058_RRS, SP00060_RR_BNSF, SP00062_RR_CORP, SP00066_RR_PNWR, or SP00068_RR_UPRR.)

Add the following subsection:

00170.01(e) Railways - 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.

The Railway contact person for this Project is:

(enter name)

(enter address)

(enter city, state and zip)

_____ (enter phone number) _____

The USDOT Number for this project is _____ (enter USDOT No.) _____.

(Use the following paragraph when Union Pacific Railroad Company is within project limits.)

The Union Pacific Railroad Folder Number is _____ (enter UP Folder Number.) _____.

(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 the following lead-in paragraph and subsection .06 on all Federal funded projects.)

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.

Add the following subsection:

00170.10(g) Paid Summary Report - The Contractor shall submit a "Paid Summary Report", form 734-2882, to the Engineer certifying payments made to all of the following:

- All subcontractors
- Committed DBE suppliers
- Non-committed DBE suppliers and service providers with estimated total payments for the Project over \$10,000.

For this purpose, a committed DBE firm is one that was identified by the Contractor to meet an assigned DBE goal including DBE firms substituting for DBE firms committed as a condition of contract award.

Submit the completed and signed Paid Summary Report to the Engineer within 20 days of receipt of payment from the Agency for each month in which payments were made to each subcontractor, each committed DBE supplier, and each non-committed DBE supplier or service provider with estimated total payments for the Project over \$10,000. At the completion of the project, submit form 734-2882 recapping the total amounts paid to each subcontractor, and each committed DBE supplier, and each non-committed DBE supplier or service provider with estimated total payments for the Project over \$10,000.

The Contractor shall require each subcontractor at every tier to comply with the requirement to submit form 734-2882 within 20 days of receipt of payment from its controlling contractor

and provide a recap of the total amounts paid at the completion of the project or completion of their Work.

Forms shall be submitted to an email address provided to the Contractor at the Preconstruction Conference.

00170.65(a) General - Add the following paragraph to the end of this subsection:

As required by ORS 279C.520, compliance by the Contractor with the prohibitions in ORS 652.220 is a material element of the Contract and failure to comply is a material breach that entitles the Agency to exercise any remedies available under the Contract, including but not limited to termination for default. The Contractor shall not prohibit any of the Contractor's employees from, or retaliate against an employee for, discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(Use the following subsection .65(e) on federal funded projects when the project is not a Safe Routes to School funded project and any one of the following conditions apply:

- *The project is a Functional Classification 08 rural minor collector, 09 rural local, or 19 urban local. Obtain the functional classification from the project risk assessment summary.*
- *The project is not located within the Federal-aid highway right-of-way. Examples: Restoration of historic railroad stations. Construction of independent bike paths.*
- *The project is not linked to or not dependent upon the Federal-aid highway. (The project would not exist without the Federal-aid highway) Examples:*
 - *A project required by an environmental document (wetland mitigation) that is not within the Federal-aid highway right-of-way but necessary for a Federal-aid project. This type of project is linked to or dependent upon the Federal-aid highway project, so Davis-Bacon would apply and this subsection is not used.*
 - *A landscaping or scenic beautification project is not on the Federal-Aid highway right-of-way and is not required because of a Federal-aid highway project. This type of project is not linked to or not dependent upon a Federal-aid highway project, so Davis-Bacon does not apply and this subsection is used.]*

00170.65(e) Additional Requirements When Federal Funds are Involved - Replace this subsection, except for the subsection number and title, with the following:

For this Federal-Aid Project, the Contractor shall comply with 00170.65(a) through 00170.65(d) and the provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts", except Section IV of FHWA Form 1273 does not apply.

(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 - Add the following to the end of this subsection:

The following insurance coverages and dollar amounts are required pursuant to this subsection:

Insurance Coverages	Combined Single Limit per Occurrence	Annual Aggregate Limit
<i>(Fill in the blanks with the dollar amounts from the project risk assessment summary.)</i>		
Commercial General Liability	\$ _____	\$ _____
Commercial Automobile Liability	\$ _____	(aggregate limit not required)
<i>(Include the following pollution liability item only when it is required by the risk assessment summary, otherwise delete it.)</i>		
Pollution Liability	\$ _____	\$ _____
<i>(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.)</i>		
<ul style="list-style-type: none"> • With Asbestos Liability Endorsement or separate coverage • With Lead Liability Endorsement or separate coverage 		
<i>(Include the following commercial automobile liability with pollution liability item only when it is required by the risk assessment summary, otherwise delete it.)</i>		
Commercial Automobile Liability with Pollution Coverage	\$ _____	(aggregate limit not required)

(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, defense 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) _____