SP00170 (2018 Specifications: 07-01-20)

SECTION 00170 - LEGAL RELATIONS AND RESPONSIBILITIES

(Follow all instructions. If there are no instructions above a subsection, paragraph, sentence, or bullet, then include it in the Project. All other modifications to this Section will require Department of Justice and State Specifications Engineer approval. 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 to the end of this subsection:

It is the Agency's intention to make all payments due under the Contract if funds are legally available for such purpose. The Agency reasonably believes that at the time of entering into the Contract sufficient funds are available and authorized for expenditure to finance the cost of the Contract within the Agency's appropriation or limitation, or other funding sources. Agency's payment of amounts under the Contract is contingent on the Agency receiving adequate appropriations, limitations or other expenditure authority or funds to allow the Agency to continue to make payments under the Contract. In the event the Agency becomes aware that sufficient funds are not available and authorized, the Agency will provide prompt written notice to the Contractor, and the Agency may terminate the Contract as provided in 00180.90(c).

> ***(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, SP00061_RR_CBRL, SP00062_RR_CORP, SP00066_RR_PNWR, or SP00068_RR_UPRR.)***

Add the following subsection:

00170.01(e) Railroads - An agreement between the Contractor and the Railroad to work on and within Railroad property is required for this Project. A copy of the Railroad agreement and corresponding requirements is included near the front of this Special Provision booklet. The Railroad agreement and requirements are subject to change by the Railroad. The Railroad 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 Railroad and provide a copy of it to the Engineer before beginning Work on or within the Railroad property or Right-of-Way.

The Railroad 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 one of the following options when Railroad flagger services are required. Delete the option that does not apply. Check with the State Utility and Railroad Liaison.)

[Option 1 - Use the following paragraph when Railroad flagger services are required on any Railroad, except for UPRR when RailPros Field Services will be used for flagging.]

When Railroad 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.

[Option 2 - Use the following paragraph when Railroad flagger services are required on a UPRR Railroad and the Contractor is required to use RailPros Field Services for flagging. Include SP00068_RR_UPRR and subsections 00225.34, .48(d), .88, & .98 in SP00225.]

In accordance with the Railroad's requirements to work on and within Railroad property, when Railroad flagger services are required, the Contractor shall provide flagger services through RailPros Field Services according to 00225.34 and 00225.48(d).

00170.04 Patents, Copyrights, and Trademarks - Replace the paragraph that begins " Prior to use of designs, devices, materials, or processes…" with the following paragraph:

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 Contractor's legal right to use such design, device, material, or process.

00170.05 Assignment of Antitrust Rights - Replace the bullet that reads "ORS 646.725; and" with the following bullet:

- ORS 646.725; or

(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.

00170.07 Record Requirements - In the paragraph that begins "For purposes of this Subsection, the term…", replace the words "OAR 731-005-0780" with the words "OAR 734-010-0400".

00170.07(a) Records Required - In the paragraph that begins "These records shall include…", replace the bullet that begins "Contracts or documents of other…", with the following bullet:

- Contracts or documents of other arrangements with any Related Entity as defined in OAR 734-010-0400.

In the paragraph that begins "The Contractor shall include…", replace the words "OAR 731-005-0780" with the words "OAR 734-010-0400".

00170.07(b) Access to Records - In the paragraph that begins "The Contractor shall provide…", replace the words "OAR 731-005-0780(9)" with the words "OAR 734-010-0400(9)".

00170.07(d) Public Records Requests - Replace the paragraph that begins " If records provided under this section…" with the following paragraph:

If records provided under this section contain any information that may be considered exempt from disclosure as a trade secret under either ORS 192.345(2) or ORS 646.461(4), or under other grounds specified in Oregon Public Records Law, ORS 192.311 through ORS 192.478, 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.

Add the following subsection:

00170.08 Electronic Document Management - The requirements of this Subsection do not apply to claims. Claims must be submitted on paper documents according to Section 00199.

Following Notice to Proceed, the Contractor shall submit all documents for this Contract to the Agency in an electronic format using Doc Express®. No paper documents, faxes or other similar paper methods or media are permitted, unless otherwise allowed or directed by the Engineer. The Contractor shall be solely responsible for submitting documents to the Agency using Doc Express® for itself and for Subcontractors, Suppliers, vendors and other third parties. Only documents submitted by the Contractor and recorded in Doc Express® as received will be considered valid and received by the Agency.

Following Notice to Proceed, all documents for this Contract will be managed in Doc Express®, unless otherwise allowed or directed by the Engineer. Following Notice to Proceed, the Contractor shall use Doc Express® to submit documents to the Agency, and the Agency will use Doc Express® to submit documents to the Contractor.

The Contractor shall comply with naming conventions, drawer structure, and other Doc Express® instructions as specified in the ODOT Doc Express® User Guide for Construction Contractors, as may be revised from time to time and available from the Engineer.

The Contractor shall provide all Subcontractors, Suppliers, vendors, and any other third parties receiving payment from the Contractor or any Subcontractor, Supplier, vendor, or any other third party, with read-only access to the Doc Express® drawer that contains payment documents from the Agency and the Contractor. The Contractor may provide Subcontractors, Suppliers, vendors, and any other third parties receiving payment from the Contractor or any Subcontractor, Supplier, vendor or other third party with read-only access to other Doc Express® drawers at the Contractor's discretion. The Contractor shall not grant write access to Subcontractors, Suppliers, vendors or any other third parties or their respective officers, employees or agents.

Documents submitted according to this Subsection, from the Agency to the Contractor and from the Contractor to the Agency, are official documents for the Contract and will be accepted as such by both parties.

By submitting documents that originate from the Contractor to the Agency using Doc Express®, the Contractor is certifying that the documents are true and accurate and that if the document was required to be signed, it has been signed by a person with appropriate authority. By submitting documents to the Agency using Doc Express® that originate from a Subcontractor, Supplier, vendor, manufacturer or other third party, the Contractor is certifying that the documents are a true and complete copy of the documents the Contractor received, that if the document was required to be signed, it has been signed, and that the Contractor does not know, nor does it have reason to believe, that the documents are not true and accurate or signed by a person without appropriate authority.

In the event of a conflict between this Subsection and the Standard Specifications or other Special Provisions, this Subsection shall control except for 00199.30.

Costs associated with obtaining and maintaining access to Doc Express® and the use of Doc Express® are Incidental to Mobilization.

Failure to submit documents electronically, as required by this Subsection, may result in payments being withheld according to 00195.50(e).

The Contractor shall be responsible for causing access to Doc Express® to be disabled for any Entity or individual that is no longer assigned, employed or under contract in relation to the Project or whose access is to be disabled due to improper activity. The Contractor's obligation to disable access applies to its own officers, employees and agents and to all Subcontractors, Suppliers, vendors and other third parties and their respective officers, employees and agents.

The Agency reserves the right to suspend or disable, or cause to be suspended or disabled, the access to Doc Express® for any Entity or individual at any time.

Use and access for Doc Express® is provided "as is". The Agency does not warrant that access to or functioning of Doc Express® will be error free, uninterrupted or meet the Contractor's needs. The Agency is not responsible for any damage that may occur due to error, omission, lack of timeliness or other malfunction of Doc Express® or its supporting systems. The Agency disclaims all liability arising from interference or interruption, viruses, telephone faults, malicious damage by anyone, electronic system downtime, overloading of the Internet or sites or any cause beyond the control of the Agency. The Agency reserves the

right to temporarily suspend or cause to be suspended access to Doc Express®, without notice, because of maintenance, repair or any other reason deemed necessary for the proper functioning of Doc Express® by the Agency or Info Tech, Inc.

In no event shall the State of Oregon, the Oregon Transportation Commission or the Agency or their respective members, officers, agents and employees be liable for any claims, suits, actions, losses, liabilities, damages, costs or expenses, including but not limited to attorney fees, of whatsoever nature, resulting from or arising out of the use of Doc Express® by the Contractor or Subcontractors, Suppliers, vendors or other third parties at any level or their respective officers, employees or agents.

The Contractor's indemnification, defense and hold harmless obligations under the Contract shall apply to the terms, conditions and requirements of this Subsection 00170.08 and to use of Doc Express® and the acts, errors and omissions of the Contractor, Subcontractors, Suppliers, vendors and other third parties and their respective officers, employees and agents respecting access to and use of Doc Express®.

The terms, conditions and requirements of this Subsection 00170.08 and Subsection 00150.30 shall be included in all contracts with all Subcontractors, Suppliers, vendors and other third parties at all levels for which access to Doc Express® will or may be required.

(a) User Terms and Conditions - The Contractor shall comply with, shall require its officers, employees and agents to comply with, and shall require all Subcontractors, Suppliers, vendors and other third parties to comply with and to require their officers, employees and agents using or accessing Doc Express® to comply with this Subsection 00170.08 and the following Additional User Terms and Conditions, all as may be revised from time to time:

As an officer, employee or agent of the Contractor or any Subcontractor, Supplier, vendor or other third party, respecting my use of or access to Doc Express®, I agree to the following, all as may be revised from time to time:

- The terms, conditions and requirements of Subsection 00170.08 of the Contract;
- The Info Tech, Inc. Doc Express® Privacy Policy and Terms of Use and the Digital Millennium Copyright Act (DMCA) Policy, accessible from the Doc Express® registration site;
- The ODOT Doc Express® User Guide for Construction Contractors available from the Engineer ; and
- The following Additional User Terms and Conditions:

  My use of and access to Doc Express® are conditioned on my agreement to and my compliance with the foregoing and these Additional User Terms and Conditions.

  I may have access to sensitive personnel, business, financial and/or security related information ("Confidential Information") through use of Doc Express®, and, except to the limited extent necessary to perform my duties, I will maintain its confidential status and will not share, publish or disseminate Confidential Information or other information obtained through Doc Express®, without regard to how ODOT may treat any such Confidential Information or other information. All information is also subject

to the Oregon Public Records law (see 00170.07(d)). In addition, if I know or have reason to believe any information was inadvertently or improperly included in Doc Express®, I will immediately notify my employer for purposes of notification to the Contractor and the Contractor's notification to ODOT.

I will not access any information I am not authorized to use or access and I will not browse or otherwise use or access information, files or documents that exceed the minimum necessary to perform my duties.

If my authorized use of and access to Doc Express® includes submitting documents into Doc Express® (or "read-write" access), I will not submit any documents or information into Doc Express® except those I am authorized to submit and necessary to perform my duties.

I have no expectation of privacy, rights or ownership of anything I may access, create, store, send or receive within Doc Express®, respecting any documents or information, including but not limited to Confidential Information of any individual or Entity. For audit or system security purposes, ODOT may monitor and/or record all activity conducted within Doc Express®. This includes but is not limited to the login identification information, times, dates and duration of access, as well as resources or documents accessed.

Unauthorized access or activities that could compromise the system or Confidential Information are strictly prohibited and patterns of unauthorized or unusual activity will result in access being immediately disabled, and possible further investigation.

If a breach of these terms and conditions or a security incident occurs, I will immediately notify my employer for purposes of notification to the Contractor and the Contractor's notification to ODOT.

I will not share my password or other means of access with any other individual or Entity. Violation of this restriction or of any of these other Terms and Conditions will result in my access being immediately disabled.

I understand that my use of and access to Doc Express® is conditioned on my relationship to my employer and my employer's relationship to one or more of: ODOT, the Contractor, a Subcontractor, Supplier, vendor or other third party, and that if I am no longer so employed or my employer no longer has such relationship, I will immediately cease my use of and access to Doc Express® and will immediately notify my employer for purposes of notification to the Contractor and the Contractor's notification to ODOT.

(b) Digital Signatures and Requirements - Unless otherwise allowed or directed by the Engineer:

- For all Change Orders that require signature by the Contractor for this Contract, the Contractor, by a person with appropriate authority, shall sign using a Doc Express® digital signature.

- Change Orders that require signature by the Contractor, but do not have a Doc Express® digital signature from the Contractor verifiable by the Engineer, will be considered as not received and of no effect.
- Documents other than Change Orders that contain digital signatures, but do not have a digital signature verifiable by the Engineer, or that were signed by a person without appropriate authority, will be considered as not received and of no effect.
- Notice requirements will not be satisfied and payments may be withheld for any affected work items until the required documents with verifiable digital signatures have been received.

(c) Electronic Submittal Requirements - Unless otherwise allowed or directed by the Engineer, all documents submitted to the Agency for this Contract that require a signature, other than Change Orders, shall be signed by a person with appropriate authority by applying:

- An original handwritten signature to a document and scanning the document into PDF format;
- An electronic signature to a document and converting the document into PDF format;
- A third-party verifiable digital signature to a PDF document; or
- A Doc Express® electronic signature when prompted during submission of the document into Doc Express®.

Documents that require a signature, but do not have a signature in accordance with this subsection, or were signed by a person without appropriate authority; or documents that were signed with a digital signature but are submitted in a form such that the digital signature is not verifiable by the Engineer, will be considered as not received and of no effect. Notice requirements will not be satisfied and payments may be withheld for any affected work items until the required documents with compliant signatures have been received.

Unless otherwise allowed or directed by the Engineer, all documents submitted to the Agency for this Contract that do not require a signature shall be submitted using Doc Express®.

00170.62 Labor Nondiscrimination - Add the following sentence to the end of this subsection:

It is a material term of this Contract that the Contractor certifies by entering into this Contract that the Contractor has a written policy and practice that meets the requirements described in ORS 279A.112 (House Bill 3060, 2017) for preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class and that the Contractor shall maintain the policy and practice in force during the entire term of this Contract.

00170.65(a) General: Replace the paragraph that begins " As required by ORS 279C.520, compliance by the …" with the following paragraphs:

As required by ORS 279C.520, the Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor's compliance with this provision constitutes a material element of the Contract and failure to comply constitutes a material breach that entitles the Agency to exercise any remedies available under the Contract, including, but not limited to, termination for default.

As required by ORS 279C.520, the Contractor shall not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person .and shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

00170.65(b)(4) Owner/Operator Data – Replace the bullet that begins "Motor Carrier plate number" with the following bullet:

- Motor Carrier account number;

(The following subsection .65(e) is required only on Federal-Aid projects that do not require Davis-Bacon prevailing wages. Use according to the following:

- ***Do not use this subsection on projects that are funded by the Safe Routes to School Program.***
- ***Do not use this subsection on projects that are required by an environmental document, even if the project is away from the Federal-aid highway right-of-way. Example: wetland mitigation. (This type of project is linked to, or dependent upon, the Federal aid highway project.)***
- ***Use this subsection on projects that have a Functional Classification of 08 rural minor collector, 09 rural local, or 19 urban local. (Obtain the Functional Classification from the project Insurance Risk Assessment ~~Summary~~.)***
- ***Use this subsection on projects that are not located within the Federal-Aid highway right-of-way, and are not linked to, nor dependent upon, the Federal-Aid highway. Examples:***
  - ***Restoration of a historic railroad station***
  - ***Construction of an independent bike path***
  - ***A landscaping or scenic beautification project that is not on the Federal-Aid highway right-of-way and is not required because of a Federal-aid highway project***

For questions about application of this section contact the ODOT State Specifications Engineer.)

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.

00170.70 Insurance - Replace this subsection with the following:

00170.70 Insurance:

(a) Insurance Coverages -

Contractor - The Contractor shall obtain the insurance specified below prior to the execution of the Contract. The Contractor shall maintain the insurance in full force at the Contractor's expense throughout the duration of the Contract and all warranty periods that apply.

Subcontracting - If the Contractor specifies prior to the execution of the Contract that a Subcontractor will satisfy an insurance requirement, that is permitted to be satisfied by a Subcontractor, the Contractor shall obtain Agency approval of Subcontractor and Subcontractor's insurance coverage(s), as required by 00180.21, prior to commencement of Subcontracted work. After the Contractor receives Agency approval of the Subcontractor, the Contractor may contractually obligate the Subcontractor to obtain and maintain, at the Subcontractor's expense or at the Contractor's expense, the insurance permitted.

The Contractor shall require that all Subcontractors carry insurance coverage that the Contractor deems appropriate based on the risks of the subcontracted work. The Contractor shall obtain proof of the required insurance coverages, as applicable, from any Subcontractor providing Services related to the Contract.

Neither the insurance provided by Subcontractor(s) nor any agreements Contractor or Subcontractor(s) may enter into shall place any limitation on the liability or indemnification obligations of the Contractor under applicable law or the Contract.

Insurance Provisions - The Contractor and Subcontractor(s), if any, shall obtain insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State and that are acceptable to the Agency. Insurance coverage shall be primary and noncontributory with any other insurance and self-insurance, with the exception of Workers' Compensation. The Contractor, or appropriate Subcontractor, but not the Agency, shall pay for all deductibles, self-insurance retentions and self-insurance, if any.

- **Commercial General Liability** - The Contractor shall provide Commercial General Liability Insurance written on an occurrence basis and covering the Contractor's liability for bodily injury and property damage. This insurance shall include personal and advertising injury liability, products and completed operations coverage, and contractual liability coverage. Coverage may be written in combination with Commercial Automobile Liability Insurance with separate limits for Commercial General Liability and Commercial Automobile Liability. Combined single limit per occurrence shall not be less than the dollar amount specified in the Contract. The annual aggregate limit shall not be less than the

dollar amount specified in the Contract. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

When Work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy.

- **Commercial Automobile Liability** - The Contractor shall provide, Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount specified in the Contract. 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.

(Include the following pollution liability bullet when it is required by the insurance risk assessment ~~summary~~, otherwise delete it.)

- **Pollution Liability** - The Contractor or Subcontractor, whichever is performing the pollution related Work, shall provide Pollution Liability Insurance written on an occurrence or claims made basis and covering the Contractor's or Subcontractor's liability, for bodily injury, property damage, and environmental damage resulting from sudden, accidental , and gradual pollution, and related cleanup costs. 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 specified in the Contract. The annual aggregate limit shall not be less than the dollar amount specified in the Contract. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

(Include the following asbestos liability bullet when it is required by the insurance risk assessment ~~summary~~, otherwise delete it.)

- **Asbestos Liability** - The Contractor or, Subcontractor, whichever is performing asbestos related Work, shall provide the Pollution Liability coverage with an Asbestos Liability endorsement. 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.

(Include the following lead liability bullet when it is required by the insurance risk assessment ~~summary~~, otherwise delete it.)

- **Lead Liability** - The Contractor or Subcontractor, whichever is performing lead related Work, shall provide the Pollution Liability coverage with a Lead Liability endorsement. 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.

(Include the following commercial automobile liability with pollution coverage bullet when it is required by the insurance risk assessment ~~summary~~, otherwise delete it.)

- **Commercial Automobile Liability with Pollution Coverage** - The Contractor or Subcontractor, whichever is performing the pollution related Work shall provide Commercial Automobile Liability Insurance with Pollution coverage covering the Contractor's or Subcontractor's liability for bodily injury, property damage, natural resource damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. Combined single limit per occurrence shall not be less than the dollar amount specified in 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 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.

(Complete the following subsection .70(a) based on the insurance 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)***

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

Insurance Coverages	Combined Single Limit per Occurrence	Annual Aggregate Limit

(Fill in the blanks with the dollar amounts from the insurance risk assessment ~~summary~~.)

Commercial General Liability	$_____	$_____
Commercial Automobile Liability	$_____	(aggregate limit not required)

(Include the following pollution liability item and fill in the blanks with the dollar amounts from the insurance risk assessment only when it is required by the insurance risk assessment ~~summary~~, otherwise delete it.)

Pollution Liability $_____ $_____

(Include one or both of the following bullets only when they are required by the insurance 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 and fill in the blank with the dollar amount from the insurance risk assessment only when it is required by the insurance risk assessment ~~summary~~, otherwise delete it.)

Commercial Automobile Liability
with Pollution Coverage $_____ (aggregate limit not required)

(Use the following [Marine Insurance] when watercraft are required or when watercraft might be used by the Contractor or any Subcontractor, otherwise delete it.)

[Begin Marine Insurance]

- **Watercraft** - When the Work to be performed entails the use of watercraft, including but not limited to barges, tug boats, work boats, and supply boats, the Contractor or Subcontractor, whichever is providing watercraft related Work, shall provide the following insurance:

(Fill in the blank with the dollar amount from the insurance risk assessment ~~summary~~, or as provided by the Procurement Office Risk and Compliance Analyst.)

  - **Marine Liability Insurance** - For the performance of the Work that requires the use of any watercraft, whether owned, non-owned, leased, rented, or chartered by Contractor or any Subcontractors, Marine Liability insurance with a minimum limit of $_____ per occurrence for bodily injury and property damage is required. Such insurance shall also include coverage for collision liability, tower's liability, marine contractual liability, wreck/debris removal, and liability for seepage, pollution, containment and cleanup.

  - **Hull and Machinery Insurance** - Including collision liability, with sister-ship clause un-amended, with limits of liability at least equal to the full value of all vessels used in connection with performance of the Work required under this Contract and with navigational limitations adequate for the Contractor to perform the specified Work. Where vessels engage in towing operations, said insurance shall include full towers' liability with the sister-ship clause un-amended.

(Fill in the blank with the dollar amount from the insurance risk assessment ~~summary~~, or as provided by the Procurement Office Risk and Compliance Analyst.)

- **Protection and Indemnity Insurance** - To be evidenced through a full entry with a Group P&I Club, including collision liability, towers' liability, marine contractual liability, tankermans' liability, and specialist operations. Alternatively, if a full entry in a Group P&I Club is not available or applicable, Protection and Indemnity Insurance coverage shall be evidenced on the SP-23 form or equivalent, including, by endorsement or otherwise, collision liability, tower's liability, specialist operations, and liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, with a minimum limit of liability of $_____.

(Fill in the blank with the dollar amount from the insurance risk assessment ~~summary~~, or as provided by the Procurement Office Risk and Compliance Analyst.)

- **Pollution Liability Insurance** - With a minimum limit of $_____, if pollution coverage is provided outside of a P&I Club entry or outside of Protection and Indemnity Insurance coverage evidenced on the SP-23 form or equivalent. Pollution liability coverage shall cover bodily injury, property damage, including cleanup costs and defense costs resulting from sudden and gradual pollution conditions of contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water.

With respect to the aforementioned Hull & Machinery Insurance, Protection and Indemnity Insurance and Pollution Insurance, the policy or policies shall be endorsed as follows:

- Other than owner provisions of all policies shall be deleted with respect to the naming of Company as an Additional Assured/Insured;
- Delete any as owner clause and any other language, which limits or purports to limit the coverage afforded to an insured or an additional insured who is not a ship-owner, with coverage to be afforded to all additional insureds in any capacity in which they may be held liable; and
- Operator warrants that COFR's are on file with the U.S. Coast Guard as per Federal requirements.

If Subcontractor(s) are utilized to perform any Work that requires the use of watercraft under the Contract, all such Subcontractor(s) shall maintain insurance including limits, coverages, terms and conditions as required herein unless said Subcontractor(s) are insured by Contractor. Where Contractor provides coverage for a Subcontractor, the Contractor shall issue a Certificate of Insurance, along with related endorsement(s) required to effect coverage, evidencing Subcontractor's "Additional Insured/Assured" status under Contractor's coverage.

An Excess Marine Liability insurance policy may be used to meet the required limits of insurance. The Excess Marine liability insurance underwritten on not less than a following form basis including Protection and Indemnity, Excess Tower's, Excess Collision and Excess Pollution Insurance.

ORS 15.320 provides that Oregon law applies to the Contract. The parties also agree that Oregon law applies to the Contract, even if ORS 15.320 is determined to be inapplicable or invalid.

[End Marine Insurance]

(b) Extended Reporting - If any of the required insurance is permitted to be and is on a "claims made" basis, the Contractor or Subcontractor who provided the insurance coverage, shall obtain an extended reporting period on the claims made policy or maintain the claims made policy, for a duration of at least 24 months from the date the applicable work has been completed and accepted by the Agency or the date of Final Acceptance. This extended reporting requirement shall be satisfied with documentation of one of the following:

- Extended Reporting Endorsement;
- Tail Coverage; or
- Maintaining the applicable continuous claims made policy with liability coverage.

The Contractor or Subcontractor shall furnish certification of this extended reporting requirement as a condition to receive Third Notice under 00150.90(b) and 00180.50(g).

(c) Excess/Umbrella Liability - A combination of primary and Excess/Umbrella Insurance may be used to meet the required limits of insurance. Excess/Umbrella coverage must be at least as broad as that provided by the underlying primary insurance policies. In addition, the limits of the underlying primary insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage provided by the Excess/Umbrella Liability policy.

(d) Additional Insured - The liability insurance coverages of 00170.70(a) shall include an Additional Insured Endorsement specifying the "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents, 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 the Contractor and its officers and employees as Additional Insureds.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Agency.

(Use the following subsection .70(d) when project management or inspection duties ~~is~~ are performed by other than ODOT forces. Fill in the blanks. Delete "(s)" or parentheses as applicable.)

Add the following as Additional Insureds under the Contract:

(Use the following two bullets on a local agency projects when the city will be performing project management or inspection duties on the project site.)

- The City of _____ and its officers, agents, and employees
- _____ City Council

(Use the following two bullets on a local agency project when the county will be performing project management or inspection duties on the project site.)

- _____ County and its officers, agents, and employees
- _____ County Board of Commissioners

(Use the following bullet when a consultant will be performing project management or inspection duties on the project site.

- _____(Consultant)_____

(Use the following bullet when a sub-consultant will be performing project management or inspection duties on the project site.

- _____(Sub-consultant)_____

(e) Workers' Compensation - All employers, including the Contractor and Subcontractor(s), if any, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage, unless such employers meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than $500,000 each accident.

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 require and verify that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

All employers, including the Contractor and Subcontractor(s), if any, exempt under ORS 656.126(2) and subject to any other state's Workers' Compensation law, shall provide Workers' Compensation Insurance coverage as required by applicable Workers' Compensation laws. The coverage shall also include Employer's Liability Insurance with limits not less than $500,000 each accident.

If the Contractor's and Subcontractor's, if any, operations include use of watercraft on navigable waters and employ persons in applicable positions, a Maritime Coverage Endorsement must be added to the Workers' Compensation policy, unless coverage for captain and crew is provided in a Protection and Indemnity policy.

If the Contractor and Subcontractor, if any, conducts its operations in proximity to navigable waters and employ persons in applicable positions, United States Longshore and Harbor Workers' Compensation Act coverage must be endorsed onto the Workers' Compensation policy.

The Contractor shall require compliance with these requirements in all Subcontractor contracts.

(f) Notice of Cancellation or Change - The Contractor shall provide at least 30 Days' written notice to the Agency before cancellation of, material change to, potential exhaustion of aggregate limits, or non-renewal of the required insurance coverages. If a Subcontractor is providing insurance to meet the contract requirements, the Contractor

shall provide at least 30 Days' written notice to the Agency before cancellation of, material change to, potential exhaustion of aggregate limits, or non-renewal of the required insurance coverage(s). Any failure to comply with the reporting provisions of this insurance shall not affect the coverage(s) provided to the State, Agency, County, City, or other applicable political jurisdiction or to the Agency's governing body, board, or Commission and its members, and the Agency's officers, agents, and employees.

(g) Certificate(s) of Insurance - As evidence of the insurance coverages required by the 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 the 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) shall:

- List the "State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees" as a Certificate holder and as an endorsed Additional Insured;
- Include all required endorsements or copies of the applicable policy language effecting coverage required by the Contract;
- Specify that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation;
- Include a list of all policies that fall under the Excess/Umbrella Insurance if Excess or Umbrella Insurance is used to meet the minimum insurance requirement.

(h) Agency Acceptance - All insurance and insurance providers are subject to Agency acceptance. If requested by Agency, the Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required by the Contract.

(i) Insurance Requirement Review - The Contractor agrees to periodic review of insurance requirements by Agency under the Contract and to provide updated requirements as mutually agreed upon by the Contractor and Agency.

(Include the following builder's risk when it is required by the insurance risk assessment or the Procurement Office Risk and Compliance Analyst, otherwise delete it.)~~(Use the following subsection .70(j) 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 structure's estimated market value or complete replacement cost in the blank. Use the second sentence, when ODOT is not the owner of the structure and fill in the blank with the structure owner. Except for the structure owner, do not make any additions to this sentence. If ODOT is the owner of the structure, delete the second sentence. If builders' risk is not required, delete subsection (j).)~~

00170.70(j) Builder's Risk - The Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builder's 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 below. The policy shall not contain a coinsurance clause or any collapse exclusions. 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 State of Oregon as loss payee.

(Fill in the blank with the dollar amount from the insurance risk assessment, or as provided by the Procurement Office Risk and Compliance Analyst.)

Provide Builder's Risk insurance for an amount equal to at least $_____.

(Use this second sentence, when ODOT is not the owner of the building or Structure and fill in the blank with the owner. Except for the owner, do not make any additions to this sentence. If ODOT is the owner of the Structure, delete this second sentence.)

The policy shall include as loss payee, the Agency and _____(County or City Owner of Building)_____.

(Include the following builder's risk installation floater when it is required by the insurance risk assessment or the Procurement Office Risk and Compliance Analyst.)~~(Use whenever a building(s) is being constructed, repaired, or remodeled and there will be more than $10,000 in building materials and supplies at a storage location, in transit, or during the installation and testing process that are intended to become a permanent part of the building. Installation floaters are generally associated with such property as plumbing, heating, cooling, and electrical systems but can be used to insure any property being installed. Carpeting, tile, windows, elevators, and machinery are examples of property that can be covered.)~~

00170.70(k) Builder's Risk Installation Floater - The Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builder's Risk Installation Floater Insurance covering the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the contractor´s labor, equipment, materials, or fixtures to be installed, in-transit, or stored off-site during the performance of the Contract. This insurance shall include as loss payees the State of Oregon, the Owner, the Contractor and Subcontractors as their interests may appear.

00170.71 Independent Contractor Status - Replace this subsection, except for the subsection number and title, with the following:

The service or services to be rendered and the Work to be completed under this Contract are those of an independent contractor as defined in ORS 670.600. The Contractor is not an officer, employee, or agent of the Agency or the State as those terms are used in ORS 30.265.

(Use the following subsection .72 only when project management is performed by other than ODOT forces. Fill in the blanks. Delete "(s)" or parentheses as applicable.)

00170.72 Indemnity/Hold Harmless - Add the following paragraph and bullet*(s)* to the end of this subsection:

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

(Use the following two bullets on a local agency projects when the city will be performing project management or inspection duties on the project site.)

- The City of _____ and its officers, agents, and employees
- _____ City Council

(Use the following two bullets on a local agency project when the county will be performing project management or inspection duties on the project site.)

- _____ County and its officers, agents, and employees
- _____ County Board of Commissioners

(Use the following bullet when a consultant will be performing project management or inspection duties on the project site.

- _____(Include on the Project site Consultant only)_____

(Use the following bullet when a sub-consultant will be performing project management or inspection duties on the project site.

- _____(Sub-consultant)_____

00170.78 Conflict of Interest - Replace the paragraph that begins " The Contractor shall also be …" with the following paragraph:

The Contractor shall also be and remain in compliance with the Agency's Conflict of Interest Guidelines. (See 00120.40(g) and 00180.21(b).)

00170.80(c) Responsibility for Damage to Work Caused by Public Traffic - Replace the sentence that begins "The Contractor may apply for relief of responsibility…" with the following sentence:

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, courier, scanned and submitted via email, or other agreed-upon method.

00170.89(b) Restoration of Roadway after Repair Work - Replace the paragraph that begins " The Contractor shall restore the Roadway …" with the following paragraph:

The Contractor shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Engineer, at no additional cost to the Agency.