SECTION 00170 - LEGAL RELATIONS AND RESPONSIBILITIES

(Follow all instructions and make all edits with "Track Changes" turned on. If there are no instructions [purple text] above a subsection, paragraph, sentence, or bullet, then include it in the Project. Delete all purple text before preparing the final document. All other modifications to this Section will require State Specifications Engineer approval and the State Specifications Engineer will obtain approval from the Department of Justice.)

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. Obtain information from ODOT's State Utility and Railroad Liaison. Use of this subsection requires SP00058-RRS, SP00060-RR-BNSF, SP00061-RR-CBRL, SP00062-RR-CORP, SP00063-RR-EOR, SP00064-RR-CORP-CROE, SP00065-RR-PNWR-CROE, SP00066-RR-PNWR, ~~or~~ SP00068-RR-UPRR, or SP00069-RR-UPRR_End.)***

Add the following subsection:

00170.01(e) Railroads -

> ***(Use the following language on Projects that does not have an agreement in place. Contact the ODOT State Utility and Railroad Liaison.)***

An agreement between the Contractor and the Railroad to Work near or 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. 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 near or within the Railroad property or Right-of-Way.

> ***(Use the following paragraph on Projects that ODOT has submitted the initial Contractor Right of Entry or MCL and paid the initial fee to the Railroad. Contact the ODOT State Utility and Railroad Liaison.)***

ODOT has submitted the initial agreement to the Railroad. The Contractor shall sign and send to the Railroad the agreement that is supplied to the Contractor by the Engineer. A sample copy of the agreement is included near the front of this Special Provision booklet. The Railroad agreement and requirements are subject to change by the Railroad. The Contractor shall obtain all necessary agreements (permits and licenses) and pay all additional fees. 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 near or within the Railroad property or Right-of-Way.

(Contact the State Railroad Liaison to complete this subsection.)

The USDOT Number for this Project is ___(enter USDOT No.)___.
Railroad company owning the track: ___(enter railroad company.)___.
Operating Railroad company at track: ___(enter operating railroad company)___.
Railroad MP: ___(enter railroad MP.)___.
Railroad Subdivision: ___(enter railroad subdivision.)___.
City: ___(enter City)___.
County: ___(enter County)___.

(Use the following paragraph when Union Pacific Railroad Company property 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 a third party vendor will be used for flagging. When calculating the number of hours of flagging needed multiply the estimate by 125%.]

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 a third party vendor for flagging. Include SP00068_RR_UPRR or SP00069_RR_UPRR_END and subsections 00223.35, .80(a)(4), & .90 in SP00223. When calculating the number of hours of flagging needed multiply the estimate by 125%.]

The Railroad requires a third-party flagging vendor when Work occurs near or within Railroad property. When Railroad flagger services are required, the Contractor shall provide flagger services from a third-party flagging vendor from Union Pacific's approved third-party list according to 00223.35.

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)____. The Contractor is responsible to pay for all railroad flagger services. Railroad flagger services beyond ____(enter number of hours or days)____ will be at no additional cost to the Agency.

[End 00170.01(e)]

(Use the following lead-in paragraph and subsection .01(f) on Projects with TriMet involvement. Obtain information from ODOT's State Utility and Railroad Liaison. Use of this subsection requires SP00067-TriMET.)

Add the following subsection:

00170.01(f) Transit Railways - The Contractor must obtain required agreements, licenses, and permits and pay all fees (see 00170.02) from the Tri-County Metropolitan Transit District of Oregon (TriMet) to work on and within the Metropolitan Area Express (MAX) right-of-way.

A sample copy of the License Agreement, License application guidelines, License application and MAX Right-of-Way Access Request/Permit, are included near the front of the Special Provision booklet for this Project. The TriMet agreements and associated requirements are subject to change by TriMet. Contractor shall obtain the actual agreements and applications from TriMet.

The Contractor shall obtain a fully executed copy of the required agreements between the Contractor and the TriMet and provide copies to the Engineer before beginning work on or within the MAX right-of-way.

(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 - Replace the paragraph that begins "For purposes of this Subsection, the term …" with the following paragraph:

For purposes of this Subsection, the term "Contractor" includes the Contractor, all Subcontractors, Material Suppliers, and providers of rented operated Equipment (except 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 734-010-0400. 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, and Material Suppliers that provide quotes.

00170.07(a) Records Required - Replace the paragraph that begins "The Contractor shall include in its subcontracts …" with the following paragraph:

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 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 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 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 and Material suppliers that provide Material quotes and Related Entities as defined in OAR 734-010-0400.

00170.08 Electronic Document Management - Replace this subsection with the following subsection:

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

For additional Specifications applicable to AASHTOWare Project™ see 00170.09.

Following Notice to Proceed, the Contractor shall submit all data and documents for this Contract to the Agency in an electronic format using Doc Express®, or using AASHTOWare Project™ for data and documents as specified in 00170.09. 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 data and documents to the Agency using Doc Express® or AASHTOWare Project™, as applicable, for the Contractor and for Subcontractors, Suppliers, vendors and other third parties. Only data and documents submitted by the Contractor to the Agency and recorded in Doc Express® or AASHTOWare Project™, as applicable, as received will be considered valid and received by the Agency.

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

If authorized to do so, Subcontractors, Suppliers, vendors and other third parties may enter data and documents into AASHTOWare Project™, but such data and documents shall not be considered submitted to Agency until the Contractor reviews the data or document and completes the workflow transition to submit the data or document to the Agency within AASHTOWare. Required workflow transitions are defined in the ODOT AASHTOWare Project™ User Guide for Construction Contractors for specific data and documents that are required to be submitted to the Agency. Completion of required workflow transitions by the Contractor will constitute submittal to the Agency. See 00170.09.

Subcontractors, Suppliers, vendors and other third parties shall not be authorized to and shall not enter data or documents into Doc Express®.

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. Instructions for entry and submittal of data and documents using AASHTOWare Project™ are specified in 00170.09.

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 in Doc Express® to Subcontractors, Suppliers, vendors or any other third parties or their respective officers, employees or agents. Additional access requirements and limitations for AASHTOWare Project™ are specified in 00170.09.

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

By submitting data and documents that originate from the Contractor to the Agency using Doc Express® or AASHTOWare Project™, as applicable, the Contractor is certifying that the data and documents are true and accurate and that if the data or document was required to be signed, it has been signed by a person with appropriate authority. By submitting data and documents to the Agency using Doc Express® or AASHTOWare Project™, as applicable, that originate from a Subcontractor, Supplier, vendor, manufacturer or other third party, the Contractor is certifying that the data and documents are a true and complete copy of the data and documents the Contractor received, that if the data or 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 data and documents are not true and accurate, are not complete, are not what was required, or were 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, as applicable, 00170.09 and 00199.30.

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

Failure to submit data and documents electronically, as required by 00170.08 and 00170.09, may result in payments being withheld according to 00195.50.

The Contractor shall be responsible for causing access to Doc Express® (or to notify the Agency for AASHTOWare Project™) 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®, or AASHTOWare Project™, or both, for any Entity or individual at any time.

Use and access for Doc Express® and AASHTOWare Project™ are provided "as is". The Agency does not warrant that access to or functioning of Doc Express® or AASHTOWare Project™ will be error free, uninterrupted, or will 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 AASHTOWare Project™ or their 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® or AASHTOWare Project™, or both, without notice, because of maintenance, repair or any other reason deemed necessary for the proper functioning of Doc Express® or AASHTOWare Project™ by the Agency, AASHTO, 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® or AASHTOWare Project™ 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 00170.08 and 00170.09 and to the use of Doc Express® and AASHTOWare Project™ 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® and AASHTOWare Project™.

The terms, conditions and requirements of 00170.08, 00170.09, and 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® or AASHTOWare Project™ 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® or AASHTOWare Project™, or both, as applicable, to comply with 00170.08, 00170.09, and the following 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®, AASHTOWare Project™, or both, I agree to the following, all as may be revised from time to time:

- The terms, conditions and requirements of 00170.08;
- The terms, conditions and requirements of 00170.09;
- 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 AASHTOWare Project™ Privacy Policy and Terms of Use and the Digital Millennium Copyright Act (DMCA) Policy, accessible from the AASHTOWare Project™ registration site;
- The ODOT Doc Express® User Guide for Construction Contractors available from the Engineer;
- The AASHTOWare Project™ Directory available from the Engineer;
- The ODOT AASHTOWare Project™ 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® or AASHTOWare Project™, or both, as applicable, 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® or AASHTOWare Project™, 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® or AASHTOWare Project™, 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® or AASHTOWare Project™, 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, data or documents I am not authorized to use or access and I will not browse or otherwise use or access information, data or documents that exceed the minimum necessary to perform my duties.

If my authorized use of and access to Doc Express® or AASHTOWare Project™ includes entering data and documents (or "read-write" access) into Doc Express® or AASHTOWare Project™, I will not enter any data or documents into Doc Express® or AASHTOWare Project™ except those I am authorized to enter (or in the case of the Contractor, to enter or submit, or both) and are 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® or AASHTOWare Project™, respecting any data or documents, including but not limited to Confidential Information of any individual or Entity. For audit or system security purposes, ODOT may monitor and record all activity conducted within Doc Express® and AASHTOWare Project™. This includes but is not limited to the login identification information, times, dates and duration of access, as well as resources, data, or documents accessed.

Unauthorized access or activities that could compromise the systems or Confidential Information are strictly prohibited and patterns of unauthorized or unusual activity may 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 may result in my access being immediately disabled.

I understand that my use of and access to Doc Express® or AASHTOWare Project™, or both, as applicable, are 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, my job position or duties no longer require my access to Doc Express® or AASHTOWare Project™, or my employer no longer has such relationship, I will immediately cease my use of and access to Doc Express® and AASHTOWare Project™ and will immediately notify my employer for purposes of notification to the Contractor and the Contractor's notification to ODOT.

(b) Electronic Submittal Requirements - Unless otherwise allowed or directed by the Engineer, all data and documents submitted to the Agency for this Contract that require a signature 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;
- A Doc Express® electronic signature when prompted during submission of the document into Doc Express®; or
- An AASHTOWare Project™ electronic signature when prompted during entry or submission of the data or document into AASHTOWare Project™.

Data and documents that require a signature, but do not have a signature according to 00170.08 or 00170.09, or 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 data or documents with compliant signatures have been received by the Engineer.

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

Add the following subsection:

00170.09 AASHTOWare Project™ - The requirements of this Subsection do not apply to claims. Claims must be submitted on paper documents according to Section 00199.

This subsection applies to data and documents identified in the AASHTOWare Project™ Directory (AWD), as data or documents to be managed in AASHTOWare Project™, as may be revised from time to time. The AWD is available from the Engineer and can be downloaded from the Agency's AASHTOWare Project™ website (see 00110.05(e)).

Following Notice to Proceed, the Contractor, Subcontractors, Suppliers, vendors, and any other third parties, shall use AASHTOWare Project™ to enter certain data and upload certain documents, as identified in the AWD, for submittal by the Contractor to the Agency. The Agency will use AASHTOWare Project™ to submit or make available certain data and documents, as identified in the AWD, to the Contractor.

The Contractor, Subcontractors, Suppliers, vendors, and any other third parties authorized to enter data and documents into AASHTOWare Project™, shall comply with naming

conventions, processes and other AASHTOWare Project™ instructions as specified in the ODOT AASHTOWare Project™ User Guide for Construction Contractors, as may be revised from time to time and available from the Engineer.

Data and documents that are required to be submitted to the Agency using AASHTOWare Project™ are identified in the AWD. Data and documents identified in the AWD to be submitted using AASHTOWare Project™ that are not submitted as required will be considered as not received and of no effect.

Data or documents that are not identified in the AWD as required to be submitted using AASHTOWare Project™ shall be submitted according to 00170.08 using DocExpress®, unless otherwise specified, allowed or directed by the Engineer.

The Contractor shall coordinate and identify to the Engineer the Subcontractors, Suppliers, vendors, and any other third parties requiring access to AASHTOWare Project™ to enter or access data or documents. Once identified, the Agency will work with Subcontractors, Suppliers, vendors and third parties for access rights in AASHTOWare Project™ per the AWD.

See also 00170.08, including but not limited to user terms and conditions and signature requirements which also apply to AASHTOWare Project™.

00170.10(g) Paid Summary Report – Replace this subsection, except for the subsection number and title, with the following:

The Contractor shall submit a *Paid Summary Report* to the Engineer certifying payments made to all of its Subcontractors.

The *Paid Summary Report* shall be completed on the form provided by the Engineer and submitted to the Engineer within 20 Calendar Days of receipt of payment from the Agency for each month in which payments were made to each Subcontractor.

At the completion of the Project, submit a final *Paid Summary Report* form that provides the total amounts paid to each Subcontractor.

The Contractor shall require each Subcontractor at every tier to comply with the requirement to submit a *Paid Summary Report* within 20 Calendar Days of receipt of payment for Work on the Project and submit a final *Paid Summary Report* that provides the total amounts paid to the Subcontractor for its Work under the subcontract at the completion of the Project or completion of its Work.

00170.20 Public Works Bond – Delete this subsection.

00170.61(a) Workers' Compensation - Replace this subsection with the following subsection:

00170.61(a) Workers' Compensation and Employer's Liability - The Contractor shall provide workers' compensation and employer's liability coverage for on-the-job injuries as required by 00170.70(e).

00170.65 Minimum Wage and Overtime Rates for Public Works Projects – Replace this subsection with the following subsection:

00170.65 Requirements for Public Works Projects:

(a) General - The provisions of ORS 279C.800 through ORS 279C.875 and OAR 839-25 are applicable to this Public Works Project ("Prevailing Wage Rate Provisions"). The Contractor, a Subcontractor or other person or Entity Contractor uses in performing all or part of the Contract who are required to comply with the Prevailing Wage Rate Provisions are collectively referred to as "Covered Employers" for the purposes of 00170.65. Covered Employers include employers of workers described in 00170.65(c)(1). "Covered Occupation" as used in 00170.65, refers to each occupation defined in the applicable Oregon Bureau of Labor and Industry ("BOLI") publication titled *Definitions of Covered Occupations for Public Works Contracts in Oregon*.

As required by ORS 279C.520, the Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of the 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. The 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.

(b) Public Works Bond - Before starting Work, Covered Employers 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(2) and ORS 279C.836. The Contractor shall verify each Covered Employer has filed a public works bond before that employer begins work.

(c) Prevailing Wage Requirements - Each Covered Employer must pay its workers on the Project in each Covered Occupation not less than the prevailing rate of wage for each Covered Occupation as set by BOLI in the applicable version of its publication entitled Prevailing Wage Rates for Public Works Contracts.

If the Class of Project is Federal-aid, each Covered Employer must pay its workers on the Project in each Covered Occupation not less than the applicable BOLI prevailing wage rate or the federal prevailing wage rate required under the Davis Bacon Act (40 U.S.C. 3141 et seq.), whichever is higher.

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.

The applicable Project Wage Rates and *Definitions of Covered Occupations for Public Works Contracts in Oregon* are included in the Special Provisions.

(1) Satellite Location Bespoke Work Subject to ORS 279C.800(G) - As required in ORS 279C.800(G) and OAR 839-025-0800, Covered Employers include employers of workers performing bespoke work at satellite locations when the applicable version of the BOLI publication entitled Prevailing Wage Rates for Public Works Contracts has expressly made a wage rate applicable to the satellite location bespoke work. Contractor must provide the Engineer with written notice of the satellite work that will be performed as part of its Consent to Subcontract. If the Covered Employer is not a Subcontractor, Contractor must provide the Engineer with a copy of its agreement with that Covered Employer prior to that Covered Employer performing any Work on the Project. The agreement must meet the requirements of 00170.65(f).

(2) Payroll and Certified Statements - As required in ORS 279C.845, every Covered Employer shall submit written certified statements to the Engineer on the form prescribed by the Commissioner of BOLI in OAR 839-025-0010 certifying compliance with wage payment requirements and accurately setting out the Contractor's or Subcontractor's weekly payroll records for each worker employed on the Project.

If the Class of Project is Federal-aid, in addition to providing the payroll information and certified statements required under ORS 279C.845, every Covered Employer shall submit written certified statements that also meet the requirements in FHWA Form 1273.

The Covered Employers shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

(3) Retainage for Noncompliance with 279C.845:

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 the Class of Project is Federal-aid. 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 the Class of Project is Federal-aid. 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) Posting Requirements - Every Covered Employer must post the prevailing wage rates and notices in accordance with OAR 839-025-0033.

(d) Overtime Requirements - As a condition of the Contract, the Contractor shall comply with the pertinent provisions of ORS 279C.520 and ORS 279C.540. If the Class of Project is Federal-aid, the Contractor shall comply with the overtime provision affording the greatest compensation required under FHWA Form 1273 and 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).

(e) 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:

- Cause a circular, clearly printed in boldfaced 12-point type and 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 that is readily available and freely visible to any or all workers employed to perform Work; and
- Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

(f) Required Terms for Agreements with Covered Employers - Contractor must have agreements with all Covered Employers. For each Covered Employer that is not a Subcontractor, the Contractor’s agreement must include:

(1) A clause or condition that if the Contractor fails, neglects, or refuses to make payment to the Covered Employer, the Covered Employer may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580.

(2) A provision requiring the Covered Employer to have a public works bond filed with the Construction Contractors Board before starting Work on the Project, unless exempt.

(3) A provision that requires the Covered Employer's workers on the Project to be paid not less than the specified minimum hourly rate of wage.

(4) A provision that requires the Covered Employer to be registered as a vendor in OregonBuys, the on-line electronic Automated Oregon Procurement System administered by the State's Department of Administrative Services; and

(5) A clause that requires the Covered Employer to include (1) – (4) in each of the Covered Employer's agreements with other Covered Employers of Workers on the Project that are also subject to the requirements of ORS 279C.800 through ORS 279C.870.

(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 Transportation Project Manager***
- ***For Consultant designed projects, contact the ODOT Resident Engineer Consultant Projects***
- ***For Local Agency designed projects, contact the ODOT Transportation Project Manager)***

00170.70(a) Insurance Coverages - Replace the paragraph that begins "**Contractor** – The Contractor shall…" with the following paragraph:

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 as required by an extended reporting period or tail coverage requirements, and all warranty periods that apply.

Replace the paragraph that begins "**Insurance Provisions** - The Contractor and Subcontractor(s), if…" with the following paragraph:

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/Employer's Liability. The Contractor, or appropriate Subcontractor, but not the Agency, shall pay for all deductibles, self-insurance retentions and self-insurance, if any.

Replace the paragraph that begins "**Commercial General Liability** - The Contractor shall provide Commercial…" with the following paragraph:

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, property damage, personal and advertising injury, products and completed operations, and contractual liability. 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 Special Provisions. The annual aggregate limit shall not be less than the dollar amount specified in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

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**
(Fill in the blanks with the dollar amounts from the insurance risk assessment.)		
Commercial General Liability	$_____	$_____
Commercial Automobile Liability	$_____	(aggregate limit not required)
(Include the following commercial automobile liability vehicle transportation for pedestrian circulation item only when it is required by the insurance risk assessment, otherwise delete it.)		
Commercial Automobile Liability (pedestrian transport vehicle)	$5,000,000	(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, otherwise delete it.)		
Pollution Liability	$_____	$_____
(Include one or both of the following bullets only when they are required by the insurance risk assessment. 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 blanks with the dollar amount from the insurance risk assessment only when it is required by the insurance risk assessment, otherwise delete it.)		
Commercial Automobile Liability with Pollution Coverage	$_____	(aggregate limit not required)

(Marine Coverage - Include the following marine liability item and fill in the blanks with the dollar amounts from the insurance risk assessment, or as provided by the Procurement Office Risk and Compliance Analyst only when it is required by the insurance risk assessment, otherwise delete it.)

Marine Liability insurance with a minimum limit of $_____ per occurrence for bodily injury and property damage is required.

(Marine Coverage - Include the following protection and indemnity insurance item and fill in the blanks with the dollar amounts from the insurance risk assessment, or as provided by the Procurement Office Risk and Compliance Analyst only when it is required by the insurance risk assessment, otherwise delete it.)

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 $_____.

(Marine Coverage - Include the following pollution liability insurance item and fill in the blanks with the dollar amounts from the insurance risk assessment, or as provided by the Procurement Office Risk and Compliance Analyst only when it is required by the insurance risk assessment, otherwise delete it.)

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.

[End 00170.70(a)]

00170.70(b) Extended Reporting - Replace the paragraph that begins "The Contractor or Subcontractor shall…" with the following paragraph:

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

00170.70(c) Excess/Umbrella Liability - Replace this subsection, except for the subsection number and title, with the following:

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required minimum limits of insurance. If any Excess/Umbrella Liability policies are in place, they must be on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. In addition, the limits of the underlying 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.

00170.70(d) Additional Insured - Replace the paragraph that begins "The liability insurance coverages of 00170.70(a)…" with the following paragraph:

The liability insurance coverages of 00170.70(a) shall include an Additional Insured Endorsement endorsing the "State of Oregon, the Oregon Transportation Commission and the Oregon 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.

(Use the following paragraphs and bullets when Project management or inspection duties are performed by other than ODOT forces. Fill in the blanks. Delete "(s)" or parentheses as applicable. Also use the following subsection for Right-of-Way easement conditions if approved by the State Specifications Engineer.)

Add the following paragraph and bullet*(*s*)* to the end of this subsection:

Add the following as Additional Insureds under the Contract:

(Use the following two bullets on city ODLAP projects or on 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 county ODLAP projects or on 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 is performing project management or inspection duties on the Project Site.)

- _____(Consultant)_____

(Use the following bullet when a sub-consultant is performing project management or inspection duties on the Project Site.)

- _____(Sub-consultant)_____

(Use the following bullet for Right-of-Way easement conditions if approved by the State Specifications Engineer.)

- _____(entity)_____

(Use the following bullet on ODLAP projects for public bodies other than a city or a county.)

- _____(entity)_____

[End 00170.70(d)]

00170.70(e) Workers' Compensation - Replace the title of this subsection with "**Workers' Compensation and Employer's Liability"**

00170.70(g) Certificate(s) of Insurance - Replace the bullet that begins "List the “State of Oregon…" with the following bullet:

- List the “State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation, and their respective officers, members, agents and employees” as a Certificate holder and endorse as an Additional Insured;

Replace the bullet that begins “Specify that all liability insurance …" with the following bullet:

- Specify that all liability insurance coverages shall be primary and noncontributory with any other insurance and self-insurance, with exception of Workers’ Compensation/Employer’s Liability;

Replace the bullet that begins "Include a list of all policies…" with the following bullet:

- Include a list of all policies that fall under the Excess/Umbrella Liability Insurance if Excess or Umbrella Liability Insurance is used to meet the minimum insurance requirements .

00170.70(i) Insurance Requirement Review - Replace this subsection, except for the subsection number and title, with the following:

The Contractor agrees to periodic review of insurance requirements by Agency. Agency reserves the right to periodically assess risks and the adequacy of insurance coverage and in its discretion to require additional insurance coverage or increased coverage limits on existing coverages, or both.

(Use the following subsection .70(j) when Builder’s Risk is required. Fill in the blank with the dollar amount from the insurance risk assessment, or as provided by the Procurement Office Risk and Compliance Analyst.)

00170.70(j) Builder’s Risk – Add the following to the end of this subsection:

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

(Use the following 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 the following sentence.)

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

(Use the following subsection .70(k) when Builder’s Risk installation floater is required. Fill in the blanks with the dollar amounts from the insurance risk assessment, or as provided by the Procurement Office Risk and Compliance Analyst.)

00170.70(k) Builder's Risk Installation Floater - Add the following to the end of this subsection:

Provide Builders' Risk Installation Floater insurance for an amount equal to at least $_____.

(Use the following subsection .72 only when project management is performed by other than ODOT forces. Also use the following subsection for Right-of-Way easement conditions if approved by the State Specifications Engineer. 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 city ODLAP projects or on local agency projects when the city is 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 county ODLAP projects or on local agency projects 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 is 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 is performing project management or inspection duties on the Project Site.)

- _____(Sub-consultant)_____

(Use the following bullet for Right-of-Way easement conditions if approved by the State Specifications Engineer.)

- _____(entity)_____

(Use the following bullet on ODLAP projects for public bodies other than a city or a county.)

- _____(entity)_____