



City Council Meeting Agenda
Tuesday, August 26, 2025
5:30 p.m. – Work Session Meeting
7:00 p.m. – City Council Regular Meeting
REVISED 08/22/2025

Welcome! The public is strongly encouraged to participate remotely but there is seating at Civic Hall for those who are not able to participate remotely. However, if you are not feeling well, please stay home and take care of yourself.

The public is strongly encouraged to relay concerns and comments to the Council in one of four ways:

- Attend in person and fill out a public comment card
- Email at any time up to **noon on Monday, August 25th** to CityRecorderTeam@mcminnvilleoregon.gov
- If appearing via telephone or ZOOM, please sign up prior by **noon on Monday, August 25th** by emailing the City Recorder at CityRecorderTeam@mcminnvilleoregon.gov as the chat function is not available when calling in Zoom; **You will need to provide the City Recorder with your First and Last name, Address, and contact information (email or phone) for a public comment card.**

*You can live broadcast the City Council Meeting on cable channels Xfinity 11 and 331,
Frontier 29 or webstream here:*

mcm11.org/live

CITY COUNCIL WORK SESSION & CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Webinar Meeting:

<https://mcminnvilleoregon.zoom.us/j/83803046663?pwd=jbTLrjwfsEG7IAExSEZwgjeoENU1eP.1>

Or you can call in and listen via Zoom: 1-253- 215- 8782

Webinar ID: 838 0304 6663

5:30 PM – WORK SESSION MEETING – VIA ZOOM AND SEATING AT CIVIC HALL

1. CALL TO ORDER
2. WORK SESSION: FINANCE DEPARTMENT
 - a. FINANCE – INVESTMENTS
 - b. FINANCE – PURCHASING
 - c. FINANCE – OPENBOOK
3. ADJOURNMENT OF WORK SESSION

7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM AND SEATING AT CIVIC HALL

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE

3. INVITATION TO COMMUNITY MEMBERS FOR PUBLIC COMMENT –

The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 4 minutes per person for a total of 32 minutes. The Mayor will read comments emailed to the City Recorder and then call on anyone who has signed up to provide public comment.

4. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports

5. CONSENT AGENDA

- a. Consider **Resolution No. 2025-49**: A Resolution awarding the contract for the Community Center Elevator Modernization, Project 2025-05.
- b. Consider **Resolution No. 2025-50**: A Resolution of the City of McMinnville Authorizing the City Manager to Execute a Personal Services Contract with Erskine Law Practice, LLC, to Provide City Prosecutorial Services.

6. RESOLUTION

- a. Consider **Resolution No. 2025-34**: A Resolution authorizing the City Manager to sign a contract with Sally Swanson Architects in the amount not- to-exceed \$300,000 for the Americans with Disabilities Act (ADA) Transition Plan project. **(Added on 08.22.2025)**

7. ORDINANCES

- a. Consider the first reading with a possible second reading of **Ordinance No. 5163**: An Ordinance Adopting an Update to the McMinnville Municipal Code, Title 11 Airport and Aviation.
- b. Consider the first reading with a possible second reading of **Ordinance No. 5164**: An Ordinance Amending Chapter 2.28 of the McMinnville Municipal Code to Clarify the Airport Commission Powers and Duties, and Association with Airport Tenants.

8. ADJOURNMENT OF REGULAR MEETING

STAFF REPORT

DATE: August 26, 2025
TO: Mayor and City Councilors
FROM: Katie Henry, Finance Director
SUBJECT: Work Session: Finance – Investments

Report in Brief: In this work session we are bringing you the recommendation to pursue a contract with a registered investment advisor in order to update our investment policy and diversify our portfolio.

Background:

The City has not updated its investment policy since the late 80's and is in desperate need of a policy review. In addition to this, the City's financial situation has changed and now includes several long-term projects that require large amounts of money to be set aside for extended periods of time, such as Wastewater Capital funds. Our current policy and procedures are not set up to handle a large volume of funds or investment terms that exceed 18 months. As we are presenting the option of new bonds to voters, additional large influxes of cash will happen if these bonds pass. We will go beyond the limits of what can be invested in LGIP and need to be able to diversify our investments.

We have invited GPA Investment Advisors who I have worked with extensively over the years in several municipalities to give information on the services they provide and how they can be beneficial for the City. Deanne Woodring, the president of the organization, has been working with public entities since 1982, is well respected among local governments and recognized as an authority on investments by the Oregon Government Finance Officers Association, and sits on the board of the Oregon Short Term Funds board.

Documents:

1. Powerpoint: 2025-08-26 Investments Work Session
2. 2025-08-26 Investment Policy 01.01.1989
3. 2025-08-26 GPA Investment Advisory Services Proposal



City of
McMinnville

Our company



Business items



Investments

August 26, 2025

Revised on 08.22.2025
4 of 311

Current situation

- Investment policy was last revised January 1, 1989
- Cites ORS 294.035–294.048, which have been amended multiple times since 1989
- Does NOT take into account ORS 294.135 which means that the maximum maturity for our investments is 18 months.
- Emphasizes cash flow and liquidity over rate of return and long-term growth. This does not maximize citizen contribution to infrastructure through rates.

Recommended changes

- Update investment policy to allow more diversification
- This will require submitting it to the Oregon Short Term Fund Board and reviewing it on a regular basis
- Strongly recommend outside assistance with policy, investment laddering, and reporting
- Expertise in Oregon is held in large part by Government Portfolio Advisors

Please welcome



Deanne Woodring, CFA

Principal

President

Senior Advisor



Frank McDonnell, CFA

Client Advisory Director

Senior Advisor



CITY OF McMINNVILLE
Investment Policy
January 1, 1989

I. Scope

The City of McMinnville investment policy applies to all activities of the City with regard to investing the financial assets of all funds, including the following:

General Fund
Special Revenue Funds
Capital Project Funds
Enterprise Funds
Debt Service Funds
Nonexpendable Trust Funds

II. Objectives

Funds of the City will be invested in accordance with Oregon Revised Statutes 294.035 through 294.048 and administrative policies and procedures interpreting these statutes.

The primary objective of the City of McMinnville's investment policy is the preservation of capital. The secondary objective is for the capital to be readily available when needed. The third objective is rate of return. Thus, when investing City funds, the Finance Director should not assume unreasonable investment risk to obtain a higher investment income.

The City's investment portfolio shall be managed using the following prioritization:

1. Safety of Principal
2. Liquidity Needs
3. Rate of Return (balanced against investment risk)

Safety of capital is accomplished through diversification of investments, diversification of financial institutions, and purchase of high quality market instruments. Liquidity is accomplished by projecting the City's cash flow needs and purchasing investment instruments which coincide with these needs. The portfolio should be managed to achieve at least a comparable rate of return with the Local Government Investment Pool.

III. Delegation of Authority

The Finance Director is designated as the investment portfolio manager. The portfolio manager is responsible to have cash available to meet day-to-day demands and invest all excess funds.

In the absence of, or at the request of the Finance Director, the City Accountant will manage the investment of funds. If both are absent,

Finance Department personnel with the City Manager's signature have the authority to transfer funds between the Local Government Investment Pool and the City's general operating checking account.

IV. Investment Standards

The standard of prudence to be applied by the investment officer shall be the "prudent investor" rule which states, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

V. Internal Controls

The independent auditor of the City of McMinnville, during the annual examination of the City's financial statements, reviews collateralization of the investment portfolio.

The Finance Director is responsible to insure adequate internal controls are in place to affect the intent of the established investment policy.

VI. Diversification

The City will diversify the purchase of investment instruments to avoid incurring unreasonable risk which is inherent in overinvesting in specific investment instruments, individual financial institutions, or particular length maturities.

A. Diversification by Instrument

	<u>Maximum % of Portfolio</u>
U.S. Treasury Obligations (T-bills, notes and bonds)	100%
U.S. Government Agency Securities	100%
Examples:	
Federal Home Loan Mortgage Corporation	
Student Loan Marketing Association	
Federal National Mortgage Association	
Federal Home Loan Bank System	
Federal Farm Credit Bank System	
Repurchase Agreements (Repos)	100%
Local Government Investment Pool	100%
Banker's Acceptances (BAs)	50%
Certificates of Deposits (CDs)	50%
Commercial Paper	25%
Oregon Corporation (Rated Moody's A-2/Standard and Poor's P-2 or better)	
U.S. Corporation (Rated Moody's A-1/Standard and Poor's P-1 or better)	

B. Diversification by Financial Institution

	<u>Maximum % of Portfolio In One Institution</u>
Banker's Acceptances (BAs)	50%
Repurchase Agreements (Repos)	50%
Certificate of Deposit (CDs)	25%
Commercial Paper	10%

C. Maturity Scheduling

Investment maturities for operating funds shall be scheduled to coincide with projected cash flow needs, taking into account large routine expenditures (payroll, bond payments, accounts payable) as well as considering sizeable blocks of anticipated revenues (tax turnovers, franchise fees, etc.).

Maturities will be timed to comply with the following guidelines:

	<u>Minimum % of Portfolio</u>
Under 30 days	10%
Under 90 days	25%
Under 180 days	50%
Under one year	100%

VII. Method of Selection of Investments

The primary depository for all City surplus funds not needed in the general operating checking account will be the Local Government Investment Pool.

Investment purchases made for other investment instruments should be documented with quote information to include the following:

Date
Financial Institution
Type of Investment Instrument
Rate of Return
Maturity Length
Discounted Cost
Maturity Value

VIII. Qualified Institutions

The Finance Director shall maintain a listing of financial institutions which are approved for investment purposes. Banks, other financial institutions, and securities dealers shall provide their annual financial report to the City. At a minimum, the Finance Director shall conduct an annual evaluation of each institution's credit worthiness to determine whether it should be listed on the Qualified Institutions List.

Securities dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank as primary dealers.

IX. Safekeeping and Collateralization

All investment securities (U.S. Treasury Obligations, U.S. Government Securities, Banker's Acceptances, and Commercial Paper) purchased by the City shall be held in a safekeeping account. The financial institution shall issue a safekeeping receipt to the City listing the specific instrument, note, maturity, and other pertinent information.

The specific governmental security or instrument acquired through a Repurchase Agreement will be recorded at the issuing financial institution in the City of McMinnville's name.

Deposit-type securities (i.e, certificates of deposit) shall be collateralized through the state collateral pool as required by ORS for any amount exceeding FDIC or FSLIC coverage. The time certificates of deposit will be held in the City of McMinnville vault.

X. Accounting Method

Investments will be accounted for at cost. Gains or losses on investments will be credited or charged to interest income at the time of maturity or sale. Premiums or discounts on security purchases will be amortized over the life of the securities.

XI. Reporting Requirement

The Finance Director will provide the City Council with a monthly Cash and Investment Report. This report will list both accounting fund designation and portfolio investment instrument information.



City of McMinnville

Investment Advisor Services

June 24, 2025



Deanne Woodring, CFA
President / Senior Advisor
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GOVERNMENT PORTFOLIO ADVISORS

Firm Highlights

- ✓ National leader in providing non-discretionary services to public entities, based on ADV Regulatory Assets Under Management.
- ✓ Focused on working with customized dedicated portfolios and strategies to meet liquidity and optimize earnings.
- ✓ We partner with clients in a collaborative relationship that leverages their institutional knowledge and expertise to shape and strengthen the investment strategy.
- ✓ Portland, Oregon based company with over \$27 billion in assets under management as of March 31, 2025, exclusively for public entity separately managed accounts.
- ✓ Oregon experience in managing over \$9 billion in assets for 32 Oregon clients, of which 12 are cities.

Portfolio Management Philosophy

- GPA will work with the Finance Director to establish a best-in-class investment program that is transparent, accountability and measurable.
- We will provide dynamic reporting that is accessible to all participants.
- Our process starts with understanding the Finance Director's needs and goals.
- Assist clients to build a long-term investment portfolio.

Team of Advisors

Deanne Woodring, CFA – Founder, President

- 40-year veteran in public fund fixed-income portfolio management
- Served two six-year terms on the GFOA Treasury and Management Committee
- GPA was founded to support public funds.

Frank McDonnell, CFA – Director of Advisory Services

- 8-year veteran fixed-income portfolio management
- Experienced fixed-income portfolio manager, previously for Deutsche Bank NY

Mitch Henke – Principal, Chief Operating & Compliance Officer

- 15-year veteran investment advisor, operations and management
- Prior to joining GPA, helped build the European Advisory group for the largest private RIA in the Pacific Northwest

Mike Clark, Managing Director – Advisor/Trading

- 25-year veteran in trading fixed income securities
- Active in implementing strategic plans and cash flow management

SUMMARY OF OUR ROLE

GPA's role as investment advisor is to work together with the City's internal staff to provide guidance for investment portfolio strategy, to develop procedural efficiencies and to support all requirements necessary to achieve a best practice investment program.

We will utilize our extensive experience and market contacts to help you create a customized investment management process while saving you time and increasing investment earnings. This process will enhance internal communication, define distinct actions, provide for full transparency, establish a complete reporting capability, and help you produce returns consistent with your expectations given your levels of risk/return tolerance.

The foundation of our services includes the following components: 1) utilizing benchmarks to measure the performance of investment portfolios, 2) applying a risk tolerance and return expectation analysis to structure the investment portfolio, 3) providing due diligence and portfolio reporting, 4) execution of all transactions and management of settlements, 5) providing investment policy updates and custodial reviews, and 6) meeting with the City as necessary.

GPA offers five primary areas of significant value:

1. *Investment policy and procedure development updates:* We specialize in helping public entities craft and modernize investment policies that align with regulatory standards and best practices. Our team also supports the development of operational procedures that strengthen communication, strategic alignment, and program execution.
2. *Benchmarking strategies:* Our advisory approach is grounded in customized portfolio benchmarking techniques that deliver measurable value. We collaborate with clients to design internal benchmarks tailored to each fund's specific goals and constraints.
3. *Increasing investment earnings:* Our disciplined portfolio management process has consistently improved investment earnings for clients by aligning risk and return with each entity's objectives and constraints—across a wide range of market conditions.
4. *Broker/Dealer experience:* We maintain strong relationships with top-tier broker/dealers and leverage a competitive pricing platform to ensure transparency and cost efficiency on every trade.
5. *Education and development:* Our Senior Advisors are experienced educators, offering tailored sessions for staff, investment committees, and boards to deepen understanding of market dynamics and investment strategies.

OREGON EXPERTISE

GPA is focused exclusively on providing investment management services for operating, project, and reserve funds for public entities. Our team of senior advisors has over 100 years of collective experience developing and implementing fixed-income portfolio strategies for public entities. As of March 31, 2025, we proudly provide advisory services to 67 public fund clients, managing over \$28.2 billion in assets and consulting to 5 clients responsible for over \$21 billion in assets. Of those clients, 32 are Oregon public fund clients with assets under management of over \$9.0 billion.

GPA currently serves as investment advisor to the following Oregon entities:

Oregon Public Fund Accounts

City – 12

City of Albany
City of Bend
City of Corvallis
City of Forest Grove
City of Grants Pass
City of Gresham
City of Happy Valley
City of Hillsboro
City of Oregon City
City of Sweet Home
City of Tualatin
City of West Linn

County – 9

Crook County
Jefferson County
Klamath County
Lake County
Lane County
Marion County
Morrow County
Multnomah County
Washington County

Special District - 6

Clean Water Services
Medford Water Commission
METRO
Oregon State Bar
Tualatin Hills Park & Recreation District
Tualatin Valley Water District

School Districts & Higher Education - 5

Eugene School District
Hillsboro School District
Lake Oswego School District
Tigard-Tualatin School District
Portland Community College

Our focus with these accounts is to provide an investment management process that is designed to meet the objectives of safety, liquidity, and return. We are experienced with creating clear lines of communication regarding the investment portfolio. We understand that the finance team has many roles and utilizing our services allows the City to retain full control while outsourcing the time-consuming tasks of managing a portfolio.

MCMINNVILLE SCOPE OF SERVICE

Phase 1

Expected timeline – first year of service.

- Comprehensive review of the City's current investment policy.
- Collaboration with City staff to update the policy in alignment with Oregon Short Term Fund Board (OSTFB) guidance and best practices.
- Assistance in preparing the policy for submission to the OSTFB for review in accordance with ORS requirements.
- Support for the Finance Director in presenting the updated policy to City Council for adoption following OSTFB review.
- Analysis of the City's historical fund balances, including a detailed cash flow analysis to inform the rollout of the investment program.
- Upon policy adoption, implementation of the full scope of work for the initial core investment portfolio of \$10-15 million, including:
 - Benchmark selection,
 - Customized strategy development,
 - Assistance with custodial bank review and selection,
 - Transaction services and related support.

Phase 2

Expected timeline - second year of service and beyond.

- Provide full-time advisory services for the City's core and liquidity funds and bond proceeds.
- Assist with the annual investment policy review and update.
- Structure an investment portfolio with securities that are compliant with the City's investment policy.
- Assist in the development and implementation of a risk-controlled strategy designed to enhance portfolio performance while specifically addressing the objectives and constraints for each fund balance.
- Assist in evaluating cash-flow expectations and incorporating into the overall investment strategy for the operating funds held at the LGIP.
- Establish optimal liquidity and core investment portfolio sizes and allocate accordingly.
- Assist in effecting and managing investment transactions. The advisor will provide disclosure to the City regarding each transaction that identifies the dealers contacted and the prices offered by each. The advisor may open accounts on behalf of the City directly with its approved broker/dealer list. The advisor agrees to monitor all settlements for delivery versus payment transactions with the City between the custodial bank and the dealers.

- Maintain a list of all authorized broker/dealers which are approved by the advisor and/or the City for investment purposes.
- Provide technical support in analyzing portfolio information.
- Provide reports for the City, which include descriptions of each security with book and market value, interest earnings, amortization, and transactions. Reports will be provided on a monthly, quarterly and fiscal year-end basis. Includes access to GPA's web-based Client Portal for designated City staff.
- Provide presentations to the oversight body as requested.

Implement full scope of services for general operating funds investment program – optimize portfolio by increasing allocation of Core investments vs. liquidity. May also include management of bond proceeds should the City issue bonds.

FEE PROPOSAL

Fees Phase 1 – Year 1

For the first year of service, GPA will charge a flat fee of \$15,000. This includes the services summarized in McMinnville Scope of Service Phase 1.

Fees Phase 2 – Year 2 and beyond

GPA's fees for phase 2 are based on assets under management. GPA's standard pricing scale is included below. The fee will be calculated utilizing the GPA reporting system and will be based on the month-end market value (including accrued) of investments, LGIP, and bank balances.

Assets Under Management	Fee in basis points
First \$50,000,000	5.0
Next \$50,000,000	4.0
Next \$50,000,000	3.5
Next \$150,000,000	3.0
Excess of \$300,000,000	Negotiated

A sample fee calculation for a \$65 million portfolio would be applied as follows:

$(\$50 \text{ million} \times 0.05\%) + (\$15 \text{ million} \times 0.04\%) = \$31,000 \text{ per year}$

Fees will be calculated monthly and will vary depending on whether balances increase or decrease. Fees will be applied in arrears and are payable within 30 days of receipt by ACH. Should the City issue bonds, fees for dedicated bond proceeds will be included per the above scale. Additional information related to the fees presented here can be discussed in further detail upon request.

Additional Fees outside of our services: Custodial bank fees are the responsibility of the City, separate from GPA's fee. It is a best practice standard to maintain a third-party custodian independent of the investment advisor. We can work with the City in searching for a custodial safekeeping provider.

STAFF REPORT

DATE: August 26, 2025
TO: Mayor and City Councilors
FROM: Katie Henry, Finance Director
SUBJECT: Work Session: Finance – Purchasing

Report in Brief: Currently all purchases \$2,500 and higher must be individually approved by the City Manager. This amount is extremely low and causes inefficiencies in operations. We are here to discuss raising this amount and to get feedback from Council on acceptable approval levels.

Background:

Currently each department within the City sets their own limits for purchase approvals below \$2,500 but everything at that level or above must go to the City Manager. This is much lower than is often seen at other cities, based on past experience. It results in purchase orders that actually need a deeper review not receiving it because of being mixed with smaller purchases.

We would like to propose standardizing approval levels for managers and directors that more closely coincide with different procurement levels and requirements and to increase the City Manager approval level to \$25,000, giving Department Directors approval up to that level, and giving managers approval up to \$10,000.

These levels are based on the basic procurement levels described in OAR 137-047 Model Rules Public Procurements for Goods and Services. Purchases between \$25,000 and \$250,000 require documentation of quotes or of cooperative procurements but do not require formal bids while those over \$250,000 require a formal competitive process.

Documents:

1. Powerpoint: 2025-08-26 Purchasing Work Session



Purchasing Procurement

Basic Procurement Levels

- < \$10,000 Micro-purchase (Federal)
 - \$10,000 – \$25,000 Small purchase
 - \$25,000 – \$250,000 Intermediate
- Procurement 3 quotes
- > \$250,000 Formal competitive bidding

Approval levels

	Current	Recommend
Level 1	Entry only	Entry only
Level 2	\$0-\$500 up to \$0-\$2,500 depending on dept	\$0-\$10,000 Manager or Supervisor
Level 3	Up to \$2,500	\$10,000 - \$25,000 Dept Head
Level 4 – City Manager	> \$2,500	>\$25,000

Purchase order FY25 data

FY25 POs	Count
\$0-\$2,500	5,814
\$2,501-\$10,000	476
\$10,001-24,999	126
>\$25,000	124
Total	6,540



Today's discussion: What is the minimum level you are comfortable requiring the City Manager to review





STAFF REPORT

DATE: August 26, 2025
TO: Mayor and City Councilors
FROM: Katie Henry, Finance Director
SUBJECT: Work Session: Finance – OpenBook

Report in Brief: City staff have begun the implementation of new budget and transparency software and are ready to begin sharing this with Council and the public. This work session will show how to access the website and how to navigate it. It will also serve for us to gather input from Council on the types of data and spotlights that are desired.

Background:

In the MacTown 2032 Strategic plan, one key objective is to gain efficiencies from technology and equipment investments. Another key objective is to educate and build support for innovative and creative solutions, including exploring open data initiative. Furthermore, a key emphasis of the current council is transparency and a desire to share the City's financial information in a more understandable and timely manner.

The OpenBook software that we are rolling out this evening does just that. We will show you where citizens can access the financial data and what options are for showing the data. We will then gather information from you on what specific information you would like to see included in this portal and discuss next steps.

Documents:

There are no documents as this will be a live, interactive session with a website.

From: [Mark Davis](#)
To: [City Recorder Team](#)
Subject: Comment for the City Council
Date: Tuesday, August 19, 2025 11:45:56 AM
Attachments: [We sent you safe versions of your files.msg](#)
[BondMeasureComment.pdf](#)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

Claudia,

Please provide the attached comment to the City Council. Thank you.

Mark Davis

Mark Davis

McMinnville, OR 97128

August 19, 2025

McMinnville City Council
230 NE Second Street
McMinnville, OR 97128

Dear Mayor Morris and Members of the Council:

Listening to the Council's discussion regarding the upcoming bond measure, it seems you have adopted a "Let the Voters Decide" policy. While this sounds good, for the voters to make an intelligent decision they need to be fully informed about what is supposed to happen, which means you need to provide useful and accurate information. I feel that there are a few issues where I think you could provide greater clarity to the public.

What Exactly Are We Voting On? The original MacPAC proposal produced a city document we could look at to get a general idea of what we are voting on. The city also paid for a consultant to analyze how much it was additionally going to cost the General Fund to run the new facility (\$600,000 annually). The sole source of information for what we are now going to vote on appears to be the PAC formed to promote passage of the bond measure. I believe they are good community-minded people, but their purpose is to advocate for people to vote Yes. They are saying we are going to get a facility like the one being built in Redmond and that it won't take additional General Fund dollars to operate it. Have you examined those plans and agree that it can be constructed here? Do you agree that no additional General Fund monies will be used to run the new facility? After all, it is the Council not the PAC that approves the budget and your statement to that effect would carry a whole lot more weight. It concerns me to listen to your discussion about what should be in the explanatory statement and hear that you don't want to list specific projects because you aren't sure if they will happen. If there is that much uncertainty about what the bond money will be used for, it certainly raises questions about the city's ability to bring this project to a successful conclusion.

How Much Will This Bond Measure Cost the Average Homeowner? The \$98.5 million bond measure repayment schedule has been aligned with the payments for outstanding bond measures for police and transportation to create a stable payment amount over the next 21 years. While creating a stable payment amount might be desirable (and likely won't last—see my next section), it is being misused to suggest that the average homeowner is only paying \$18 per month to get all the benefits promised by promoters of the bond. In fact, once the previous bonds are paid off in a few years, the average homeowner will be paying \$34 per month or \$410 per year in additional property taxes. There is no permanent property tax rate on bonds. I voted for the police and transportation bonds with the clear understanding that when they were paid off my property taxes would go down. The claim of an \$18 increase in property taxes is

based on the assumption that somehow the voters have already agreed to keep paying the bonds for police and transportation in perpetuity, which is neither legally nor factually correct.

Is the Council Really Committing to Not Issue Another Bond for 21 Years? Of course not, but that is the implication of giving the voters a nominally fixed tax rate for the life of the bonds (yes, we all know rates will change over time as the assessment base is adjusted). Of the two bonds that are currently outstanding, I would suggest it is reasonable to assume that we won't need to build a new police station/civic hall in the near future, but that once the Transportation Bond is paid off that a new one will be promoted. In fact, we are presently planning for a new Transportation System Plan that will be the basis for asking the voters for more money to fix the roads and sidewalks. It is hard to imagine any reasonable scenario for implementing the needed transportation improvements without a bond measure. Instead of implying bond levy taxes will be steady for the next 21 years, I think the Council should be making clear to voters that another bond measure will be coming.

What Other Financial Commitments (i.e., Taxes and Fees) Are Expected? The city does a wonderful job of generating reports with wish lists. The consultants have been churning them out for decades. Most of them don't get implemented or have to be significantly reduced (e.g., the MacPAC proposal) because the cost is unreasonable. I would think that to make an intelligent vote on whether to go into debt \$98.5 million to build the pool/rec center, it would be helpful to know what else is coming down the pipeline. The stormwater fee comes immediately to mind, and it is an even worse example of the impact of deferred maintenance than the pool. I previously mentioned paying for transportation improvements, and the city approved a PROS Plan with a \$70 million capital improvement list. The current bond measure includes a small down payment on our parks' needs, but where is the rest of the money coming from? I heard you are currently reviewing MacTown 2032 and implementing even some of the remaining projects is going to take more money. Who pays that?

Despite my questioning tone in this letter, I support constructing a new pool and recreation center, fixing the senior center, updating our current parks and expanding the library. What concerns me is that this latest effort feels slapped together at the last minute with a lot of uncertainty and no clear plan for how this huge financial commitment fits in with the rest of the city's plans for the future. It's as if you'll figure out how to proceed after the vote. It doesn't inspire a lot of confidence in city government.

Thanks for considering my perspective on this matter.

Mark Davis

Mark Davis



City of McMinnville
Operations
1900 NE Riverside Drive
McMinnville, OR 97128
(503) 434-7312

www.mcminnvilleoregon.gov

STAFF REPORT

DATE: August 14, 2025
TO: Adam Garvin, Interim City Manager
FROM: David Renshaw, PW Operations Supt.
Gianni Barrette, PW Facilities Maintenance Coordinator
SUBJECT: Community Center Elevator Modernization contract award

Report in Brief:

This action is the consideration of a resolution to award a contract for the Community Center Modernization, Project 2025-05, to Otis Elevator, in the amount of \$165,985.00.

Background:

In June of 2024 the City completed an assessment of five elevators and one vertical platform lift. This included elevators at the Public Safety Building, Library, Water Reclamation Facility, Parking Structure and the Community Center. The vertical platform lift is located at the Public Safety Building. The report noted immediate modernization needs for the Parking Structure, Community Center and the WRF. These three units are all over 30 years old, with the first two being over 40 years old. Proper maintenance is difficult since it is difficult to find technicians with experience with equipment of this age, and parts are often difficult to source. Based on program and building usage impacts, the Community Center unit was prioritized for modernization during the FY 2025-26 budget process. The other two units will be proposed for modernization in forthcoming budget cycles.

Discussion:

On August 12, 2025, two bids were received, opened, and publicly read for the construction of the Community Center Elevator Modernization, Project 2025-5. The bid results are as follows:

Bid #1 – Otis Elevator -	\$165,985.00
Bid #2 – ATTA Elevator -	\$200,020.00

As a note, a third contractor submitted a bid just after the posted bid opening time of 2:00pm. That bid was not accepted.

The construction estimate for this work was \$225,000.

The bids were checked for completeness, including a review of the following:

- Was the bid submitted, on time, in a properly sealed and labeled envelope?
- Was the Bid Form properly filled out and executed?
- Was a Bid Bond included?
- Were the project addenda acknowledged?
- Was the First Tier Subcontractor Form turned in on time?

Two bids were complete and met the City's requirements. A detailed breakdown of the bids received is on file in the Engineering Department.

The bid from Otis Elevator, in the amount of \$165,985.00, was deemed to be the lowest responsible and responsive bid.

Attachments:

1. Resolution No. 2025-49.
2. Bid documents

Fiscal Impact:

Funding for this project is included in the FY 2025-26 budget.

Recommendation:

Staff recommends that the City Council adopt the attached resolution awarding the public improvement contract for construction of the Community Center Elevator Modernization project, Project 2025-05, in the amount of \$165,985.00 to Otis Elevator and an additional budget authority of \$10% for project contingencies for dealing with unknown or unforeseen conditions.

RESOLUTION NO. 2025-49

A Resolution awarding the contract for the Community Center Elevator Modernization, Project 2025-05.

RECITALS:

Whereas, At 2:00pm on August 12, 2025, two (2) bids for the Community Center Elevator Modernization Project 2025-05, were publicly opened and read aloud; and

Whereas, the low bidder, Otis Elevator, met all of the bid requirements, and should be considered the lowest responsive bidder; and

Whereas, Funding for this project is included in the FY 2025-26 budget.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMinnville, OREGON, as follows:

1. That entry into a public improvement contract with Contractor, in the amount of \$165,985.00, with a substantial completion date of April 30, 2026, for the Community Center Elevator Modernization Project 2025-05, is hereby approved.
2. That the City Manager is hereby authorized and directed to execute the public improvement contract.
3. Authorizes a 10% reserve for contingencies (\$16,598.50) for dealing with unknown or unexpected site conditions, to be administered by the Project Manager or designee.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 26th day of August 2025 by the following votes:

Ayes: _____

Nays: _____

Approved this 26th day of August 2025.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



**City of
McMinnville**

PUBLIC WORKS

***COMMUNITY CENTER ELEVATOR MODERNIZATION
PROJECT 2025-5***

Kim Morris,

Mayor

City Council

Jessica Payne
Sal Peralta
Zach Geary

Dan Tucholsky
Scott Cunningham
Chris Chenoweth

Jeff Towery - City Manager
James Lofton - City Engineer

Bidder's Name: _____

Total Contained Herein: _____

July, 2025

CITY OF McMINNVILLE
INDEX OF DOCUMENTS

for

**Community Center Elevator Modernization
Project 2025-5**

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CONSTRUCTION PLANS (under separate cover)

**CITY OF MCMINNVILLE
COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5**

Bids Due: 2:00 PM, Thursday, August 7, 2025

INVITATION TO BID

Sealed bids for the **COMMUNITY CENTER ELEVATOR MODERNIZATION, Project 2025-5** will be received by Gianni Barrette, Project Manager, at the Community Development Department, 231 Northeast Fifth Street, McMinnville, Oregon 97128, until the bid closing time of 2:00 PM, Thursday August 7, 2025 at which time the bids will be publicly opened and read. Bidder shall submit the required first-tier subcontractors disclosure form within two working hours of the bid closing time. Bidders whose bids and/or disclosure statements are received after the stated times will be considered non-responsive and their bids will not be considered.

The scope of work being considered is: turnkey modernization of an existing 1980 Otis hydraulic elevator, with a capacity of 4,000 pounds operating at 125 FPM, including an add-alternate to modernize the passenger cab interior finishes. The elevator is located at the McMinnville Community Center, 600 NE Evans Street, McMinnville OR. This is a turnkey project with the Elevator Contractor being designated the "Prime Contractor" for all related and non-related work specified and required work unless specifically excluded or referenced to be done by others.

A pre-bid meeting will be held at the McMinnville Community Center, 600 NE Evans Street, McMinnville OR at 1:30pm on Tuesday, July 29, 2025. Attendance at the pre-bid meeting is mandatory. Technical questions about the project should be addressed to Bill Greenland at VDA, Inc, via email: wgreenland@vdassoc.com or by telephone at 425-957-4641.

The complete Contract Documents for the may be obtained at the following website:
<https://www.mcminnvilleoregon.gov/rfps>

Any questions should be directed to Gianni Barrette, Project Manager, at the Community Development Department, 231 Northeast Fifth Street, McMinnville, Oregon 97128, by email gianni.barrette@mcminnvilleoregon.gov , or by phone (503) 583-0005.

Contractors must be qualified in accordance with the applicable parts of ORS 279C in order to enter into a contract with the City. Among other factors that will be considered, the City will only award a contract to a contractor that is able to demonstrate that they have completed previous contracts of a similar nature with a satisfactory record of performance, and that demonstrate that they have a satisfactory record of integrity. The City may investigate to determine the qualifications of the bidders as part of the evaluation of the bids, and the City may reject a bid that does not comply with the prescribed public contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b).

This project is for a public improvement subject to the prevailing rates of wage requirements of ORS 279C.800 to 279C.870, and the City will not receive or consider a bid unless the bid contains a statement by the bidder that the bidder will comply with ORS 279C.838 or 279C.840. Contractor licensing under ORS 468A.720 for asbestos abatement is not a requirement of this project. No bid shall be considered unless the bidder is licensed by the Oregon Construction Contractors Board or the State Landscape Contractors Board. Each bid must also identify whether the bidder is a resident bidder, as defined by ORS 279A.120.

Bids must be submitted on the prescribed forms and must be accompanied by certified check, cashier's check, or bid bond executed in favor of the City in an amount equal to ten percent (10%) of the amount bid.

The City reserves the right to reject any and all bids, to waive any irregularities, and to accept the bid deemed in the best interest of the City. The City may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all bids after finding that doing so is in the public interest.

Gianni Barrette, Project Manager
CITY OF McMINNVILLE

Dated at the City of McMinnville, July 16, 2025

Published: Daily Journal of Commerce – July 16, 2025

CITY OF McMINNVILLE, OREGON
**COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5**

BIDDER'S CHECKLIST

To all Plan Holders and/or Prospective Bidders:

Use the following checklist to ensure that your bid package is complete upon submittal to the City of McMinnville on the date listed in the Invitation to Bid:

- ❑ Complete the Bid in clearly written ink or typed characters. Changes may be made provided all changes are initialed.
- ❑ Complete the Contractors Qualification Application
- ❑ Include an executed Bid Bond or other acceptable Bid Security in the amount of ten percent (10%) of the total bid amount.
- ❑ Acknowledge receipt of all Addenda. Bidders are strongly encouraged to contact the City to verify that all addenda are in hand prior to submittal of the bid package.
- ❑ Submit the bid package, prior to the Bid Closing time, at the place indicated in the Invitation to Bid. The bid package shall be enclosed in an opaque, sealed envelope, marked with the project title, date and time of the Opening, and the name and address of the Bidder.
- ❑ Complete and submit the First-tier Subcontractors Disclosure Form prior to the time listed in the Invitation to Bid. Failure to submit the disclosure form will result in the bid being declared "non-responsive".

CITY OF McMinnville, OREGON

**COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5**

BID

TO: Honorable Mayor and City Council
City of McMinnville
230 NE Second Street
McMinnville, Oregon 97128

This Bid is submitted as an offer by the undersigned, having examined the Contract Documents and considered all conditions to be encountered, to enter into a Public Improvement Contract with the City of McMinnville (City) to furnish all labor, materials, and equipment, and to perform all work necessary to complete this project, in accordance with the Contract Documents, in consideration of the amounts stated in this Bid.

BID AMOUNTS:

Base Bid

BID SCHEDULE					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Total Price
10	Elevator Modernization	LS	1	\$	\$
20	Work By Others	LS	1	\$	\$

BASE BID TOTAL BID \$_____

Add Alternate

BID SCHEDULE					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Total Price
30	Modernize elevator cab	EA	LS	\$	\$

TOTAL, ADD ALTERNATE \$ _____

BASE BID + ADD ALTERNATE \$ _____

Hourly Rate Outside of Project Scope and Material Mark Up INFORMATIONAL ONLY

Item No.	Description	Unit	Unit Price	Comments
40	Hourly rate, normal business hours	Hour	\$	
50	Hourly rate, outside business hours	Hour	\$	
60	Percentage material markup, not to exceed 15%	Percent	%	

If the Bid contains more than one schedule of work, the Bidder shall refer to the Bid and construction drawings on the applicable bid items for each schedule of work. The Bidder shall include in the bid prices the entire cost of each item of work set forth in the Bid. The Bidder shall also prepare the Bid so that the Bid for each work schedule is complete and includes the entire cost to complete all the work within each work schedule.

The City reserves the right to award all of the work schedules, a single work schedule, or any combination of work schedules without penalty.

If the Bid contains Additive Alternates, the Bidder shall refer to the Bid and construction drawings for the applicable bid items for each Additive. The bidder shall include in the bid prices the entire cost of each item set forth in the Bid. The bidder shall also prepare

the Bid so that the bid for each additive alternate is complete and includes the entire cost to complete all the work within each additive alternate.

The City reserves the right to award all of the additive alternates, a single alternate, any combination of the alternates or none of the alternates without penalty.

The City will award based on the lowest of total Base Bid and Additive Alternates selected.

All blanks on the Bid must be completed by clearly printing in ink or by typewriter. Changes may be made provided that the Bidder initials all changes.

All items in the Bid form shall be completed in full showing a unit or lump sum price or prices for each and every item. The price per item shall be clearly shown in the space provided. The pricing shall be extended to show the total when required.

The extensions in the column headed "TOTAL COST" are made for the sole purpose of facilitating Bid comparisons and if there are any discrepancies between the unit prices and the total amount shown, the unit prices shall govern.

BID BOND:

Accompanying this Bid is a certified check, cashier's check or bid bond payable to the City of McMinnville, Oregon, in the sum of _____ Dollars (\$ _____), said amount being equal to ten percent (10%) of the Total Bid Amount, based on the foregoing prices. If this bid shall be accepted by the City of McMinnville and the undersigned shall fail to execute a satisfactory Public Improvement Contract, performance bond, and payment bond within seven (7) days from the date of the Notice of Award, then the City may, at its option, determine that the undersigned has abandoned the Contract and thereupon this bid shall be null and void, and the above check or bond accompanying this bid shall be forfeited to and become the property of the City.

PUBLIC WORKS BOND:

For projects over \$100,000, before starting work on a contract or subcontract for a public works project, a contractor or subcontractor shall comply with the requirements of ORS 279C.836 and related Oregon Administrative Rules, pertaining to the filing of a Public Works Bond.

PREVAILING WAGE STATEMENT:

The undersigned Bidder declares by the signing of this Bid that the provisions required by ORS 279C.840 pertaining to prevailing wage rates are included in this Bid, and that the Bidder will comply with said requirements throughout the duration of the contract.

RESIDENT/NONRESIDENT BIDDER STATUS:

Oregon law requires that the City, in determining the lowest responsive Bidder, must add a percent increase on the bid of a nonresident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Consequently, each Bidder must indicate whether it is a resident or nonresident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid whether the Bidder is a "resident bidder". A "nonresident bidder" is a Bidder who is not a resident bidder.

The Bidder listed above is (check one):

1. A resident bidder _____
2. A nonresident bidder _____

Indicate state in which Bidder resides: _____

NON-DISCRIMINATION STATEMENT:

By signing and submitting a Bid to the City, Bidder certifies that bidder has not discriminated and will not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.

ADDENDA:

By signing and submitting this Bid to the City, Bidder represents that it has examined and carefully studied the Contract Documents, and other data identified in the Contract Documents, and the following Addenda, receipt of which is hereby acknowledged:

<i>ADDENDUM NO.</i>	<i>ADDENDUM DATE</i>

SIGNATURE OF BIDDER:

Name of Bidder: _____

Signature of Authorized Agent: _____ (Date)

Title: _____

(SEAL) Business Address: _____

Phone #: _____

Construction Contractors Board Registration No.: _____

Workers Comp. Insurance Company: _____

Workers Comp. Policy/Binder Number: _____

CITY OF McMinnville, Oregon

COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Bid Closing: 2:00 PM, Thursday, August 7, 2025

For projects with a contract value of more than \$100,000, this form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date within two (2) working hours after the advertised bid closing time.

List below, the “Name” “Dollar Value” and “Category of Work” of each subcontractor that:

- (A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement; and
- (B) Will have a contract value that is equal to or greater than five percent (5%) of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

Enter “NONE” if there are no subcontractors that need to be disclosed (if needed attach additional sheets).

SUBCONTRACTOR NAME	DOLLAR VALUE	CATEGORY OF WORK
	(\$)	
	(\$)	
	(\$)	
	(\$)	
	(\$)	
	(\$)	

FAILURE TO SUBMIT THIS FORM BY THE DISCLOSURE DEADLINE WILL RESULT IN A NONRESPONSIVE BID. A NONRESPONSIVE BID WILL NOT BE CONSIDERED FOR AWARD.

Form submitted by (Bidder name): _____

Contact Name: _____ Phone #: _____

NOTE: Faxed copies of this form will not be accepted. For more information please see the “Bidder’s Checklist” and the “Instructions to Bidders.”

CITY OF McMinnville, Oregon

COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5

BID BOND *

KNOW ALL PERSONS BY THESE PRESENTS, that _____
hereinafter called the PRINCIPAL, and _____
a corporation duly organized under the laws of the State of _____
having its principal place of business at _____
in the State of _____, and authorized to do business in the State of Oregon,
as SURETY, are held and firmly bound unto the City of McMinnville, a Municipal Corporation of
the State of Oregon, acting by and through its City Council, hereinafter called the OBLIGEE, in
the penal sum of _____ Dollars (\$_____), for
the payment of which we bind ourselves, our heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presence.

THE CONDITION OF THIS BOND IS SUCH THAT:

NOW, THEREFORE, if the Bid submitted by the PRINCIPAL is accepted, and the Contract
awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and
shall furnish such Performance Bond as required by the Contract Documents within the time
fixed by the Documents, then this obligation shall be void; if the PRINCIPAL shall fail to
execute the proposed Contract and furnish the bond, the SURETY hereby agrees to pay to the
OBLIGEE the penal sum as liquidated damages, within ten (10) days of such failure.

Signed and sealed this day of _____, 2025.

Principal

Countersigned

Address / Phone #

Surety

Attorney-in-Fact

** Surety companies executing bid bond must be currently authorized to transact business in the State
of Oregon.*

CITY OF McMINNVILLE, OREGON

**MCMINNVILLE COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5**

CONTRACTOR'S QUALIFICATION APPLICATION

DATE: _____

APPLICATION OF: _____
(Name of Applicant)

TYPE OF FIRM:

Individual _____ Co-partnership _____ Corporation _____

Joint Venture _____ Member of a Joint Venture _____

ADDRESS (to which all of applicant's correspondence is to be mailed):

Telephone No. _____ Fax No. _____

IF A CORPORATION, registered agent for service of process:

Telephone No. _____ Fax No. _____

1. List names of all previous and current assumed business names and the state or states in which such names were registered, if any:

2. **BIDDER'S EQUIPMENT QUESTIONNAIRE**

List equipment owned by the bidder for the particular type of work for which qualification is sought. List only major items. Lump together small equipment and tools.

Description, Quantity, and Capacity of Items	Age in years / condition

Estimated Total Value of Equipment: \$ _____

Does the applicant intend to rent equipment? If so, provide a general description of the types of equipment, and note where it is available:

3. BIDDER'S EXPERIENCE QUESTIONNAIRE

Provide information on contracts for elevator modernization projects completed in the past five years (Attach additional sheets if necessary):

Project Name / Owner	Contact Person / Telephone #	Year Constructed	Contract Amount

4. What is the elevator modernization experience of the principal individuals in applicant's organization? Include the individual(s) who will be responsible for routine supervision of the City of McMinnville contract.

Name / Title	Years of Experience	Type of Work ***	Expected Function in this Contract

*** List the specific types of work the individuals have experience constructing and/or supervising elevator modernization projects including the work others (e.g electrical, HVAC, plumbing, etc.).

5. Are there any current or pending bond or construction claims against the applicant, or by the applicant against another party?

_____ Yes _____ No

If yes, please explain:

6. The following space may be used for general remarks and explanations pertaining to the foregoing pre-qualification statements.

7. SIGNATURE OF APPLICANT:

Signature: _____

Printed Name: _____ (Date)

Title: _____

(SEAL)

CITY OF McMinnville CONSTRUCTION CONTRACT

This Construction Contract (“Contract”) for the **Community Center Elevator Modernization, Project 2025-5**, is made and entered into on this _____ day of _____ 2025 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____, a(n) _____ [state] _____ [corporation/limited liability company, etc.] (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing Recitals and all of the following additional “Contract Documents”: Specifications and Contract Documents for the McMinnville Community Center Elevator Modernization Project, 2010 ADA Standards for Accessible Design, as amended, 2004 Americans with Disabilities Act Accessibility Guidelines “ADAAG” as amended; City of McMinnville Building Code as amended and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than May 31, 2026, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than **April 30, 2026**, and at Final Completion by **May 31, 2026**. See **Section 23** for the definitions of Substantial Completion and Final Completion.

Section 3. Contractor’s Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Project.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

3.3. The existence of this Contract between the City and Contractor shall not be construed as the City’s promise or assurance that Contractor will be retained for future services beyond the Work described herein.

3.4. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor’s employees assigned to perform any of the Work provided in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

Section 4. Contract Sum, Retainage, and Payment

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor a not to exceed unit price of _____ DOLLARS (\$_____) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Unit Prices are as more particularly described in the Contract Documents.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 4**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 23**.

4.4. Except as provided in **Section 8.2**, the Contract Sum includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees required to perform the Work on the Project.

4.5. Contractor's unit prices and Contract Sum are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

4.6. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in Section 1 and in ORS 279C.570.

Section 5. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by the Bureau of Labor and Industries (BOLI), effective July 1, 2021, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 6. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 7. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 8. City's Rights and Responsibilities

8.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one-tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of

any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

8.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2025-26. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 21**.

Section 9. City's Project Manager

The City's Project Manager is **Gianni Barrett, Facility Maintenance Coordinator**. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 10. Contractor's Project Manager

Contractor's Project Manager is _____. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 11. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 12. Duty to Inform

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

Section 13. Subcontractors and Assignments

13.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 14.3**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 14. Contractor's Responsibilities

This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Those required provisions include but are not limited to all of the following:

14.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

14.2. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the

right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

14.3. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

14.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with, and be subject to, the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

14.5. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

14.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

14.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor

expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third-party beneficiary rights against the City.

14.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.15. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.17.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.17.1, 14.17.2, and 14.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.21. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.25. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

14.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

Section 15. Subcontractor Requirements

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 15.1.1** above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 15.1.1 and 15.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

15.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

Section 16. Environmental Laws

16.1. Although the City is not aware of any of the following, before beginning construction, Contractor shall determine if there is any asbestos, lead paint, or other hazardous materials that will be removed or disturbed as a part of the Project. If disturbance or removal is required, Contractor will advise the City, in writing, and will provide the City with a detailed written supplemental Scope of Work concerning how such disturbance or removal will be accomplished and how materials, if any, will be disposed of, all in accordance with State and Federal environmental laws. Work required due to the finding of any such hazardous materials will require a written Change Order.

16.2. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted

ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service
Defense, Department of
Environmental Protection Agency
Bureau of Sport Fisheries and Wildlife
Bureau of Land Management
Bureau of Reclamation
Occupational Safety and Health Administration
Coast Guard

Agriculture, Department of
Soil Conservation Service
Army Corps of Engineers
Interior, Department of
Bureau of Outdoor Recreation
Bureau of Indian Affairs
Labor, Department of
Transportation, Department of
Federal Highway Administration

STATE AGENCIES:

Environmental Quality, Department of
Forestry, Department of
Human Resources, Department of
Soil and Water Conservation Commission
State Land Board

Agriculture, Department of
Fish and Wildlife, Department of
Geology and Mineral Industries, Department of
Land Conservation and Development Commission
National Marine Fisheries Service (NMFS)
State Engineer
Water Resources Board

LOCAL AGENCIES:

County Courts
Port Districts
County Service Districts
Water Districts

City Council
County Commissioners, Board of
Metropolitan Service Districts
Sanitary Districts
Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

16.3. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

16.4. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.5. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

Section 17. Indemnity

17.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or

willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 17.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers. and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

17.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 18. Insurance

18.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

18.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

18.1.2. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

18.1.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality (“DEQ”) and Federal Environmental Protection Agency (“EPA”) clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

18.1.4. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

18.1.5. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

18.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor’s liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor’s Commercial General Liability, Automobile Liability, Pollution Liability and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

18.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

18.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 19. Bonding Requirements

19.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

19.2. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

19.3. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 20. Warranty

20.1. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of one (1) year from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within one (1) year

following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The one (1) year warranty period shall, with relation to such required repair, be extended one (1) year from the date of completion of such repair.

20.2. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

20.3. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 21. Early Termination; Default

21.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

21.1.1. By mutual written consent of the parties;

21.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

21.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

21.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time

period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

21.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

21.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 28**, for which Contractor has received payment or the City has made payment.

Section 22. Suspension of Work

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 23. Substantial Completion, Final Completion, and Liquidated Damages

23.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed, and the elevator is fully functional and may be utilized with only minor punch list items remaining that do not significantly impact public use. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before April 30, 2026 or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Section 23.4** and **Section 23.5** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

23.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty),

Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial and Final Completion.

23.3. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of April 30, 2026, or any written extension thereof granted by the City, Contractor shall pay the City **Five Hundred Dollars (\$500)** for each day that expires after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

23.4. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Completion. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

23.5. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to circumstances beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that would preclude any reasonable Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 24. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any

increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 25. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Yamhill County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

Section 26. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts during the term of this Contract and for a period of four (4) years after termination of the Contract, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

Section 27. As-Builts

Contractor must provide redlined as-builts prior to Final Acceptance. As-builts should be provided in electronic and paper format.

Section 28. Property of the City

28.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Contractor under this Contract shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation.

28.2. Contractor shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all Work performed by Contractor pursuant to this Contract without the express written permission of Contractor.

Section 29. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the

United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
Attn: Gianni Barrette, Facility Maintenance Coordinator
230 NE Second Street
McMinnville, OR 97128

To Contractor: _____
Attn: _____

Section 30. Miscellaneous Provisions

30.1. Integration. This Contract contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

30.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

30.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

30.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

30.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

30.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

30.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and

reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

30.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

30.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

30.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

30.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

30.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

30.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

30.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

30.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

30.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

30.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

30.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

30.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

30.20. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

30.21. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

CITY OF McMinnville

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

David Ligtenberg, City Attorney
City of McMinnville, Oregon

CITY OF McMinnville, OREGON

**COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5**

PAYMENT BOND

BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS: that

hereinafter called CONTRACTOR (Corporation, Partnership or Individual) and

(Name of Surety)

and the City of McMinnville, located at 230 NE 2nd Street, McMinnville hereinafter called OWNER and unto all persons, firms and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of

_____ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the CONTRACTOR entered into a certain contract with the OWNER, dated the _____, a copy of which is hereto attached and made a part hereof for the Community Center Elevator Modernization, Project 2025-5.

NOW, THEREFORE, if the CONTRACTOR shall promptly make payment to all persons, firms, and corporations furnishing materials for, or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for materials consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lien holder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUB-CONTRACTORS, and persons, firms, and corporations having a direct contract with the CONTRACTOR or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or to the SPECIFICATIONS ACCOMPANYING the Contract shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the CONTRACTOR shall have given written notice to any two of the following: The CONTRACTOR, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which CONTRACTOR ceased work on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than twenty percent (20%), so as to bind the CONTRACTOR and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

WITNESS WHEREOF, this instrument is executed in _____ counterparts, each of which shall be deemed an original, this _____ day of _____, 2025.

WITNESS:

Principal

Address

Phone Number

SURETY:

Address

Phone Number

BY: _____
Attorney-in-fact

Address

Phone Number

NOTE: If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must be authorized to transact business in the State of Oregon.

CITY OF McMinnville, Oregon

COMMUNITY CENTER ELEVATOR MODERNIZATION PROJECT

PERFORMANCE BOND

AMOUNT \$ _____

BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS: that we, _____ (hereinafter called the "Principal") as Principal, and the _____, a corporation and existing under and by virtue of the laws of the State of and authorized to transact a surety business in the State of Oregon (hereinafter called the "Surety") as Surety, are held and firmly bound unto the City of McMinnville, a Municipal Corporation of the State of Oregon, (hereinafter called the "Obligee") in the penal sum of _____ lawful money of the United States of America to be paid to said Obligee, we do bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas on the ____ day of _____ 2025 the Principal entered into a contract with the Obligee described as defined in these contract documents.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the terms of the contract and shall well and truly perform all matters and things undertaken to be performed under said contract upon the terms proposed therein and shall promptly make payments to all persons supplying labor or material for any prosecution of the work provided for each contract and shall not permit any lien or claim to be filed or prosecute against the Obligee on account of any labor or material furnished, and shall promptly pay all contributions or amounts due the State Accident Insurance Fund and all contributions or amounts due the State Unemployment Compensation Trust Fund incurred in the performance of said contract and shall promptly, as due, make payment to the person, co-partnership, association or corporation entitled thereto of the moneys and sums mentioned in Section 279C.530 of the Oregon revised Statutes, then this obligation is to be void, otherwise to remain in full force and effect.

This performance bond shall also guarantee the improvement against defects in materials or workmanship for a period of one (1) year from the date of written acceptance of the subject project by the Owner.

The total amount of the Surety's liability under this bond both to the Obligee and to the persons furnishing labor or materials, provisions and goods and to any other person or persons, shall in no event exceed the penalty hereof. Provided, however, that the conditions of the obligation shall not apply to any money loaned or advanced to the Principal or to any subcontractor or other person in the performance of any such work, whether specifically provided for in the contract or not.

This bond is executed for the purpose of complying with ORS 279C.380, the provisions of which are hereby incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument this ____ day of _____ 2025.

WITNESS:

Principal

Address

Phone Number

SURETY:

Address

Phone Number

BY: _____
Attorney-in-fact

Address

Phone Number

NOTE: If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must be authorized to transact business in the State of Oregon.

CITY OF McMINNVILLE, OREGON
COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5

General Conditions

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PART 00100 - GENERAL CONDITIONS

Section 00110 - Organization, Conventions, Abbreviations, and Definitions

00110.00 Organization of Specifications - The Specifications are comprised of the following:

- The "General Conditions for Construction for the City of McMinnville", published by the Agency, which contain Part 00100 "General Conditions", which deal with the solicitation process and contractual relationships.
- Technical Specifications for Modernization of One (1) Hydraulic Passenger Elevator Located at the McMinnville Community Center (the "Technical Specifications"). The Technical Specifications are intended to supersede the General Conditions in priority. Any redundant provisions or conflicts between the General Conditions and the Technical Specifications should be reconciled in favor of the Technical Specifications.

In addition, throughout the Specifications:

- Each Part is divided into Sections and Subsections.
- Reference to a Section includes all applicable requirements of the Section.
- When referring to a Subsection, only the number of the Subsection is used; the word "Subsection" is implied.
- Where Section and Subsection numbers are not consecutive, the interval has been reserved for use in the Special Provisions or future expansion of the Standard Specifications.

Conventions

00110.05 Conventions Used Throughout the Specifications Include:

(a) Punctuation - In this publication the "outside method" of punctuation is employed for placement of the comma and the period with respect to quotation marks. Only punctuation that is part of the quoted matter is placed within quotation marks.

(b) References to Laws, Acts, Regulations, Rules, Ordinances, Statutes, Orders, and Permits - References are made in the text of the Specifications to "laws", "acts", "rules", "statutes", "regulations", "ordinances", etc. (collectively referred to for purposes of this Subsection as "Law"), and to "orders" and "permits" (issued by a governmental authority, whether local, State, or federal, and collectively referred to for purposes of this Subsection as "Permits"). Reference is also made to "applicable laws and regulations". The following conventions apply in interpreting these terms, as used in the Specifications.

- **Statutes and Rules** - Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) referenced in the Specifications are accessible on line, including through the Oregon Legislative Counsel Committee web site and through the Oregon Secretary of State Archives Division web site.
- **Law** - In each case, unless otherwise expressly stated therein, the Law is to be understood to be the current version in effect, and as may be amended during the term of the Contract. This also applies where a specific Law is referenced or cited, regardless of whether the text of the Law has been included in the Specifications or not, and regardless of whether the text of the Law has been summarized or paraphrased. In each case, the current version, as may be amended, of the Law is applicable under any Contract. The reader is therefore cautioned to check the actual text of the Law to confirm that the text included in the Specifications has not been modified or superseded.
- **Permits** - Orders and permits issued by a government agency may be modified during the course of performing the Work under a Contract. Therefore, wherever the term "order" or "permit" is used in the Specifications, it is intended to refer to the then-current version. That version may be embodied in a modified, superseding order or permit, or it may consist of all terms and conditions of prior orders or permits that have not been superseded, as well as the additional terms added by amendment or supplement. In certain cases, the orders and/or permits are identified by name in

the Specifications; in other cases the terms are used in the generic sense. The reader is cautioned to check the text(s) of each order and permit identified either by name or by generic reference.

- **Applicable Laws and Regulations** - Where the phrase "applicable laws and regulations" appears, it is to be understood as including all applicable laws, acts, regulations, administrative rules, ordinances, statutes, and orders and permits issued by a governmental or regulatory authority.

Abbreviations

00110.10 Abbreviations - Following are meanings of abbreviations used in the Standard Specifications, in the Special Provisions, on the Plans, and in other Contract Documents. Other abbreviations and meanings of abbreviations may be in the individual Sections of the Standard Specifications to which they apply, in the Special Provisions, and in OAR 731-005 and OAR 731-007.

AAR	- Association of American Railroads
AASHTO	- American Association of State Highway and Transportation Officials
ABC	- Associated Builders and Contractors, Inc.
AC	- Asphalt Concrete
ACI	- American Concrete Institute
ACP	- Asphalt Concrete Pavement
ACWS	- Asphalt Concrete Wearing Surface
ADAAG	- ADA Accessibility Guidelines
AGC	- Associated General Contractors of America
AIA	- American Institute of Architects
AISC	- American Institute of Steel Construction
AISI	- American Iron and Steel Institute
AITC	- American Institute of Timber Construction
ANSI	- American National Standards Institute
APA	- American Plywood Association
APWA	- American Public Works Association
ARA	- American Railway Association
AREA	- American Railway Engineering Association
ASCE	- American Society of Civil Engineers
ASME	- American Society of Mechanical Engineers
ASTM	- American Society for Testing and Materials
ATPB	- Asphalt Treated Permeable Base
AWG	- American Wire Gauge
AWPA	- American Wood Preservers Association
AWS	- American Welding Society
AWWA	- American Water Works Association
CAGT	- Certified Aggregate Technician
CAT-I	- Certified Asphalt Technician I
CAT-II	- Certified Asphalt Technician II
CBM	- Certified Ballast Manufacturers
CCO	- Contract Change Order
CCT	- Concrete Control Technician
CDT	- Certified Density Technician
CEBT	- Certified Embankment and Base Technician
CIPP	- Cured In Place Pipe
CMDT	- Certified Mixture Design Technician
CPF	- Composite Pay Factor
CRSI	- Concrete Reinforcing Steel Institute
CFR	- Code of Federal Regulations
CS	- Commercial Standard, Commodity Standards Division, U.S. Department of Commerce
D1.1	- Structural Welding Code - Steel, American Welding Society, current edition
D1.5	- Bridge Welding Code, American Welding Society, current edition
DBE	- Disadvantaged Business Enterprise
DEQ	- Department of Environmental Quality, State of Oregon

DOGAMI	- Department of Geology and Mineral Industries, State of Oregon
DSL	- Division of State Lands, State of Oregon
EAC	- Emulsified Asphalt Concrete
EPA	- U.S. Environmental Protection Agency
ESCP	- Erosion and Sediment Control Plan
FHWA	- Federal Highway Administration, U.S. Department of Transportation
FSS	- Federal Specifications and Standards, General Services Administration
GSA	- General Services Administration
HDPE	- High Density Poly Ethylene
I & I	- Inflow and Infiltration
ICEA	- Insulated Cable Engineers Association (formerly IPCEA)
IES	- Illuminating Engineering Society
IMSA	- International Municipal Signal Association
ISO	- International Standards Organization
ITE	- Institute of Transportation Engineers
JMF	- Job Mix Formula
MFTP	- Manual of Field Test Procedures (ODOT)
MIL	- Military Specifications
MSC	- Minor Structure Concrete
MUTCD	- Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation
NEC	- National Electrical Code
NEMA	- National Electrical Manufacturer's Association
NESC	- National Electrical Safety Code
NIST	- National Institute of Standards and Technology
NPDES	- National Pollutant Discharge Elimination System
NPS	- Nominal Pipe Size (dimensionless)
OAR	- Oregon Administrative Rules
ODA	- Oregon Department of Agriculture
ODOT	- Oregon Department of Transportation
ORS	- Oregon Revised Statutes
OR-OSHA	- Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services
OSHA	- Occupational Safety and Health Administration, U.S. Department of Labor
PCA	- Portland Cement Association
PCC	- Portland Cement Concrete
PCI	- Precast/Prestressed Concrete Institute
PCP	- Pollution Control Plan
PF	- Pay Factor of a constituent
PLS	- Professional Land Surveyor
PMBB	- Plant Mixed Bituminous Base
PROWAG	- Public Rights Of Way Accessibility Guidelines
PTI	- Post-Tensioning Institute
PUC	- Public Utility Commission, State of Oregon
PVC	- Polyvinyl Chloride
QA	- Quality Assurance
QC	- Quality Control
QCT	- Quality Control Technician
QL	- Quality Level
QPL	- Qualified Products List
RAP	- Reclaimed Asphalt Pavement
REA	- Rural Electrification Administration, U.S. Department of Agriculture
RMA	- Radio Manufacturers Association or Rubber Manufacturers Association
ROW	- Right Of Way
SAE	- Society of Automotive Engineers
SI	- International System of Units (Système Internationale)
SRCM	- Soil and Rock Classification Manual (ODOT)

SSPC	- Society for Protective Coatings
T	- Tolerances, AASHTO Test Method
TCP	- Traffic Control Plan
TM	- Test Method (ODOT)
TV	- Target Value
UBC	- Uniform Building Code (as adopted by the State of Oregon)
UL	- Underwriters Laboratory, Inc.
UPC	- Uniform Plumbing Code (as adopted by the State of Oregon)
USC	- United States Code
WAQTC	- Western Alliance for Quality Transportation Construction
WCLIB	- West Coast Lumber Inspection Bureau
WWPA	- Western Wood Products Association

Definitions

00110.20 Definitions - Following are definitions of words and phrases used in the Standard Specifications, in the Special Provisions, on the Plans, and in other Contract Documents. Other definitions may be in the individual Sections of the Standard Specifications to which they apply, in the Special Provisions, and in OAR 731-005 and OAR 731-007.

Act of God or Nature - A natural phenomenon of such catastrophic proportions or intensity as would reasonably prevent performance.

Addendum - A written or graphic modification, issued before the opening of Bids, which revises, adds to, or deletes information in the Solicitation Documents or previously issued Addenda.

Additional Work - Increased quantities of any Pay Item, within the scope of the Contract, for which a unit price has been established.

Advertisement - The public announcement (Notice to Contractors) inviting Bids for Work to be performed or Materials to be furnished.

Agency - The City of McMinnville which has entered into a Contract with the Contractor.

Agency-Controlled Lands - Lands owned by the Agency, or controlled by the Agency under lease or agreement, or under the jurisdiction and control of the Agency for the purposes of the Contract.

Aggregate - Rock of specified quality and gradation.

Attorney in Fact - An Entity appointed by another to act in its place, either for some particular purpose, or for the transaction of business in general.

Award - Written notification to the Bidder that the Bidder has been awarded a Contract.

Base - A Course of specified material of specified thickness placed below the Pavement.

Bid - A competitive offer, binding on the Bidder and submitted in response to an invitation to bid.

Bid Bond - The Surety bond for Bid guarantee.

Bid Booklet - The bound booklet included in the Solicitation Documents that contains the information identified in 00120.10.

Bid Closing - The date and time after which Bids, Bid modifications, and Bid withdrawals will no longer be accepted.

Bid Documents - See under Solicitation Document.

Bid Opening - The date and time Bids are opened.

Bid Schedule - The list of Pay Items, their units of measurement, and estimated quantities. (When a Contract is awarded, the Bid Schedule becomes the Schedule of Items.)

Bid Section - The portion of the Bid Booklet containing all pages after the Bidder's checklist and before the appendix.

Bidder - An Entity that submits a Bid in response to an invitation to bid.

Bike Lane - A lane in the Traveled Way, designated by striping and Pavement markings for the preferential or exclusive use of bicyclists.

Borrow - Material lying outside of planned or required Roadbed excavation used to complete Project earthwork.

Boulders - Particles of rock that will not pass a 12 inch square opening.

Bridge - A single or multiple span Structure, including supports, that carries motorized and non-motorized vehicles, pedestrians, or utilities on a Roadway, walk, or track over a watercourse, highway, railroad, or other feature.

Buttress - A rock fill placed at the toe of a landslide or potential landslide in order to resist slide movement.

Calendar Day - Any day shown on the calendar, beginning and ending at midnight.

Camber - A slight arch in a surface or Structure to compensate for loading.

Change Order - A written order issued by the Engineer to the Contractor modifying Work required by the Contract, or adding Work within the scope of the Contract, and, if applicable, establishing the basis of payment for the modified Work.

Changed Work - Work included in a Pay Item and within the scope of the Contract that is different from that reflected in the Contract Documents. (see 00140.30)

Class of Project - A designation based on a Project's funding source, i.e., State or Federal-Aid.

City - The City of McMinnville, Oregon, a municipal corporation.

Class of Work - A designation referring to the type of Work in which Bidders must be pre-qualified. Classes of Work are limited to those listed in ODOT's Contractor's Prequalification Application.

Clay - Soil passing a No. 200 sieve that can be made to exhibit plasticity (putty-like properties) within a range of water contents.

Clear Zone - Roadside border area, starting at the edge of the Traveled Way, that is available for safe use by errant vehicles. Establishing a minimum width Clear Zone implies that rigid objects and certain other hazards within the Clear Zone should be relocated outside the Clear Zone, or shielded, or remodeled to make them break away on impact or be safely traversable.

Close Conformance - Where working tolerances are given on the Plans or in the Specifications, Close Conformance means compliance with those tolerances. Where working tolerances are not given, Close Conformance means compliance, in the Engineer's judgment, with reasonable and customary manufacturing and construction tolerances.

Coarse Aggregate - Crushed Rock or crushed Gravel retained on a 1/4 inch sieve, with allowable undersize.

Cobbles - Particles of Rock, rounded or not, that will pass a 12 inch square opening and be retained on a 3 inch sieve.

Commercial Grade Concrete - Concrete furnished according to Contractor proportioning, placed in minor Structures and finished as specified.

Construction Contracts Unit - Agency's office that administers construction contracts

Contract - The written agreement between the Agency and the Contractor, including without limitation all Contract Documents, describing the Work to be completed and defining the rights and obligations of the Agency and the Contractor.

Contract Amount - Sum of the Pay Item amounts computed by multiplying the Pay Item quantities by the unit prices in the Schedule of Items.

Contract Documents - Solicitation Documents, Specifications, Plans, Contract booklet, Change Orders, Force Account Work orders, pay documents issued by the Agency, Materials certifications, Project Work schedules, final estimate, written orders and authorizations issued by the Agency, Material source development and reclamation plans, and permits, orders and authorizations obtained by the Contractor or Agency applicable to the Project, as well as all documents incorporated by reference therein.

Contract Time - The amount of time allowed to complete the Work under the Contract.

Contractor - The Entity awarded the Contract according to the solicitation.

Course - A specified Surfacing Material placed in one or more Lifts to a specified thickness.

Coverage - One Pass by a piece of Equipment over an entire designated area.

Cross Section - The exact image formed by a plane cutting through an object, usually at right angles to a central axis, to determine area.

Day - A Calendar Day including weekdays, weekends, and holidays, unless otherwise specified.

Durable Rock - Rock that has a slake durability index of at least 90% based on a two-cycle slake durability test, according to ASTM D 4644. In the absence of test results, the Engineer may evaluate the durability visually.

Emulsified Asphalt - Emulsified asphalt cement.

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

Engineer - The Engineer who represents the Agency and who is designated by the Agency to administer the contract.

Entity - A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

Equipment - All machinery, tools, manufactured products, and fabricated items needed to complete the Contract or specified for incorporation into the Work.

Establishment Period - The time specified to assure satisfactory establishment and growth of planted Materials.

Existing Surfacing - Pavements, slabs, curbs, gutters, walks, driveways, and similar constructions of bricks, blocks, portland cement concrete, bituminous treated materials, and granular surfacing materials on existing Highways.

Extra Work - Work not included in the Contract, but deemed by the Engineer to be necessary to complete the Project.

Final Completion - The completion of all of the work called for under the contract including but not limited to, if applicable, satisfactory operation of all equipment, by means of acceptance tests, correction of all punch list items to the satisfaction of the City, settlement of all claims, if any, payment and release of records of all construction and like liens, delivery of all guarantees, equipment operation and maintenance manuals, as-built drawings, building certificate required prior to occupancy, electrical certificates, mechanical certificates, plumbing certificates, all other required approvals and acceptances by city, county and state

governments, or other authority having jurisdiction, and removal of all rubbish, tools, scaffolding, equipment, and surplus materials and equipment from the job site.

Final Acceptance - Written confirmation by the Agency that the Project has been completed according to the Contract, with the exception of latent defects and Warranty obligations, if any, and has been accepted.

Final Inspection - The inspection conducted by the Engineer to determine that the Project has been completed according to the Contract.

Fine Aggregate - Crushed Rock, crushed Gravel, or Sand that passes a 1/4 inch sieve, with allowable oversize.

First Notification - Written acknowledgment by the Engineer of the date on which workers employed by the Contractor or a Subcontractor have begun performance of the Contract, including Aggregate source development or erection of a plant, but not including installation of covered temporary signs according to Section 00222.

Force Account Work - Items of Extra Work ordered by the Engineer that are to be paid according to Section 00197.

Granular Material - Graded and selected free-draining material composed of particles of Rock, Sand, and Gravel.

Gravel - Particles of Rock, rounded or not, that will pass a 3 inch sieve and be retained on a No. 4 sieve.

Highway - Every road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of the State, open, used or intended for use by vehicular traffic.

Incidental - A term identifying those acts, services, transactions, property, Equipment, labor, Materials, or other items for which the Agency will make no separate or additional payment.

Inspector - The representative of the Engineer authorized to inspect and report on Contract performance.

Leveling - Placing a variable-thickness Course of Materials to restore horizontal and vertical uniformity to existing Pavements, normally continuous throughout the Project.

Lift - The compacted thickness of material placed by Equipment in a single Pass.

Lump Sum – A method of payment providing for one all-inclusive cost for the work or a particular portion of the work.

Local Public Agency (LPA) - See Agency.

Mandatory Source - A material source provided by the Agency from which the Contractor is required to obtain Materials. (see 00160.00(b) and 00160.40)

Materials - Any natural or manmade substance specified for use in the construction of the Project or for incorporation into the Work.

Median - The portion of a divided Highway separating traffic traveling in opposite directions.

Multiple Course Construction - Two or more Courses, exclusive of Patching or Leveling, placed over the entire Roadway width.

Multi-Use Path - That portion of the Highway Right-of-Way or a separate Right-of-Way, physically separated from motor vehicle traffic and designated for use by pedestrians, bicyclists and other non-motorized users.

Neat Line - Theoretical lines specified or indicated on the Plans for measurement of quantities.

Nondurable Rock - Rock that has a slake durability index of less than 90% based on a two-cycle slake durability test, as tested by ASTM D 4644, or Rock that is observed to readily degrade by air, water, and mechanical influence.

Notice to Contractors - The public announcement inviting Bids for Work to be performed or Materials to be provided.

Notice to Proceed - Written notice authorizing the Contractor to begin performance of the Work.

On-Site Work - Any Work taking place on the Project Site, including designated staging areas adjacent to the Project Site, except for installation of covered temporary signs according to Section 00222.

Organic Soil – A Soil with sufficient organic content to influence the Soil properties.

Panel – The width of specified Material being placed by Equipment in a single Pass.

Pass – One movement of a piece of Equipment over a particular location.

Patching – Placing a variable-thickness Course of Materials to correct sags, dips, and/or bumps to the existing grade and Cross Section, normally intermittent throughout the Project.

Pavement – Asphalt concrete or Portland cement concrete placed for the use of motor vehicles, bicycles, or pedestrians on Roadways, Shoulders, Multi-Use Paths and parking areas.

Pay Item (Contract Item) – A specific unit of Work for which a price is provided in the Contract.

Payment Bond – The approved security furnished by the Contractor's Surety as a guaranty of the Contractor's performance of its obligation to pay promptly in full all sums due for Materials, Equipment, and labor furnished to complete the Work.

Peat – A Soil composed primarily of vegetative matter in various stages of decomposition, usually with an organic odor, dark brown to black color, and a spongy consistency.

Performance Bond – The approved security furnished by the Contractor's Surety as a guaranty of the Contractor's performance of the Contract.

Plans – Standard and Supplemental Drawings, and approved unstamped and reviewed stamped Working Drawings. (see 00150.10 and 00150.35)

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

Project Manager - The Engineer's representative who directly supervises the engineering and administration of a Contract.

Project Site - The geographical dimensions of the real property on which the Work is to be performed, including designated contiguous staging areas.

Proposal - A competitive offer, binding on the Proposer and submitted in response to a Request for Proposals issued pursuant to ORS 279C.400 to ORS 279C.410..

Prospective Source - A Material source provided by the Agency, from which the Contractor has the option of obtaining Materials. (see 00160.00(a) and 00160.40)

Publicly-Owned Equipment - Equipment acquired by a state, county, municipality or political subdivision primarily for use in its own operations.

Public Improvement Contract – The contract included in the Bid Booklet, which may also be titled "Construction Contract."

Public Traffic - Vehicular or pedestrian movement, not associated with the Contract Work, on a public way.

Punch List - A list prepared by the City of the Contractor's incomplete or uncorrected work.

Railroad - Publicly or privately owned rail carriers, including passenger, freight, and commuter rail carriers, their tenants, and licensees. Also, Utilities that jointly own or use such facilities.

Responsible Bidder - An entity that has submitted a Bid and meets the standards set for in the Contract Documents, and has not been disqualified by the City.

Responsive Bid - A Bid that substantially complies with the applicable solicitation procedures and requirements and the Contract Documents.

Right-of-Way - Land, property, or property interest, usually in a strip, acquired for or devoted to transportation or other public works purposes.

Roadbed - Completed excavations and embankments for the Subgrade, including ditches, side slopes, and slope rounding, if any.

Roadside - The area between the outside edges of the Shoulders and the Right-of-Way boundaries. Unpaved median areas between inside Shoulders of divided Highways and infield areas of interchanges are included.

Roadway - That portion of a Highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or Shoulder. If a Highway includes two or more separate Roadways, the term "Roadway" refers to any such Roadway separately, but not to all such Roadways collectively. (see Traveled Way)

Rock - Natural deposit of solid material composed of one or more minerals occurring in large masses or fragments.

Sand - Particles of Rock that will pass a No. 4 sieve and be retained on a No. 200 sieve.

Schedule of Items - The list of Pay Items, their units of measurement, estimated quantities, and prices.

Schedule of Values - The breakdown of the values of the component elements comprising a lump sum Pay Item.

Second Notification - Written acknowledgment by the Engineer of the end of Contract Time according to 00180.50(g).

Shoulder - The part of a Roadbed contiguous to the Traveled Way or Roadway, whether paved or unpaved, for accommodating stopped vehicles, for emergency use and for lateral support of Base and surface Courses.

Signed or Signature - Any mark, work or symbol executed or adopted by an Entity evidencing an intent to be bound.

Silt - Soil passing a No. 200 sieve that is nonplastic or exhibits very low plasticity.

Single Course Construction - A wearing Course only, not including patching or leveling Courses or partial width Base Course.

Slope - Vertical distance to horizontal distance, unless otherwise specified.

Soil - Accumulations of particles produced by the disintegration of Rock, which sometimes contains organic matter. Particles may vary in size from Clay to Boulders.

Solicitation Document - Documents which define the procurement of a public improvement Project, including, but not limited to, the Bid Booklet, Agency-provided Plans, Standard Specifications, Special Provisions, Addenda, and which includes all documents incorporated by reference. May also be called Bid Documents.

Special Provisions - The special directions, provisions, and requirements specific to a Project that supplement or modify the Standard Specifications. Permits and orders governing the Project that are issued directly to the Agency by a governmental or regulatory authority are considered to be part of the Special

Provisions, to the extent and under the conditions stipulated in the Special Provisions. This includes any amended or supplemental permits or orders issued during the course of performing the Work under a Contract.

Special Services - Work services that the Contractor and Engineer agree cannot be satisfactorily performed by the Contractor's and Subcontractors' forces, including, but not limited to, temporary traffic control, owner operated trucking, sawcutting, core drilling, vacuum excavation, arborist services, fabrication and machining work that is most effectively performed away from the Project Site, or rental of operated Equipment as defined in 00180.20(c).

Specifications - The Standard Specifications and Special Provisions, together with all provisions of other documents incorporated therein by reference.

Standard Drawings - The Agency-prepared detailed drawings for Work or methods of construction that normally do not change from project to project.

Standard Specifications - "General Conditions for Construction for the City of McMinnville" published by the Agency and "2021 Oregon Standard Specifications for Construction", Parts 00200 through 03020, published by the Oregon Department of Transportation and as amended by the Agency through the Special Provisions. It provides directions, provisions, and requirements necessary for performing public improvement projects.

State - The State of Oregon.

Structures - Bridges, retaining walls, endwalls, cribbing, buildings, culverts, manholes, catch basins, drop inlets, sewers, service pipes, underdrains, foundation drains, and other similar features which may be encountered in the Work.

Subbase - A Course of specified material of specified thickness between the Subgrade and a Base.

Subcontractor - An Entity having a direct contract with the Contractor or another Subcontractor, to perform a portion of the Work.

Subgrade - The top surface of completed earthwork on which Subbase, Base, Surfacing, Pavement, or a Course of other Material is to be placed.

Substructure - Those parts of a Structure which support the Superstructure, including bents, piers, abutments, and integrally built wingwalls, up to the surfaces on which bearing devices rest. Substructure also includes portions above bearing surfaces when those portions are built integrally with a Substructure unit (e.g., backwalls of abutments). When Substructure and Superstructure elements are built integrally, the division between Substructure and Superstructure is considered to be at the bottom soffit of the longitudinal or transverse beam, whichever is lower. Culverts and rigid frames are considered to be entirely Substructure.

Substantial Completion - The completion of the work to the extent that the City may have uninterrupted occupancy and use of the facility or specified portion thereof for the purpose for which intended. Substantial completion shall not be construed as acceptance of the work or any part thereof by the City.

Superstructure - Those parts of a Structure above the Substructure, including bearing devices.

Supplemental Drawings - The Agency-prepared detailed drawings for Work or methods of construction that are Project specific, and are denoted by title in the Project title block.

Supplier - The Entity that furnishes goods to be incorporated into the Work.

Surety - The Entity that issues the bond.

Surfacing - The Course or Courses of material on the Traveled Way, auxiliary lanes, Shoulders, or parking areas for vehicle use.

Third Notification - Written acknowledgment by the Engineer, that as of the date of the notification the Contractor has completed the Project according to the Contract, including without limitation completion of all

minor corrective work, Equipment and plant removal, site clean-up, and submittal of all certifications, bills, forms and documents required under the Contract.

Ton - One short ton of 2,000 pounds (Ton, ton, Tn, or T).

Topsoil - Soil ready for use in a planting bed.

Traffic Lane - That part of the Traveled Way marked for moving a single line of vehicles.

Traveled Way - That part of the Highway for moving vehicles, exclusive of auxiliary lanes, berms and Shoulders.

Typical Section - That Cross Section established by the Plans which represents in general the lines to which the Contractor shall work in the performance of the Contract.

Unit Price - A contract item of work providing for payment based on a specified unit of measurement; e.g. lineal feet or tons.

Unsuitable Material - Frozen material, or material that contains organic matter, muck, humus, peat, sticks, debris, chemicals, toxic matter, or other deleterious materials not normally suitable for use in earthwork.

Utility - A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity which directly or indirectly serves the public. The term may also mean the utility company, district, or cooperative owning and operating such facilities, including any wholly-owned or controlled subsidiary.

Warranty Bond - The approved security furnished by the Contractor's, Subcontractor's, or Supplier's Surety as a guaranty of the Contractor's performance of its warranty obligations.

Work - The furnishing of all Materials, Equipment, labor, and Incidentals necessary to successfully complete any individual Pay Item or the entire Contract, and the discharge of duties and obligations imposed by the Contract.

Work Day - Every Calendar day excluding Saturdays, Sundays and legal holidays as listed in ORS 187.010.

Worker - Any person performing work under the contract, including employees of the Contractor or subcontractor, and persons having full or partial ownership of the Contractor or subcontractor.

Working Drawings - Supplemental Plans, not furnished by the Agency, that the Contractor is required to submit to the Engineer. (see 00150.35)

Workplace Violence - Any act of physical, verbal or written aggression by an individual in or related to the work place and/or project sites. This includes, but is not limited to, verbal abuse, threats or intimidation and physical intimidation, assault or battery by a worker or former worker. Work place violence may also include destruction or abuse of property.

Section 00120 - Bidding Requirements and Procedures

00120.00 Responsibility and Qualifications of Bidders - To demonstrate the Bidder's responsibility to perform the project work, each Bidder must be prepared to submit within five days after the Bid opening, upon the City's request, detailed written evidence such as financial data, previous experience, present commitments and other such data as may be called for below or elsewhere in these documents. Each Bid must contain evidence of Bidder's qualification to do business in the state of Oregon or covenant to obtain such qualification prior to award of the contract. The City may require submission of a prequalification package, pursuant to ORS 279C.450, on a project by project basis.

00120.01 General Bidding Requirements -

(a) City Representative - The City's representative for the project, who assumes duties and responsibilities and has rights and authority assigned in the Contract Documents in connection with completion of this project in accordance with the Contract Documents, shall be listed in the Invitation to Bid.

(b) Reference is made to the Public Improvement Contract and the Standard Terms and Conditions for Public Improvement Contracts for identification of additional contract provisions required by the State of Oregon in connection with this contract.

(c) Concerning those reports of conditions at or contiguous to the site which have been utilized by the City in preparation of the Contract Documents; the bidder may rely upon the general accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

(d) Concerning those drawings utilized by the City in preparation of the Contract Documents; the Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information. The Bidder is responsible for obtaining any investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or finishing of the project work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and finishing the project work in accordance with the time, price and other terms and conditions of the Contract Documents.

(e) The submission of a Bid will constitute an incontrovertible representation by the Bidder:

- That without exception the Bid is premised upon performing and furnishing the project work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents;
- That the Bidder has given the City written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and that the written resolutions thereof by the City are acceptable to the Bidder;
- That the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

(f) Availability of Lands for Work - The lands upon which the project work is to be performed, rights-of-way and easements for access thereto, and other lands designated for use in performing the project work, shall be supplied by the City.

(g) Interpretations and Addenda - All questions about the meaning or intent of the Contract Documents are to be directed to the City or City's Representative. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the City as having received the Bidding Documents. Questions received less than five days prior to the

date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Addenda may also be issued to modify the Bidding Documents as deemed advisable by the City or City's Representative.

(h) Bid Schedule/Bid Form - The bid schedule is included with the Bidding Documents; additional copies may be obtained from the City Representative. All blanks on the bid schedule must be completed by clearly printing in ink or by typewriter, or by filling in the bid spreadsheet, if provided. Changes may be made provided that the Bidder initials all changes.

(i) All items in the bid schedule shall be completed in full showing a unit or lump sum price or prices for each and every item. The price per item shall be clearly shown in the space provided. The pricing shall be extended to show the total when required.

(j) The extensions in the column headed "TOTAL COST" are made for the sole purpose of facilitating bid comparisons and if there are any discrepancies between the unit prices and the total amount shown, the unit prices shall govern.

(k) Drug Testing Program - By signing and submitting a Bid to the City, the Bidder shall certify that it has an employee drug testing program in place.

(l) Non-discrimination Certification - By signing and submitting a Bid to the City, Bidder certifies that bidder has not discriminated and will not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.

(m) Opening of Bids - Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where Bids are to be submitted, at the time for the Bid Opening stated in the Invitation to Bid.

(n) Bids to Remain Subject to Acceptance - All Bids will remain subject to acceptance for sixty (60) days after the day of the Bid opening, but the City may, in its sole discretion, release any Bid and return the Bid security prior to that date.

(o) Award of Contract:

1. The City reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if the City believes that it would not be in the best interest of the City to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the City. The City also reserves the right to waive all informalities not involving price, time, or changes in the project work and to negotiate contract terms with the Successful Bidder. Discrepancies between words and figures will be resolved in favor of the words. Bidders responding to this Invitation to Bid do so solely at their expense, and the City is not responsible for any Bidder expenses associated with the Invitation to Bid. By submitting a Bid, Bidders agree that doing so is at their own risk and the City shall have no liability related thereto. The City is not liable for any cost incurred by a Bidder in protesting any portion of the Solicitation Documents or the City's selection decision.

2. In evaluating Bids, the City will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid or prior to the Notice of Award.

3. The City may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the project work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Contract Documents. The City also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the project work when such data is required to be submitted prior to the Notice of Award.

4. The City may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed

Subcontractors, Suppliers and other persons and organizations to perform and furnish the project work, in accordance with the Contract Documents, to the City's satisfaction, within the prescribed time.

5. If the contract is to be awarded, it will be awarded to the lowest responsive and responsible Bidder whose evaluation by the City indicates that the award will be in the best interests of the City.

6. If the contract is to be awarded, the City will give Successful Bidder a Notice of Award within sixty (60) days after the day of the Bid opening.

(p) **Signing of Public Improvement Contract** - When the City gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Public Improvement Contract with all other written Contract Documents attached. Within seven (7) days thereafter, the Contractor shall sign and deliver the required number of counterparts of the Public Improvement Contract and attached documents to the City with the required liability and workers compensation insurance certificates, and payment and performance bonds. Within thirty (30) days thereafter, the City shall deliver one fully signed counterpart to the Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

00120.05 Request for Plans, Special Provisions, and Bid Booklets:

(a) Copies of the Contract Documents may be obtained from City's website <https://www.mcminnvilleoregon.gov/rfps>.

(b) The Contractor shall use complete sets of Contract Documents in preparing the Bid; the City assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

(c) The City, in making copies of Contract Documents available on the above terms, does so only for the purpose of obtaining Bids for the project work and does not confer a license or grant for any other use.

00120.10 Bid Booklet - The Bid Booklet may include, but is not limited to:

- Invitation to Bid
- Bidder's Checklist
- Bid
- First Tier Subcontractor Disclosure Form
- Bid Bond
- Public Improvement Contract
- Payment Bond
- Performance Bond
- General Conditions
- Special Provisions
- Revisions to Standard Specifications
- Technical Specifications
- Appendix, which includes required time-sensitive forms such as Restoration Release Form, sample forms, Prevailing Wage Rates, and other informational pages
- Construction Plans

00120.15 Examination of Work Site and Solicitation Documents; Consideration of Conditions to be Encountered - Before submitting a Bid, Bidders shall make a careful visual examination of the site of the proposed Work, the Bid Booklet, Plans, and Specifications. Bidders shall also contact Utility owners to verify all Utilities' anticipated involvement on the Project Site. Bidders shall also review any subsurface investigation material referenced in 00120.25 that may be available and conduct additional investigation of any unusual condition apparent during the visual site examination. As soon as reasonably practicable after noting any such unusual condition, Bidder shall notify Agency, in writing, of any such unusual condition and

the additional investigation undertaken by Bidder. Submission of a Bid will constitute confirmation that the Bidder has examined the Project and finds the Plans and Specifications to be sufficiently detailed and accurate to enable Bidder to properly perform the Work and understands the conditions to be encountered in performing the Work and all requirements of the Contract.

The Bidder is responsible for loss or unanticipated costs suffered by the Bidder because of the Bidder's failure to examine the site and become fully informed about all conditions of the Work, or failure to request clarification of Plans and Specifications Bidder believes to be erroneous or incomplete.

Any clarification of Plans and Specifications needed by the Bidder shall be requested in writing through the Engineer. Unless the procurement period is shorter than one week, requests for changes or clarification shall be submitted at least five days prior to the date of Bid Closing. The Agency will respond to each request at least 72 hours prior to the date of Bid Closing. If the Procurement period is less than seven days, requests shall be submitted within one day after the Procurement is issued and the Agency will issue its response to each such request at least 24 hours prior to Bid Closing. Failure to timely request clarification or changes shall be deemed acceptance of all of the terms and conditions of the Procurement. Oral explanations or interpretations given before receiving Bids for a Project will not be binding. To be binding, interpretation of the Plans and Specifications by the Agency must be made by written Addendum furnished to all Holders of Bidding Plans according to 00120.30. Notification of erroneous or incomplete Plans or Specifications shall also be submitted to the Engineer. Such notification shall also be made in sufficient time for the Agency to make any necessary modifications and issue Addenda to Bidders prior to Bid Closing.

00120.16 Material, Equipment, and Method Substitutions - When the Contract specifies certain Materials, Equipment, and/or methods, the Bidder shall include those Materials, Equipment, and/or methods in the Bid unless the Engineer has issued an Addendum granting approval to substitute. The procedure for requesting approval is as follows:

(a) Written Request - If a Bidder proposes to use Materials, Equipment and/or methods other than those specified, the Bidder shall send a written request to the Engineer, at least 7 Calendar Days prior to Bid Opening, including complete descriptive and technical information on the proposed Materials, Equipment and/or methods.

(b) Functional Similarity - Materials and Equipment proposed for substitution shall be similar in design, and equal or better in quality and function to those specified.

(c) Manufacturer's Information - If manufacturers' brochures or information is needed, the Bidder shall submit three copies of each with all pertinent information clearly marked.

(d) Differences - The Bidder shall specifically note all differences between the specified Materials, Equipment and/or methods and the proposed substitutes.

(e) Cost - Where a substitute will result in alteration of the design or space requirements, or any other modifications to the Plans, the Bidder shall include in the substitution request all items of cost for the revised design and construction.

(f) Notification of Holders of Bidding Plans - If the Engineer approves any proposed substitution, such approval, and any modifications necessitated to the design and construction by the substitution, will be acknowledged by Addenda.

Unless the Engineer has approved substitutions of Materials, Equipment, and/or methods prior to opening of Bids, the Bidder shall furnish the items specified in the Contract. Substitution after Award is specified in 00180.31(b), 00180.31(c), and 00180.31(d).

00120.17 Use of Agency-Owned Land for Staging or Storage Areas - The Contractor may use Agency-owned property for staging or storage areas, subject to the following limitations:

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

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

If a Bidder obtains approval before submitting a Bid, use of the property will be at no cost to the Contractor, or at a cost stated by the Engineer upon granting approval, as confirmed by Addendum.

If approval is not obtained before submitting a Bid, and the Contractor proposes to use Agency-owned property outside the normal Right-of-Way limits, then use of the property may be approved by the Engineer, but the Contractor will be assessed fair market value, as determined by the Engineer, for use of the property.

(c) Restrictions on Use - Contractors shall comply with all applicable laws, ordinances, and regulations pertaining to use of Agency-owned property, and shall:

- Not cause unreasonable impacts on traffic and other facility users.
- Clean up all hazardous materials deposited by, or resulting from, Contractor operations.
- Be responsible for all costs associated with use of the property.

00120.20 Interpretation of Quantities in Bid Schedule - Quantities appearing in the Bid Schedule are approximate and are provided only for comparison of Bids. The Agency does not warrant that the actual individual items, amount of Work, or quantities will correspond to those shown in the Bid Schedule. Payment to the Contractor will be made only for actual quantities of Work performed and accepted or Materials furnished and accepted, as required by the Contract. Quantities of Work to be performed and Materials to be furnished may each be increased, decreased, or omitted as provided in 00120.30 and 00140.30.

00120.25 Subsurface Investigations - If the Agency or its consultant has conducted subsurface or geologic investigations of the proposed Project Site, the results of the investigations may be included in written reports. If reports have been prepared, copies will be available at the Engineer's office. If the Agency has retained subsurface samples, they will also be available for inspection. Bidders and the Contractor may make arrangements for viewing the samples through the Engineer's office.

The availability of subsurface information from the Agency is solely for the convenience of the Bidder and shall not relieve the Bidder or the Contractor of any risk, duty to make examinations and investigations as required by 00120.15, or other responsibility under the Contract Documents. It is mutually agreed to by all parties that:

- The written report(s) are reference documents and not part of the Contract Documents.
- The subsurface investigations made by the Agency are for the purpose of obtaining data for planning and design of the Project.
- The data for individual test boring logs apply only to that particular boring and are not intended to be conclusive as to the character of any material between or around test borings.
- If Bidders use this information in preparing a Bid, it is used at their own risk, and Bidders are responsible for all conclusions, deductions, and inferences drawn from this information.

00120.30 Changes to Plans, Specifications, or Quantities before Opening of Bids - The Agency reserves the right to issue Addenda making changes or corrections to the Plans, Specifications, or quantities. Only holders of Solicitation Documents obtained from the Agency's web page who have been identified by the Agency as Holders of Bidding Plans may be notified of these Addenda by mail, email, or posted to the City's Projects Webpage.

The Agency will not be responsible for failure of Bidders to receive Addenda sent as described in the preceding paragraph. Bids shall incorporate all Addenda. Bids may be rejected if opened and found by the Agency to not be based on all Addenda issued before Bid Closing.

00120.40 Preparation of Bids:

(a) General:

(1) Paper Bids - For Bids submitted by paper, the Bidders shall not alter, in any manner, the paper documents within the Bid Section. Bidders shall complete the certifications and statements included in the Bid Section of the Bid Booklet according to the instructions. Signature of the Bidder's authorized representative thereon constitutes the Bidder's confirmation of and agreement to all certifications and statements contained in the paper Bid Booklet. Entries on the paper documents in the Bid Section shall be in ink or typed. Signatures and initials shall be in ink.

The Bidder shall properly complete and bind all the required paper documents in the Bid Section, between the front and back covers of the Bid Booklet, except that the Bid Bond is not required if another permissible type of Bid guaranty is provided. (see 00120.40(e))

(b) Bidding Considerations - Bidders may refer to the following Subsections for requirements that may affect bidding considerations:

- 00120.80, Reciprocal Preference for Oregon Resident Bidders
- 00130.80, Project Site Restrictions
- 00150.55, Cooperation with Other Contractors
- 00150.75, Protection and Maintenance of Work During Construction
- 00160.20(a), Buy America
- 00160.20(b), Buy Oregon
- 00170.07, Record Requirements
- 00180.20, Subcontracting Limitations
- 00180.21, Subcontracting
- 00195.00(a), Scope and Limit
- 00195.50(a-1), Progress Payments
- 00199.30, Claims Procedure

(c) Bid Schedule Entries:

(1) Paper Bid Schedule Entries - Using figures, Bidders shall fill in all blank spaces in the paper Bid Schedule (or electronic spreadsheet if provided). For each item in the paper Bid Schedule, Bidders shall enter the unit price and the product of the unit price multiplied by the quantity given. The unit price shall be greater than zero, shall contain no more than two decimal places to the right of the decimal point, and shall be expressed in U.S. dollars and cents (for example, \$150.25 or \$0.37). Unit prices submitted which contain more than two decimal places, will be truncated by the Agency at the second decimal place to determine the product of the unit price and quantity. No rounding will be considered or paid. Bidders Bid shall also enter the total amount of the Bid obtained by adding amounts for all items in the paper Bid Schedule. Corrections or changes of item entries shall be in ink, with incorrect entry lined out and correct entry entered and initialed.

(d) Bidder's Address and Signature Pages - Bidders shall include in the Bid the address to which all communications concerning the Bid and Contract should be sent. The Bid must be signed by a duly authorized representative of the Bidder.

(e) Bid Guaranty - All Bids shall be accompanied by a Bid guaranty in the amount of 10% of the total amount of the Bid.

(1) Bid Guaranty with Paper Bids - For Bids submitted by paper, the Bid guaranty shall be either a Surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or security in the form of a cashier's check or certified check made payable to the Agency. (see ORS 279C.365(5))

If a Surety bond is submitted, Bidders shall use the Agency's standard Bid Bond form included with the paper Bid Booklet. Bidders shall submit the bond with original signatures and the Surety's seal affixed. The Bid guaranty shall be submitted by mail, delivery service, email, or hand delivered to the offices and addresses, and at the times given in the paper Bid Booklet

- Acceptable Surety companies are limited to those authorized to do business in the State of Oregon.
- Forfeiture of Bid guaranties is covered by 00130.60, and return of guaranties is covered by 00130.70.

(f) Disclosure of First-Tier Subcontractors - If a Bidder's Bid on a public improvement Project exceeds \$100,000, the Bidder shall, within 2 working hours of the time Bids are due to be submitted, submit to the Agency, on a form provided by the Agency, a disclosure identifying any first-tier Subcontractors that will furnish labor or labor and Materials, and whose contract value is equal to or greater than:

- 5% of the total Project Bid, but at least \$15,000; or
- \$350,000, regardless of the percentage of the total Project Bid.

For each Subcontractor listed, Bidders shall state:

- The name of the Subcontractor;
- The dollar amount of the subcontract; and
- The category of Work that the Subcontractor would be performing.

If no subcontracts subject to the above disclosure requirements are anticipated, a Bidder shall so indicate by entering "NONE" or by filling in the appropriate check box. For each Subcontractor listed, Bidders shall provide all requested information. An incomplete form will be cause for rejection of the Bid.

The Subcontractor Disclosure Form may be submitted for a paper Bid either:

- By filling out the Subcontractor Disclosure Form included in the Bid Booklet and submitting it together with the Bid at the time and place designated for receipt of Bids;
- By removing it from the paper Bid Booklet, filling it out and submitting it separately to the Agency at the address given in the Bid Booklet; or

Subcontractor Disclosure Forms submitted by any method will be considered late if not received by the Agency within two 2 working hours of the time designated for receiving Bids.

E-mail submissions must be fully compatible with Microsoft Word, Excel, or Adobe Acrobat, as applicable. The Agency is not responsible for partial, failed, illegible or partially legible e-mail submittals, and such forms may be rejected as incomplete.

Bids not in compliance with the requirements of this Subsection will be considered non-responsive.

00120.45 Submittal of Bids:

(a) Paper Bids - Paper bids may be submitted by mail, parcel delivery service, or hand delivery to the Agency, and at the times given in the Bid Booklet. Submit paper Bids in an opaque sealed envelope, marked with the project title, date of opening, name and address of bidder, and accompanied by the bid security (if required) and other required documents. If a delivery or courier service is used, the Bidder shall place the sealed envelope containing the paper Bid inside the delivery or courier service's envelope.

Paper or Email Bids submitted or received after the time set for receiving paper Bids will not be opened or considered. Bidders are solely responsible to ensure that Bids are received at or prior to the time set for receiving Bids. The Agency assumes no responsibility for the receipt and return of late paper Bids.

Preparation and submission of Bids is at the sole risk and expense of the Bidder and is not a cost of contract performance.

00120.60 Revision or Withdrawal of Bids:

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

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

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

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

00120.65 Opening and Comparing Bids - Bids will be opened and the total price for each Bid will be read publicly at the time and place indicated in the Bid Advertisement. Bidders and other interested parties are invited to be present.

Bids for each Project will be compared on the basis of the total amount of each Bid. The total amount of the Bid will be the total sum computed from quantities listed in the Bid Schedule and unit prices entered by the Bidder.

In case of conflict between the unit price and the corresponding extended amount, the unit price shall govern, and the Agency may make arithmetic corrections on extension amounts.

00120.70 Rejection of Nonresponsive Bids - A Bid will be considered irregular and will be rejected if the irregularity is deemed by the Agency to render the Bid non-responsive. Examples of irregularities include without limitation:

- The Bid Section documents provided are not properly used or contain unauthorized alterations.
- The Bid is incomplete or incorrectly completed.
- The Bid contains improper additions, deletions, alternate Bids, or conditions.
- The Bid is submitted on documents not obtained directly from the Agency or is submitted by a Bidder who has not been identified by the Agency as a Holder of Bidding Plans, as required by 00120.05.
- The Bid or Bid modifications are not signed by a person authorized to submit Bids or modify Bids, as required by 00120.01.
- A member of a joint venture and the joint venture submit Bids for the same Project. Both Bids may be rejected.
- The Bid has entries not typed or in ink, or has signatures or initials not in ink.
- Each change or correction is not individually initialed.
- White-out tape or white-out liquid is used to correct item entries.
- The price per unit cannot be determined.
- The Bid guaranty is insufficient or improper.
- The original Bid Bond form is not used or is altered.
- The Oregon Construction Contractors Board registration number and expiration date are not shown on the Bid if required in the Solicitation Document. This requirement applies to Agency and State-funded Projects, with the exception of Aggregate production and landscape Projects. (not required on Federal-Aid Projects)
- A disclosure of qualified first-tier Subcontractors, if required under 00120.40(f), is not received within 2 working hours of the time Bids are due to be submitted, or the disclosure form is not complete.
- The Bidder has not complied with the DBE requirements of the solicitation.

- The Bid does not acknowledge all issued Addenda.
- The Bid contains entries that are not greater than zero.
- The Bid entries are not expressed in U.S. dollars and cents.
- The Agency determines that any Pay Item is significantly unbalanced to the potential detriment of the Agency.

In addition, the Agency may reject all Bids for good cause upon its finding that it is in the public interest to do so. The Agency may also waive minor informalities or irregularities.

00120.80 Reciprocal Preference for Oregon Resident Bidders - This Subsection applies only to Contracts for Projects financed without federal funds.

Bidders shall complete the certificate of residency provided by the Agency in the Bid Booklet. Failure to properly complete the form will be cause to reject the Bid.

As used in the certificate of residency and this Subsection, "Resident Bidder" means a Bidder who has:

- Paid unemployment taxes or income taxes in the State of Oregon during any of the 12 calendar months immediately preceding submission of the Bid;
- A business address in the State of Oregon; and
- Certified in the Bid that the Bidder qualifies as a Resident Bidder.

"Nonresident Bidder" means a Bidder who is not a Resident Bidder as defined above.

In determining the lowest Bid, the Agency will, for the purpose of awarding the Contract, add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides (ORS 279A.120). The percentage preference applied in each state will be published on or before January 1 of each year by the Oregon Department of Administrative Services. The Agency may rely on these percentages without incurring liability to any Bidder (ORS 279A.120).

This increase will only be applied to determine the lowest Bid, and will not cause an increase in payment to the Contractor after Award of the Contract.

00120.90 Disqualification of Bidders - The Bid(s) of a disqualified Bidder will be rejected. Any of the following reasons is sufficient to disqualify a Bidder:

- More than one Bid is submitted for the same Work by an Entity under the same or different name(s).
- Evidence of collusion among Bidders. Participants in collusion will be found not responsible, and may be subject to criminal prosecution.

A Bidder will be disqualified if the Bidder has:

- Been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860;
- Not been licensed by the Oregon Construction Contractors Board (CCB) or the State Landscape Contractors Board before submitting a Bid (ORS 279C.365(1)(k), ORS 701.055, and ORS 671.530). The Bidder's license number and expiration date shall be shown in the Bid form, if requested. Failure to furnish the license number, if requested, will render the Bid non-responsive and subject to rejection. (not required on Federal-Aid projects); or
- Been determined by the CCB under ORS 701.227 not to be qualified to hold or participate in a public contract for a public improvement.

00120.91 Rejection of Bid on Grounds of Nonresponsibility of Bidder - The Bid of a Bidder who is found to be nonresponsive according to the criteria listed in 00130.10 or ORS 279C.375(3) will be rejected.

Section 00130 - Award and Execution of Contract

00130.00 Consideration of Bids - After opening and reading Bids, the Agency will check them for correct extensions of unit prices and totals. (see 00120.65). The total of extensions, corrected where necessary, will be used by the Agency for Award purposes.

The Agency reserves the right to waive minor informalities and irregularities, and to reject any or all Bids for irregularities under 00120.70 or for good cause after finding that it is in the public interest to do so (ORS 279C.395). An example of good cause for rejection in the public interest is the Agency's determination that any of the unit Bid prices are significantly unbalanced to the Agency's potential detriment. The Agency may correct obvious errors, when the correct information can be determined from the face of the document, if it finds that the best interest of the Agency and the public will be served thereby.

Bids will be considered and a Contract awarded, if at all, within 60 Calendar Days from the date of Bid Opening, unless an extension beyond that time is agreed to by both parties and acknowledged in writing by the Bidder.

00130.10 Award of Contract - After the Bids are opened and a determination is made that a Contract is to be awarded, the Contract will be awarded to the lowest responsible Bidder. For the purposes of this Section, "lowest responsible Bidder" means the lowest Bidder who is not on the list created by the Construction Contractors Board according to ORS 701, and who has:

- Substantially complied with all prescribed public bidding procedures and requirements.
- Available the appropriate financial, Materials, Equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the prospective Bidder to meet all contractual responsibilities.
- A satisfactory record of performance. In evaluating a Bidder's record of performance, the Agency may consider, among other things, whether the Bidder completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of evaluating a Bidder's performance on previous contracts of a similar nature, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the Bidder's control, the Bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. Satisfactory performance of the Contract also includes compliance with the requirements for records in 00170.07 for Contracts with the Agency.
- A satisfactory record of integrity. In evaluating a Bidder's record of integrity, the Agency may consider, among other things, whether the Bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Bidder's performance of a contract or subcontract.
- Qualified legally to contract with the Agency.
- Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Bidder fails to promptly supply information requested by the Agency concerning responsibility, the Agency shall base the determination of responsibility upon any available information, or may find the prospective Bidder not to be responsible.

If the Bidder is found not to have a satisfactory record of performance or integrity, the Agency will document the record and the reasons for the unsatisfactory finding.

The Agency will mail the Notice of Intent to Award to the Bidders, and may provide Notice of Intent to Award on the Agency's web site.

The Award will not be final until the later of the following:

- Seven calendar days after the Notice of Intent to Award has been posted as specified in the advertised solicitation or Addendum thereto; or;
- The Agency has provided a written response to each timely protest, denying the protest and affirming the Award.

If the Agency accepts a Bid and awards a Contract, the Agency will send the successful Bidder written notice of acceptance and Award.

Notice of Award and Contract booklets ready for execution will be sent within 60 Calendar Days of the opening of Bids or within the number of Calendar Days specified in the Special Provisions or a written mutual agreement.

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

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

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

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

00130.20 Cancellation of Award - Without liability to the Agency, the Agency may for good cause cancel Award at any time before the Contract is executed by all parties to the Contract, as provided by ORS 279C.395 for rejection of Bids, upon finding, in its sole and absolute discretion, it is in the public interest to do so.

00130.30 Contract Booklet - The Contract booklet may include but is not limited to:

- Special Provisions
- Addenda
- Schedule of Items
- Contract
- Performance Bond
- Payment Bond
- Certification of workers' compensation coverage

00130.40 Contract Submittals - Before the Agency will execute the Contract, the successful Bidder shall furnish the following:

(a) Performance and Payment Bonds - When Awarded the Contract, the successful Bidder shall furnish a Performance Bond and a Payment Bond of a Surety authorized to do business in the State of Oregon.

The successful Bidder shall submit the standard bond forms, which are bound in the Contract booklet. Faxed or photocopied bond forms will not be accepted. The amount of each bond shall be equal to the Contract Amount. The Performance Bond and the Payment Bond must be signed by the Surety's authorized Attorney-in-Fact, and the Surety's seal must be affixed to each bond. A power of attorney for the Attorney-in-Fact shall be attached to the bonds in the Contract booklet, which must include bond numbers, and the Surety's original seal must be affixed to the power of attorney. Bonds shall not be canceled without the Agency's consent, nor will the Agency normally release them, prior to Contract completion.

When a coating system warranty is required by 00594.75, the Contractor shall also furnish a supplemental warranty performance bond as and when described in 00594.75.

(b) Certificates of Insurance - The successful Bidder shall furnish the Agency certificates of insurance applicable to the Project, according to 00170.70. The insurance coverages shall remain in force throughout the performance of the Contract and shall not be allowed to lapse without prior written approval of the Agency. Bidders may refer to 00170.70 for minimum coverage limits and other requirements.

For specified Contracts, certified copies, and in some instances the original, of insurance policies may be required by the Special Provisions.

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

(d) Licensing and Registration Requirements:

(1) ORS 701.055 and ORS 671.530 require that Bidders be licensed by the Oregon Construction Contractors Board or the State Landscape Contractors Board prior to submission of a Bid on a Project not involving federal funds. Licensing by the Construction Contractors Board or the State Landscape Contractors Board is not a prerequisite to bidding on Federal-Aid Projects; however, the Agency will not execute a Contract until the Contractor is so licensed.

(2) Bidders must be registered with the Corporation Division, Oregon Secretary of State, if bidding as a corporation, limited liability company, joint venture, or limited liability partnership, or if operating under an assumed business name and the legal name of each person carrying on the business is not included in the business name.

(3) A Contractor licensed under ORS 701 may bid on a landscaping Project or perform a construction project that includes landscape contracting as a portion of the project if the landscape contracting is subcontracted to a licensed landscaping business as defined in ORS 671.520.

(4) A landscaping business may bid on a Project or perform a Contract that includes the phase of landscape contracting for which it is not licensed if it employs a landscape contractor, or subcontracts with another licensed landscaping business, licensed for that phase.

00130.40(e) Tax Identification Number - The successful Bidder shall furnish the Agency the Bidder's Federal Tax Identification Number.

00130.50 Execution of Contract and Bonds:

(a) By the Bidder - The successful Bidder shall deliver the required number of Contract booklets with the properly executed Contract, Performance Bond, Payment Bond, certification of workers' compensation coverage, the required certificates of insurance, and the required insurance endorsements to the Agency within 10 Calendar Days after the date on which the Contract booklets are sent or otherwise conveyed to the Bidder under 00130.10. The Bidder shall return the originals of all documents received from the Agency and named in this Subsection, with original signatures. Certificates of insurance shall also be originals. Certificates of insurance, and related endorsements, for coverages that are permitted by the Agency under 00170.70(a) to be obtained by appropriate subcontractors shall be delivered by the Contractor to the Agency together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. No copies of these documents will be accepted by the Agency.

Proper execution requires that:

- If the Contractor is a partnership, limited liability partnership, joint venture, or limited liability company, an authorized representative of each Entity comprising it shall sign the Contract, Performance Bond, and Payment Bond, and an authorization to sign shall be attached.
- If the Contractor is a corporation, the President and the Secretary of that corporation shall sign the Contract, Performance Bond, and Payment Bond. However, if other corporate officers are authorized to execute contracts and bonds, the successful Bidder shall furnish with those documents a certified, true and correct copy of the corporate bylaws or minutes stating that authority. If only one officer is signing, then the bylaws or minutes must include the authority to

sign without the signature of others. The successful Bidder shall also include the title(s) or corporate office(s) held by the signer(s).

(b) By the Agency - Within 15 Working Days after the Agency has received and verified the properly executed documents specified in 00130.50(a), and received legal sufficiency approval from the Agency's attorney (if required), the Agency will execute the Contract. The Agency will then send a fully-executed original Contract booklet to the successful Bidder, who then officially becomes the Contractor.

00130.60 Failure to Execute Contract and Bonds - Failure of the successful Bidder to execute the Contract and provide the required certificates, certifications, and bonds may be cause for cancellation of the Award, and may be cause for forfeiture of the Bid guaranty under ORS 279C.385.

Award may then be made to the next lowest responsible Bidder, the Project may be re-advertised, or the Work may be performed otherwise as the Agency decides.

The forfeited Bid guaranty will become the Agency's property, not as a penalty but as liquidation of damages resulting from the Bidder's failure to execute the Contract and provide the certificates, certifications, and bonds as required by these Specifications.

00130.70 Release of Bid Guaranties - Bid guaranties will be released and checks returned 7 Calendar Days after Bids are opened, except for those of the three apparent lowest Bidders on each Project. The guaranties of the three apparent lowest Bidders will be released and checks returned to unsuccessful Bidders within 7 days of the Agency's execution of the Contract.

00130.80 Project Site Restriction - Until the Agency sends the Contractor written Notice to Proceed with the Work, and the Contractor has filed the public works bonds required in 00170.20, the Contractor shall not go onto the Project Site on which the Work is to be done, nor move Materials, Equipment, or workers onto that Project Site.

The Contractor will not automatically be entitled to extra compensation because the commencement of Work is delayed by failure of the Agency to send the Contract for execution. However, if more than 60 Calendar Days elapse between the date the Bid is opened and the date the Agency sends the Contract to be executed, the Agency will consider granting an adjustment of time for completion of the Work to offset any actual delay to Contract completion resulting directly from delay in commencement.

00130.90 Notice to Proceed - Notice to Proceed will be issued not later than five Calendar days after the Contract is executed by the Agency.

Should the Agency fail to issue the Notice to Proceed within five Calendar Days of Contract execution, the Contractor may apply for an adjustment of Contract Time according to 00180.80(c).

The Engineer will issue a First Notification recording the date the performance of the Contract has begun.

Section 00140 - Scope of Work

00140.00 Purpose of Contract - The purpose of the Contract is to set forth the rights and obligations of the parties and the terms and conditions governing completion of the Work. The Contractor's obligations shall include without limitation the following:

- The Contractor shall furnish all Materials, Equipment, labor, transportation, and Incidentals required to complete the Work according to Plans, Specifications, and terms of the Contract.
- The Contractor shall perform the Work according to the lines, grades, Typical Sections, dimensions, and other details shown on the Plans, as modified by written order, or as directed by the Engineer.
- The Contractor shall perform all Work determined by the Engineer to be necessary to complete the Project.
- The Contractor shall contact the Engineer for any necessary clarification or interpretation of the Contract.

00140.10 Typical Sections - The Typical Sections are intended to apply in general. At other locations where the Typical Section is not appropriate, the Contractor shall perform construction to the identified alignment as directed by the Engineer.

00140.20 Thickness - The thickness of Courses of Materials shown on the Plans, given in the Specifications, or established by the Engineer is considered to be the compacted thickness. Minor variations are acceptable when within tolerances specified in the Specifications or Plans, or when approved by the Engineer.

00140.30 Agency-Required Changes in the Work - Changes to the Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of Project construction.

Without impairing the Contract, the Agency reserves the right to require changes it deems necessary or desirable within the scope, which in the Specifications means general scope, of the Project. These changes may modify, without limitation:

- Specifications and design
- Grade and alignment
- Cross Sections and thicknesses of Courses of Materials
- Method or manner of performance of Work
- Project Limits

or may result in:

- Increases and decreases in quantities
- Additional Work
- Elimination of any Contract item of Work
- Acceleration or delay in performance of Work

Upon receipt of a Change Order, the Contractor shall perform the Work as modified by the Change Order. If the Change Order increases the Contract Amount, the Contractor shall notify its Surety of the increase and direct the Surety to increase the amount of the performance and payment bonds to equal the new Contract Amount. The Contractor shall provide the Agency with a copy of the modified bond documents within 15 calendar days of receipt of the Change Order. The Contractor's performance of Work according to Change Orders shall neither invalidate the Contract nor release the Surety. Payment for changes in the Work will be made according to 00195.20. Contract Time adjustments, if any, will be made according to 00180.80.

00140.40 Differing Site Conditions - The following constitute differing Project Site conditions provided such conditions are discovered at the Project Site after commencement of the Work:

- **Type 1** - Subsurface or latent physical conditions that differ materially from those indicated in the Contract Documents; or

- **Type 2** - Unknown physical conditions of unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

The party discovering such a condition shall promptly notify the other party, in writing, of the specific differing conditions before they are disturbed and before the affected Work is performed. The Contractor shall not continue Work in the affected area until the Engineer has inspected such condition according to 00195.30 to determine whether an adjustment to Contract Amount or Contract Time is required.

Payment adjustments due to differing Project Site conditions, if any, will be made according to 00195.30. Contract Time adjustments, if any, will be made according to 00180.80.

00140.50 Environmental Pollution Changes - ORS 279C.525 will apply to any increases in the scope of the Work required as a result of environmental or natural resources laws enacted or amended after the submission of Bids for the Contract. The Contractor shall comply with the applicable notice and other requirements of ORS 279C.525. The applicable rights and remedies of that statute will also apply.

In addition to ORS 279C.525, the Agency has compiled a list at 00170.01 of those federal, State, and local agencies, of which the Agency has knowledge, that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of Agency contracts.

00140.60 Extra Work - If directed by the Engineer's written order, the Contractor shall perform work not included in the Contract. The Contractor shall perform this work according to:

- Standard Specifications
- Standard Drawings
- Supplemental Specifications, if any
- Other Plans and Specifications issued by the Engineer

Payment for Extra Work will be made according to Section 00196. Contract Time adjustments, if any, will be made according to 00180.80.

00140.65 Disputed Work - The Contractor may dispute any part of a Change Order, written order, or an oral order from the Engineer by the procedures specified in Section 00199.

00140.70 Cost Reduction Proposals - The Contractor may submit written proposals to the Engineer that modify Plans, Specifications, or other Contract Documents for the sole purpose of reducing the total cost of construction. Unless otherwise agreed to in writing by the Agency, a proposal that is solely or primarily a proposal to reduce estimated quantities or delete Work, as determined by the Engineer, is not eligible for consideration as a cost reduction proposal and will instead be addressed under 00140.30, whether proposed or suggested by the Agency or the Contractor.

(a) Proposal Requirements - The Agency will not adopt a cost reduction proposal that impairs essential functions or characteristics of the Project including but not limited to service life, economy of operation, ease of maintenance, designed appearance, or design and safety standards.

To conserve time and funds, the Contractor may first submit a written request for a feasibility review by the Engineer. The request should contain a description of the proposal together with a rough estimate of anticipated dollar and time savings. The Engineer will, within a reasonable time, advise the Contractor in writing whether or not the proposal would be considered by the Agency, should the Contractor elect to submit a detailed cost reduction proposal.

A detailed cost reduction proposal shall include without limitation the following information:

- A description of existing Contract requirements for performing the Work and the proposed change;
- The Contract items of Work affected by the proposed change, including any quantity variation caused by the proposed change;
- Pay Items affected by the proposed change including any quantity variations;

- A detailed cost estimate for performing the Work under the existing Contract and under the proposed change. Cost estimates shall be made according to Section 00197. Costs of re-design, which are incurred after the Agency has accepted the proposal, will be included in the cost of proposed work; and
- A date by which the Engineer must accept the proposal in order to accept the proposed change without impacting the Contract Time or cost reduction amount.

(b) Continuing to Perform Work - The Contractor shall continue to perform the Work according to Contract requirements until the Engineer issues a Change Order incorporating the cost reduction proposal. If the Engineer fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.

(c) Consideration of Proposal - The Engineer is not obligated to consider any cost reduction proposal. The Agency will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted.

The Engineer will determine in its sole discretion whether to accept a cost reduction proposal as well as the estimated net savings in construction costs from the adoption of all or any part of the proposal. In determining the estimated net savings, the Engineer may disregard the Schedule of Items. The Engineer will establish prices that represent a fair measure of the value of Work to be performed or to be deleted as a result of the cost reduction proposal.

(d) Sharing Investigation Costs - As a condition for considering a Contractor's cost reduction proposal, the Agency reserves the right to require the Contractor to share in the Agency's costs of investigating the proposal. If the Agency exercises this right, the Contractor shall provide written acceptance of the condition to the Engineer. Such acceptance will authorize the Agency to deduct its share of investigation costs from payments due or that may become due to the Contractor under the Contract.

(e) Acceptance of Proposal Requirements - If the Contractor's cost reduction proposal is accepted in whole or in part, acceptance will be made by a Change Order that will include without limitation the following:

- Statement that the Change Order is made according to 00140.70;
- Revised Contract Documents that reflect all modifications necessary to implement the approved cost reduction measures;
- Any conditions upon which the Agency's approval is subject;
- Estimated net savings in construction costs attributable to the approved cost reduction measures; and
- A payment provision according to which the Contractor will be paid 50% of the estimated net savings amount as full and adequate consideration for performance of the Work of the Change Order.

The Contractor's cost of preparing the cost reduction proposal and the Agency's costs of investigating the proposal, including any portion paid by the Contractor, will be excluded from determination of the estimated net savings in construction costs. Costs of re-design, which are incurred after the Agency has accepted the proposal, will be included in the cost of the Work attributable to cost reduction measures.

If the Agency accepts the cost reduction proposal, the Change Order that authorizes the cost reduction measures will also address any Contract Time adjustment.

(f) Right to General Use - Once submitted, the cost reduction proposal becomes the property of the Agency. The Agency reserves the right to adopt the cost reduction proposal for general use without additional compensation to the Contractor when it determines that a proposal is suitable for application to other contracts.

00140.80 Use of Publicly Owned Equipment - The Contractor is prohibited from using publicly-owned Equipment except in the case of emergency. In an emergency, the Contractor may rent publicly-owned Equipment provided that:

- The Engineer provides written approval that states that such rental is in the public interest; and

- Rental does not increase the Project cost.

00140.90 Final Trimming and Cleanup - Before Final Inspection as described in 00150.90, the Contractor shall neatly trim and finish the Project and remove all remaining unincorporated Materials and debris. Final trimming and cleanup shall include without limitation the following:

- The Contractor shall retrim and reshape earthwork, and shall repair deteriorated portions of the Project Site.
- Where the Work has impacted existing facilities or devices, the Contractor shall restore or replace those facilities to their pre-existing condition.
- The Contractor shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.
- The Contractor shall clean up and leave in a neat, orderly condition, Rights-of-Way, Materials sites, and other property occupied in connection with performance of the Work.
- The Contractor shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials, and rubbish.
- The Contractor shall dispose of Materials and debris including without limitation forms, falsework, scaffolding, and rubbish resulting from clearing, grubbing, trimming, clean-up, removal, utility replacement, and other Work. These Materials and debris become the property of the Contractor. The Contractor shall properly dispose of these Materials and debris immediately.
- The Contractor shall restore and replant or resurface adjoining properties to match existing grades and existing surfaces.

Unless the Contract specifically provides for payment for this item, the Agency will make no separate or additional payment for final trimming and cleanup.

Section 00150 - Control of Work

00150.00 Authority of the Engineer - The Engineer has full authority over the Work and its suspension. (see Section 00180) The Contractor shall perform all Work to the complete satisfaction of the Engineer. The Engineer's determination shall be final on all matters, including but not limited to the following:

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

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

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

Interim approvals issued by the Engineer, including but not limited to Third Notification, will not discharge the Contractor from responsibility for errors in prosecution of the Work, for improper fabrication, for failure to comply with Contract requirements, or for other deficiencies, the nature of which are within the Contractor's control. It is not incumbent upon the engineer or the City to notify the Contractor when to begin, cease or resume work, nor to give early notice of rejection of faulty work, nor in any way to superintend so as to relieve the Contractor of any responsibility or of any consequences for neglect or carelessness by the Contractor or his/her subordinates.

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

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

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

00150.02 Inspector's Authority and Duties - To the extent delegated under 00150.01, Inspectors are authorized to represent the Engineer and Project Manager to perform the following:

- Inspect Work performed and Materials furnished, including without limitation, the preparation, fabrication, or manufacture of Materials to be used;
- Orally reject defective Materials and to confirm such rejection in writing;
- By oral order, temporarily suspend the Work for improper prosecution pending the Engineer's decision; and
- Exercise additional delegated authority.

Inspectors are not authorized to:

- Accept Work or Materials.
- Alter or waive provisions of the Contract, including, but not limited to, authorizing Change Orders.
- Give instructions or advice inconsistent with the Contract Documents.

An inspector is placed on the work to keep the engineer informed as to the progress of the work and the manner in which it is being done; also to call the attention of the Contractor to any infringements upon plans or specifications, but failure of the inspector or the engineer to call the attention of the Contractor to faulty work or infringements upon the plans or specifications shall not constitute acceptance of said work.

00150.10 Coordination of Contract Documents - The Contract Documents, including but not limited to Contract Change Orders, the Special Provisions, the Plans, and the Standard Specifications are intended to collectively describe all of the items of Work necessary to complete the Project.

(a) Order of Precedence - The Engineer will resolve any discrepancies between these documents in the following order of precedence:

- Addenda;
- Permits from governmental agencies;
- Special Provisions;
- Agency-prepared drawings specifically applicable to the Project and bearing the Project title;
- Public Improvement Contract and Supplemental Terms
- Revisions to Standard Specifications
- Standard Drawings;
- Standard Specifications;
- Reference Specifications

Notes on a drawing shall take precedence over drawing details.

Dimensions shown on the drawings, or that can be computed, shall take precedence over scaled dimensions.

Change orders, supplemental agreements, and approved revisions to the plans and specifications will take precedence over the documents listed above.

(b) Immaterial Discrepancies - The Contract Documents specify details for the construction and completion of the Work. If Contract Documents describe portions of the Work in sufficient detail but are silent in some minor respect, the Contractor may proceed utilizing the current best industry practices.

(c) Material Discrepancies - If the Contractor identifies a discrepancy, error, or omission in the Contract Documents that cannot be resolved by the approach specified in (b) above, the Contractor shall immediately request clarification from the Engineer.

00150.15 Construction Stakes, Lines, and Grades:

(a) General - The Contractor shall perform no Work until the Engineer establishes field controls. Work performed without field controls will be subject to removal at the Contractor's expense.

(b) Agency Responsibilities - The Engineer will:

- Provide coordination and plans and specifications in conformance with the *Oregon Department of Transportation Construction Surveying Manual for Contractors*, current version.
- The Agency will not establish any principal grades or lines.

(c) Contractor Responsibilities - The Contractor shall:

- Provide construction staking in conformance with the *Oregon Department of Transportation Construction Surveying Manual for Contractors*, current version.
- Monuments that are noted on the plans to be protected and are disturbed by the Contractor's activities shall be replaced by the Contractor's surveyor at the Contractor's expense.
- Perform "as constructed" measurements

00150.20 Inspection:

(a) Inspection by the Engineer - The Engineer may test Materials furnished and inspect Work performed by the Contractor to ensure Contract compliance. The Contractor shall notify the Engineer 24 hours (one full Work Day) in advance for inspection of each portion of the Work.

Contractor shall not begin placing successive Courses or portions of Work until preceding Courses or portions of the Work have been inspected.

If the Contractor performs Work without the Engineer's inspection or uses Materials that the Engineer has not approved, the Engineer may order affected portions of the Work removed at the Contractor's expense.

At the Engineer's direction, any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore these portions of Work to the standard required by the Contract. If the Engineer rejects Work due to Materials or workmanship, or if the Contractor performed such Work without providing sufficient advance request for inspection to the Engineer, the Contractor shall bear all costs of uncovering and restoring the Work. If the Engineer accepts the uncovered Work, and the Contractor performed the Work only after providing the Engineer with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Agency according to 00195.20.

(b) Inspection Facilities - The Contractor shall furnish walkways, railings, ladders, shoring, tunnels, platforms, and other facilities necessary to permit the Engineer to have safe access to the Work to be inspected. The Contractor shall require producers and fabricators to provide safe inspection access as requested by the Engineer.

(c) Sampling - When directed, the Contractor shall furnish the Engineer with samples of Materials that the Engineer will test. All of the Contractor's costs related to this required sampling are Incidental.

(d) Inspection by Third Parties - Where third parties have the right to inspect the Work, the Contractor shall coordinate with the Engineer and shall provide safe inspection access.

(e) Contractor's Duty to Make Corrections - The Contractor shall perform all Work according to the Contract Documents. The Contractor shall correct Work that does not comply with the Contract Documents at its own expense. Inspection of the Work by the Engineer does not relieve the Contractor of responsibility for improper prosecution of the Work.

00150.25 Acceptability of Materials and Work - The Contractor shall furnish Materials and shall perform Work in Close Conformance to the Contract Documents. If the Engineer determines that the Materials furnished or the Work performed are not in Close Conformance with the Contract Documents, the Engineer may:

- Reject the Materials or Work and order the Contractor, at the Contractor's expense, to remove, replace, or otherwise correct any non-conformity; or
- Accept the Materials or Work as suitable for the intended purpose, adjust the amount paid for applicable Pay Items to account for diminished cost to the Contractor or diminished value to the Agency, document the adjustment, and provide written documentation to the Contractor regarding the basis of the adjustment.

The Engineer's decisions concerning acceptability of Materials or Work will be final.

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

- In person;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested), to the current office address as shown in the records of the Agency;
- By overnight delivery service of a private industry courier, to the current office address as shown in the records of the Agency: Or
- By email.

Notices shall be considered as having been received by the Contractor:

- At the time of actual receipt when delivered in person;
- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier;
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier; or
- By email with read receipt notification.

Written notices to the Engineer or the Agency by the Contractor shall be delivered to the Agency address shown in the Special provisions, unless a different address is agreed to by the Engineer, and shall be delivered:

- In person;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested);
- By overnight delivery service of a private industry courier; Or
- By email with read receipt notification.

Notices will be considered as having been received by the Agency:

- At the time of actual receipt when delivered in person or by facsimile transmission;
- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier;
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier; or
- By email with read receipt notification.

00150.35 Plans and Working Drawings

(a) Plans - The Plans will show details of lines, grades, and Typical Section of the Roadway, and locations and design details of Structures.

(b) Working Drawings - The Contractor shall supplement the Agency-prepared Plans with stamped or unstamped Working Drawings that show all information necessary to complete the Work. The applicable Section or Subsection of the Standard Specifications will indicate the supplemental information required and whether the drawings are to be stamped or unstamped. Stamped and unstamped Working Drawings are defined as follows:

(1) Stamped Working Drawings - Working Drawings, calculations, and other data which are prepared by or under the direction of a Professional Engineer licensed in the State of Oregon, and which bear the engineer's signature, seal, and expiration date.

(2) Unstamped Working Drawings - Working Drawings, calculations, and other data that do not bear an engineering seal.

(c) Number and Size of Drawings -- The Contractor shall submit Working Drawings according to one of the following methods:

(1) Paper Submittal - For paper submissions, submit seven copies of Working Drawings for steel Structures and six copies of Working Drawings for other Structures to the Engineer. The submitted copies shall be clear and readable. Drawing dimensions shall be 8 1/2 inches by 11 inches, 11 inches by 17 inches, or 22 inches by 36 inches in size. One copy of the submitted Working Drawings will be returned to the Contractor after processing. The Contractor shall submit such additional number of copies to the Engineer for processing that the Contractor would like to have returned.

(2) Electronic Submittal (preferred) - For electronic submissions, submit Working Drawings according to the "Guide to Electronic Shop Drawing Submittal" which is available from ODOT.

(d) Processing Working Drawings - The Engineer will process Working Drawings and include all comments on them as follows:

(1) Stamped Working Drawings - Stamped Working Drawings will be designated as "reviewed" or "reviewed with comments" by the Engineer.

(2) Unstamped Working Drawings - Unstamped Working Drawings will be designated on the face of the Drawing, as "approved", "approved as noted", or "returned for correction" by the Engineer.

The Contractor shall not fabricate or construct any structural components until the stamped or unstamped Working Drawings are returned by the Engineer with written notation of approval or review, as applicable, of the Working Drawings.

The Engineer's processing of the Working Drawings does not amend any contractual obligations of the parties. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems.

The Engineer will process and return Working Drawings within 10 Calendar Days (65 Calendar Days if Railroad approval is required) after receipt by the Engineer. If the Engineer fails to return such drawings within this period of time, the Engineer will consider granting a Contract Time extension according to 00180.80.

00150.37 Equipment Lists and Other Submittals - The Contractor shall submit Equipment lists, and other required submittals for approval by the Engineer. The Engineer will respond to requests for approval within time frames specified in each Section of the Specifications that requires such approval.

00150.40 Cooperation and Superintendence by the Contractor -

The Contractor is responsible for full management of all aspects of the Work, including superintendence of all Work by Subcontractors, Suppliers, and other providers. The Contractor shall appoint a single Superintendent and may also appoint alternate Superintendents as necessary to control the Work. The form of appointment of the alternate shall state, in writing, the alternate's name, duration of appointment in the absence of the Superintendent, and scope of authority. The Contractor shall:

- Provide for the cooperation and superintendence on the Project by:
 - Furnishing the Engineer all data necessary to determine the actual cost of all or any part of the Work, added Work, or changed Work.
 - Allowing the Engineer reasonable access to the Contractor's books and records at all times. To the extent permitted by public records laws, the Engineer will make reasonable efforts to honor the Contractor's request for protection of confidential information.
 - Keeping one complete set of Contract Documents on the Project Site at all times, available for use by all the Contractor's own organization, and by the Engineer if necessary.
- Appoint a single Superintendent and any alternate Superintendent who shall meet the following qualifications:
 - Appointees shall be competent to manage all aspects of the Work.
 - Appointees shall be from the Contractor's own organization.
 - Appointees shall have performed similar duties on at least one previous project of the size, scope and complexity as the current Contract.
 - Appointees shall be experienced in the types of Work being performed.
 - Appointees shall be capable of reading and thoroughly understanding the Contract Documents.
- The appointed single Superintendent, or any alternate Superintendent shall:
 - Be present for all On-Site Work, regardless of the amount to be performed by the Contractor, Subcontractors, Suppliers, or other providers, unless the Engineer provides prior approval of the Superintendent's or alternate Superintendent's absence.
 - Be equipped with a two way radio or cell phone capable of communicating throughout the project during all the hours of Work on the Project Site and be available for communication with the Engineer.
 - Have full authority and responsibility to promptly execute orders or directions of the Engineer.

- Have full authority and responsibility to promptly supply the Materials, Equipment, labor, and Incidentals required for performance of the Work.
- Coordinate and control all Work performed under the Contract, including without limitation the Work performed by Subcontractors, Suppliers, and Owner Operators.
- Diligently pursue progress of the Work according to the schedule requirements of Section 00180.
- Cooperate in good faith with the Engineer, Inspectors, and other contractors in performance of the Work.
- Provide all assistance reasonably required by the Engineer to obtain information regarding the nature, quantity, and quality of any part of the Work.
- Provide access, facilities and assistance to the Engineer in establishing such lines, grades and points as the Engineer requires.
- Carefully protect and preserve the Engineer's marks and stakes.
- Maintains as-built drawings.

Any Superintendent or alternate Superintendent who repeatedly fails to follow the Engineer's written or oral orders, directions, instructions, or determinations, shall be subject to removal from the project.

If the Contractor fails or neglects to provide a Superintendent, or an alternate Superintendent, and no prior approval has been granted, the Engineer has the authority to suspend the Work according to 00180.70. Any continued Work by the Contractor, Subcontractors, Suppliers, or other providers may be subject to rejection and removal. The Contractor's repeated failure or neglect to provide the superintendence required by these provisions constitutes a material breach of the Contract, and the Engineer may impose any remedies available under the Contract, including but not limited to Contract termination.

00150.50 Cooperation with Utilities:

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

(b) Agency Responsibilities - Before Bids are received, the Agency will make preliminary arrangements for planned Adjustment of Utilities. The Plans will not normally show the anticipated new location of Utilities that have been or will be adjusted.

The locations, depth and description of existing utilities shown were compiled from available GIS mapping, records and/or field observations. The Engineer or Utility Companies do not guarantee the accuracy or the completeness of such locations. Additional utilities may exist in the project area.

(c) Contractor's Responsibilities - The Contractor shall:

- Follow applicable rules adopted by the Oregon Utility Notification Center;
- Contact Utility owners during Bid preparation and after the Contract is awarded to verify all Utilities' involvement on the Project Site;
- Coordinate Project construction with the Utilities' planned adjustments, take all precautions necessary to prevent disruption of Utility service, and perform its Work in the manner that results in the least inconvenience to the Utility owners;
- Include all Utility adjustment work, whether to be performed by the Contractor or the Utilities, on the Contractor's Project Work schedule submitted under 00180.41;
- Protect from damage or disturbance any Utility that remains within the area in which Work is being performed;
- Not disturb an existing Utility if it requires an unanticipated adjustment, but shall protect it from damage or disturbance and promptly notify the Engineer; and
- Report to the Engineer any Utility owner who fails to cooperate or fails to follow the planned Utility adjustment.

- Verify the location of existing utilities by direct site investigation. Physical location of utilities in paved areas shall be determined by core and vactor-excavation. Patching of cores shall be with Level 3 (1/2") hot mix asphalt, sealed, and sanded. Potential conflicts with existing utilities shall be potholed no less than one week prior to performing work in the area of the potential conflict and results given to the Engineer for evaluation. Costs for this effort shall be considered incidental to other bid items. No separate measurement and payment will be made.

Subject to the Engineer's approval, the Contractor may adjust the Utilities by asking the Utility owners to move, remove, or alter their facilities in ways other than as shown on the Plans or in the Special Provisions. The Contractor shall conduct all negotiations, make all arrangements, and assume all costs that arise from such changes.

(d) Notification - If the Project is located within the area served by the Oregon Utility Notification Center, the Contractor shall notify owners of Utilities prior to the performance of Work in the vicinity of their facilities. The Utilities notification system telephone number is 1-800-332-2344 or 811.

The Contractor shall comply with the rules of the Oregon Utility Notification Center, OAR 952-001, and ORS 757.557. The Contractor may contact the Oregon Utility Notification Center at 503-232-1987 about these rules.

(e) Utility Information - The following organizations may be adjusting Utilities within the limits of the Project during the period of the Contract:

Type of Utility Responsible Authority

- Gas – Northwest Natural
- Electric and Water – McMinnville Water and Light
- Telephone – AT&T, OnlineNW, and Verizon Communications
- Storm & Sanitary Sewer – City of McMinnville
- Cable TV & High Speed Internet – Comcast and Ziplly Fiber.
- Other agencies within the project area.

The Contractor shall be responsible, although Agency will cooperate as necessary, for scheduling and coordinating public utility work. The Agency assumes no responsibility as to the exact location of utilities and/or omission from the plans. Existing utilities, whether known or unknown, that are damaged by the Contractor shall be repaired or replaced at Contractor's expense. The Contractor shall not be entitled to any additional compensation due to the presence of or interference, delays, or expense caused by said existing utilities, whether known or unknown.

The Contractor shall allow at least 4 weeks for the utility companies to relocate their facilities. If a utility requires more than 4 weeks to relocate its facilities, the Contractor may request a Contract Time extension according to 00180.80, but will not be entitled to any additional compensation as a result of the utility's delay to relocate.

00150.55 Cooperation with Other Contractors - The Agency reserves the right to perform other work on or near the Project Site, including without limitation any Materials site, with forces other than those of the Contractor.

If such work takes place on or near the Project Site, the Contractor shall have the following obligations:

- The Contractor shall coordinate Work with other contractors or forces.
- The Contractor shall cooperate in good faith with all other contractors or forces.
- The Contractor shall perform the Work specified in the Contract in a way that will minimize interference and delay for all forces involved.
- The Contractor shall place and dispose of the Materials being used so as not to interfere with the operations of other forces.
- The Contractor shall join the Work with that of other forces in a manner acceptable to the Engineer or the Agency, and shall perform it in the accepted sequence with the work of the other force.

The Engineer will resolve any disagreements under this Subsection that may arise among the Contractor and other work forces, or between the Contractor and the Agency. The Engineer's decision in these matters is final, as provided in 00150.00.

When the schedules for Work of the Contractor and the work of other forces overlap, each contractor involved shall submit a current, realistic progress schedule to the Engineer. Before the Engineer accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, the Engineer will determine acceptable schedules.

The Contractor waives any right it may have to make claims against the Agency for any damages or claims that may arise because of inconvenience, delay, or loss due to the presence of other contractors working on or near the Project Site.

If the Contract gives notice of work to be performed by other forces that may affect the Contractor's Work under the Contract, the Contractor shall include any costs associated with coordination of the Work in the appropriate Pay Item or as a portion of a Pay Item.

In an emergency, the contractor most immediately able to respond may repair a facility or Utility of another contractor in order to prevent further damage to the facility, Utility, or other Structure as a result of the emergency.

00150.60 Construction Equipment Restrictions:

(a) Load and Speed Restrictions for Construction Vehicles and Equipment - The Contractor shall comply with legal weight and speed restrictions when moving Materials or Equipment beyond the limits of the Project Site.

The Contractor shall control vehicle and Equipment loads and speeds within the Project Site according to the following restrictions, unless the Special Provisions provide otherwise:

- The Contractor shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on Subgrades and Aggregate Bases.
- The Contractor shall restrict weights to legal loads, and shall travel at speeds of no more than 45 mph or the posted construction speed, whichever is less, on treated Bases, Pavement, or wearing Courses.
- The Contractor shall not cross Bridges or other Structures with Equipment or vehicles exceeding the legal load limit without prior written permission of the Engineer. The Contractor shall make any such request in writing, describing the loading details and the arrangement, movement, and position of the Equipment on the Structure. The Contractor shall comply with any restrictions or conditions included in the Engineer's written permission.

(b) Protection of Buried Items - The Contractor shall use temporary fill or other methods to avoid overload of pipes, box culverts, and other items that are covered, or to be covered, by fill or backfill.

(c) Responsibility for Damages - The Contractor shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site. The Engineer's permission to cross Bridges and other Structures, according to 00150.60(a) will not relieve the Contractor from responsibility for load-caused damages.

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

When any such damage occurs, the Engineer will determine if it is to be corrected by repair, replacement, or compensatory payment by the Contractor. If compensatory payment is required, the Engineer will determine the amount. Compensatory payment may be deducted from monies due or to become due to the Contractor under the Contract.

00150.75 Protection and Maintenance of Work During Construction - The Contractor shall protect and maintain the Work during construction and until Third Notification has been issued, unless otherwise provided in the Contract. For the purposes of this Subsection, "maintenance" shall include measures to

prevent deterioration of Roadway and Structures at the Project Site, and to keep them in good condition at all times during the prosecution of the Work. The Contractor shall continuously allocate sufficient Equipment and workers to achieve such maintenance.

If the Contract requires the placement of a Course upon a previously constructed Course or Subgrade, the Contractor shall maintain the previous Course or Subgrade during all construction operations.

The Contractor shall include costs of protecting and maintaining the Work during construction in the unit prices bid for the various Pay Items. The Contractor will not be paid an additional amount for this Work, unless otherwise specified.

The Engineer will immediately notify the Contractor of Contractor's noncompliance with this Subsection. If the Contractor fails to remedy unsatisfactory protection or maintenance within 24 hours after receipt of such notice, the Engineer may proceed immediately to remedy the deficiency, and deduct the entire cost from monies due or to become due the Contractor under the Contract.

00150.80 Removal of Unacceptable and Unauthorized Work - The Contractor shall correct or remove unacceptable Work and remove unauthorized Work, as directed by the Engineer in writing. The Contractor shall replace such work with Work and Materials conforming to the requirements of the Contract.

For the purposes of this Subsection, "unauthorized work" shall include without limitation the following:

- Work that extends beyond lines shown on the Plans or otherwise established by the Engineer;
- Work that is contrary to the Engineer's instructions; and
- Work that is conducted without the Engineer's written authorization.

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

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

00150.90 Final Inspection:

(a) On-site Construction Work - The Engineer will inspect the Project at a time close to the completion of On-Site Work to ensure the Contractor's compliance with the Contract Documents.

When all On-Site Work on the Project is completed, including but not limited to Change Order Work and Extra Work, the Engineer will issue Second Notification as specified in 00180.50(g).

Not later than 15 Calendar Days after the Engineer receives the Contractor's written notification that all punch list items, final trimming and cleanup according to 00140.90 have been completed, the Engineer will review the Project and notify the Contractor that all Work is complete, or will give the Contractor written instruction regarding incomplete or unsatisfactory Work.

(b) All Contract Work - The Engineer will issue the Third Notification when the Contractor has satisfactorily accomplished all of the following:

- The Contractor has completed all On-Site Work required under the Contract, including the punch list items from (a) above;
- The Contractor has removed all Equipment; and
- The Contractor has submitted all required certifications, bills, forms, warranties and other documents.

00150.91 Post-Construction Review - The Contractor or the Engineer may request a Post-Construction Review meeting, to be held at a time prior to issuance of Third Notification but not earlier than 15 Days following the date of Second Notification. The meeting may be held if agreed to by both parties. The party making the request will conduct the meeting, and will announce the time and place of the meeting at least

15 Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects.

00150.95 Final Acceptance - After the Engineer completes Final Inspection of all Work and sends Third Notification to the Contractor, the Agency will acknowledge Final Acceptance. The Agency will notify the Contractor in writing of the date of Final Acceptance within 7 Calendar Days after Final Acceptance, or as soon thereafter as is practicable.

00150.96 Maintenance Warranties and Guarantees - Prior to Third Notification, the Contractor shall transfer to the Agency all unexpired manufacturers' warranties and guarantees for Materials and Equipment installed on the Project. Such warranties and guarantees shall recite that they are enforceable by the Agency.

00150.97 Responsibility for Materials and Workmanship:

- (a) The Contractor shall perform the Work according to the terms, conditions, and requirements of the Contract.
- (b) Whether before or after the Agency's acceptance of the Work, the Contractor shall be responsible for:
 - Correcting or repairing any defects in, or damage to, the Work which results from the use of improper or defective materials or workmanship; or
 - Replacing, in its entirety, the Work affected by the use of improper or defective materials or workmanship to the extent provided by law; and
 - Correcting or repairing any Work, Materials, Structures, Existing Surfacing, Pavement, Utilities, or sites, including without limitation Wetlands, damaged or disturbed in that correction, repair, or replacement. (see 00170.80 to 00170.85).

Section 00160 - Source of Materials

00160.00 Definitions - The following definitions apply to Section 00160:

(a) Prospective Source - Agency-furnished Materials source, use of which by the Contractor is optional. The Agency makes no guarantee or representation, by implication or otherwise, of the land use status, quantity, quality, or acceptability of Materials available from it, except as may be stated in the Special Provisions.

(b) Mandatory Source - Agency-furnished Materials source, use of which by the Contractor is required.

00160.01 Notification of Source of Supply and Materials:

(a) All Materials - The Contractor shall notify the Engineer in writing of all proposed Materials sources of supply, including without limitation any steel or other fabricators within the following time frames:

- At least 15 Calendar Days before using or fabricating Materials, if source is within the State; or
- At least 45 Calendar Days before using or fabricating Materials, if source is outside the State

(b) Prospective Source Materials - When given an option to use Prospective Sources of Materials to be incorporated into the Work, the Contractor shall notify the Engineer in writing of the option selected within 15 Calendar Days from date of Notice to Proceed. Otherwise, such Materials sources may become unavailable.

(c) Approval Required - Before allowing production or delivery of Materials to begin from any source, the Contractor must obtain the Engineer's approval. Approval to use any source does not imply that Materials from that source will be accepted. If approved sources do not provide Materials that meet Specifications, the Materials will be rejected. The Contractor will then be responsible for locating other sources and obtaining the Engineer's approval.

(d) Terms Required - The Contractor shall comply with 00170.07.

00160.10 Ordering, Producing, and Furnishing Materials - The Contractor shall not place orders for or produce full quantities of Materials anticipated to be required to complete the Work until the Work has advanced to a stage that allows the quantities to be determined with reasonable accuracy. Upon request, the Engineer will notify the Contractor in writing of the quantities required. Quantity estimates by the Engineer before this notification are only approximate.

(a) Contractor's Duties - In purchasing, producing, or delivering Materials, the Contractor shall take into account the following:

- Kind of work involved;
- Amount of work involved;
- Time required to obtain Materials; and
- Other relevant factors.

00160.20 Preferences for Materials:

(a) Buy America - If federal highway funds are involved on the Project, the Contractor shall limit the quantity of foreign Materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including without limitation the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States, unless the cost of foreign-origin iron or steel Materials does not exceed one-tenth of one percent (0.1%) of the Contract Amount or \$2,500, whichever is greater. The Contractor shall not incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at the Contractor's expense. For purposes of this Specification, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component.

The Contractor shall provide the Engineer with a Certificate of Materials Origin, on a form furnished by the Engineer, before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the Engineer, the Materials shall be considered of foreign origin.

The Contractor shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for 3 years after the date of final payment for the Project, and shall furnish copies to the Engineer upon request.

(b) Buy Oregon - According to ORS 279A.120, the Contractor shall give preference to goods or services produced in Oregon if price, fitness, availability, and quality are equal. This provision does not apply to Contracts financed wholly or in part by federal funds.

(c) Recycled Materials - According to the provisions of ORS Chapter 279A and subject to the approval of the Engineer, the Contractor shall use recycled products to the maximum extent economically feasible.

00160.30 Agency-Furnished Materials - Unless otherwise specified in the Special Provisions, Materials listed as Agency-furnished will be available to the Contractor free of charge.

The Contractor shall be responsible for all Materials furnished by the Agency and shall pay all demurrage and storage charges. The Contractor shall replace at its expense Agency-furnished Materials lost or damaged due to any cause.

The locations at which Agency-furnished Materials are available will be specified in the Special Provisions. If the locations are not listed in the Special Provisions, the Agency-furnished Materials will be furnished to the Contractor at the Project Site. In either case, all costs of handling, hauling, unloading, and placing Agency-furnished Material shall be considered included in the price paid for the Pay Item involving such Material.

All Agency-furnished Materials not incorporated into the Work remains the property of the Agency. The Contractor shall deliver such Materials as directed by the Engineer.

00160.40 Agency-Furnished Sources -

Agency-Furnished Sources for this Project, if any, will be listed in Section 00235 of the Special Provisions.

00160.50 Agency-Controlled Land; Limitations and Requirements:

(a) General - The Contractor shall have no property rights in, or right of occupancy on, Agency-Controlled Land. Nor shall the Contractor have the right to sell, use, remove, or otherwise dispose of any material from Agency-Controlled Land, areas, or property, except as specified in the Special Provisions or by the written authorization of the Engineer.

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

Unless otherwise specified in the Contract, the ownership of all materials originating on Agency-Controlled Lands will at all times vest in, and remain within the control of, the Agency.

(b) Waste, Excess, and By-Product Materials - All waste, excess, and by-product materials, collectively referred to in this Subsection as "By-Products", from the manufacture or production of Materials shall remain Agency property. Unless otherwise ordered by the Engineer in writing, By-Products shall be placed as required by the development plan:

- In stockpiles at designated locations;
- At locations and in shapes that are readily accessible; and
- In such a manner as to avoid fouling areas containing useable materials, or interfering with future plant setups to use materials from the property.

The Agency will not compensate the Contractor for handling and stockpiling By-Products according to the development plan requirements. If by written order the Engineer directs the Contractor to stockpile or place designated By-Products at alternate sites, the By-Products designated shall be loaded, hauled, and placed as directed, and this work will be paid for according to 00195.20.

00160.60 Contractor-Furnished Materials and Sources:

(a) General - The Contractor shall furnish, at its own expense, all products and Materials required for the Project from sources of its own choosing, unless such sources have been specified in the Special Provisions or Plans as Prospective or Mandatory Sources.

(b) Acquisition of Sources - The Contractor shall acquire, at its own expense, the rights of access to, and the use of, all sources the Contractor chooses which are not Agency-controlled and made available by the Agency to the Contractor.

(c) Additional Requirements - Except for continuously-operated commercial sources, Work shall not begin, nor will any Materials be accepted by the Engineer, until the Contractor has:

(1) Given to the Engineer a copy of permits from, or proof that permits are not required from:

- The Department of Geology and Mineral Industries, as required under ORS 517.790;
- The Division of State Lands, as required under ORS 196.810 (when removing material from the bed or banks of any waters or from any Wetland); and
- Local governmental authorities having jurisdiction over land use at the source location.

(2) Furnished to the Engineer written approval of the property owner, if other than the Contractor, for the Contractor's proposed plans of operation in, and reclamation of, the source. The Contractor shall include in the document containing the property owner's written approval a summary of the requirements of the permits described above, which shall be subject to the Engineer's approval.

00160.70 Requirements for Plant Operations - Before operating mixing plants, Rock crushers, or other Equipment, the Contractor shall provide the Engineer copies of all applicable discharge permits for noise, air contaminants, and water pollutants from DEQ or applicable local jurisdictions, or a letter from DEQ or the local jurisdiction stating that no permits are required for the use of the Equipment and sites.

00160.80 Requirements for Sources of Borrow and Aggregate - The Contractor shall conduct operations according to all applicable federal, State, and local laws (including without limitation ORS 517 and OAR 632-030) when developing, using, and reclaiming all sources of Borrow material and Aggregate. The Contractor shall provide erosion control at Borrow sources that are not within the Project Site. The Contractor shall not operate in Wetlands except as allowed by permit. The Contractor shall comply with all requirements for pollution and sediment control, including without limitation the National Pollutant Discharge Elimination System where applicable.

Except for continuously-operated commercial sources, the Contractor shall also conform to the following:

(a) If a natural growth of trees or shrubs is present, preserve a border of such to conceal land scars.

(b) Excavate Borrow sources and Aggregate sources, except for those in streams and rivers, to provide:

- Reasonably uniform depths and widths;
- Natural drainage so no water stands or collects in excavated areas, when practicable;
- Slopes trimmed to blend with the adjacent terrain upon completion of operations;
- Slopes covered with native soil, or acceptable plant rejects to support plant growth, if required by Specifications, Plans, or permits; and
- A vegetative cover that blends with the adjacent natural growth.

(c) Excavate in quarries so that:

- Faces will not be steeper than vertical (no overhang);
- Vertical faces conform to Oregon OSHA standards, Division 3, and as shown on an approved development plan;
- Floors or benches are excavated to a uniform Slope free of depressions and will drain and not interfere with the downland owner's property; and
- Upon completion, the quarry is left appearing neat and compatible with surrounding terrain.

(d) Obliterate haul roads specifically built for access to sources, and restore the areas disturbed by these roads as nearly as practicable to the conditions that existed before the roads were built, unless otherwise directed by the landowner, regulatory body, or Agency.

Section 00165 - Quality of Materials

Description

00165.00 General - The Contractor shall incorporate into the Work only Materials conforming to the Specifications and approved by the Engineer. The Contractor shall incorporate into the Work only manufactured products made of new materials unless otherwise specified in the Contract. The Agency may require additional testing or retesting to determine whether the Materials or manufactured products meet Specifications.

Materials or manufactured products not meeting the Specifications at the time they are to be used are unacceptable and must be removed immediately from the Project Site, unless otherwise directed by the Engineer.

00165.01 Rejected Materials - The Engineer may reject any Materials that appear to be defective (00150.25) or that contain asbestos. The Contractor shall not incorporate any rejected Materials into the Work. Rejected Materials whose defects have been corrected may not be incorporated into the Work until the Engineer has approved their use. The Engineer may order the removal and replacement by the Contractor, at Contractor's expense, of any defective Materials. (refer also to 00150.20)

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

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

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

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

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

Provisions and Requirements

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

(a) Field-Tested Materials - Field-tested Materials will be accepted according to the ODOT Manual of Field Test Procedures (MFTP). The MFTP is published once per year and is available on the ODOT Construction Section web site.

(b) Nonfield-Tested Materials - Nonfield-tested Materials will be accepted according to the ODOT Nonfield Tested Materials Acceptance Guide (NTMAG), unless otherwise specified in the Contract. The NTMAG is available on the ODOT Construction Section web site.

00165.20 Materials Specifications and Test Method References - References to Materials specifications and test methods of ODOT, WAQTC, AASHTO, ASTM, other governmental agencies, or other recognized organizations mean those officially adopted and in current use by that agency or organization on the date of Advertisement.

If there are conflicting references, or if no reference is made to Materials specifications or test method, Materials must meet the Materials specifications or test methods required by the first applicable of the following agencies and organizations:

- Field-Tested Materials:
 - Special Provisions.
 - MFTP; and
 - Standard Specifications.
- Non-field Tested Materials:
 - ODOT;
 - WAQTC;
 - AASHTO;
 - ASTM;
 - Other recognized national organizations, such as ANSI, AWWA, IMSA, and UL; and
 - Industry standards in the location where the Work is being performed.

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

- Special Provisions.
- MFTP; and
- Standard Specifications.

00165.30 Field-Tested Materials:

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

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

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

(c) Acceptance of Field-Tested Materials The Contractor's test results for field-tested Materials will be verified by the Agency according to the Quality Assurance program outlined in the MFTP. If the Agency's QA test results verify the Contractor's results, the Materials will be analyzed for acceptance according to one of the following methods before the Engineer will accept them for incorporation into the Work:

- Statistically, according to 00165.40, to determine "Pay Factors" for produced Aggregate;
- Statistically, according to 00165.40, to determine "Composite Pay Factors" for mixtures; or
- Other methods determined by the Engineer.

If the Agency's verification testing reveals that the Contractor's data is incorrect, the Agency may require additional testing to determine whether the Materials meet Specifications. The Contractor shall perform additional quality control testing or provide split samples to the Agency for additional testing as directed. If the Materials do not meet Specifications, the Contractor shall reimburse the Agency for the cost of the additional testing, which may be deducted from monies due or to become due the Contractor under the Contract. Incorporated Materials that do not meet Specifications will be evaluated according to 00165.01 and 00150.25. If the Materials meet Specifications the Agency will pay the cost for the additional testing.

00165.35 Non-field-Tested Materials - The Contractor shall furnish Materials meeting Specifications, along with all Materials Conformance and Quality Compliance Documents.

(a) Test Results Certificate - The Certificate shall:

- Be from the manufacturer verifying that the Material furnished has been sampled and tested and the test results meet the Specifications.
- Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL or other).
- Identify the testing agency and the representative responsible for the test results.
- Permit positive determination that Material delivered to the Project is the same Material covered by the test results.
- Be delivered to the Engineer with the shipment of the material.

(b) Quality Compliance Certificate - The Certificate from the manufacturer shall:

- Verify that the Material meets the Specifications, and identify by number the specified test methods used, (ODOT, AASHTO, ASTM, UL, or other)
- Permit positive determination that Material delivered to the Project is the same Material covered by the certificate,
- Be delivered to the Engineer with the shipment of the Material, or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material,

(c) Equipment List and Drawings - These consist of lists of proposed Equipment and Materials, such as:

- Shop drawings
- Material lists
- Equipment lists
- Catalog description sheets
- Manufacturer's brochures

Submit these lists to the Engineer for review of conformance with the Specifications.

(d) Certificate of Origin of Steel Materials - When specified, complete this document (ODOT Form 734-2126) as required by 00160.20 for Federal-aid projects.

Materials will be subject to acceptance testing if the Engineer so elects. The Engineer may reject damaged or non-Specification Materials regardless of the Materials Conformance Documents furnished.

00165.40 Statistical Analysis Statistical Analysis is not required. When 00165.30(c) or 00165.50 applies the Contractor shall divide the Materials into lots and sublots and randomly sample and test them as required. The Engineer will analyze the materials and determine if the Materials conform to the Specifications. If this subsection has been referenced it shall be understood that Statistical Analysis is not required and the Engineer will clarify the intent according to 00150.10(c).

(a) Lot - A lot is the quantity of Materials produced by a single process or JMF that is sampled and tested, as specified in this Subsection.

(b) Sublot - A sublot is a portion of a lot, for which a sample test value may be normally obtained.

00165.50 Acceptance Sampling and Testing -The Contractor shall sample and test Materials for acceptance, as required by the Contract. Materials will be analyzed as determined by the Engineer for acceptance before the Engineer will accept them for incorporation into the Work. Acceptance based on Statistical Analysis is not required. When the Engineer determines the Materials or Work does not conform to the Specifications the Engineer may accept the Materials or Work with pay adjustments or reject the Materials or Work per 00150.25.

00165.70 Use of Materials without Acceptable Materials Conformance Documents:

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

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

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

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

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

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

Stored Materials:

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

Measurement

00165.80 Measurement - No separate measurement will be made of Work performed under this Section.

Payment

00165.90 Incidental Basis - No separate or additional payment will be made for sampling, testing, certification, or other associated Work performed under this Section, whether performed by the Contractor, manufacturer, producer or supplier. No payment will be made for providing quality control personnel.

00165.91 Fabrication Inspection Expense - Fabrication of certain items outside of the State creates additional shop and plant inspection expense to the Agency. It is impractical, and extremely difficult, to determine the actual additional expenses incurred. Therefore, each time that inspection by Agency personnel is necessary, payment to the Contractor will be reduced by an amount computed at the following rates:

Zone	Place of Fabrication	Reduction in Payment
1	All of State of Oregon and those portions of adjacent states within 50 airline miles of the Oregon border	\$0
2	Outside of Zone 1 and up to 300 airline miles from the Oregon border	\$100 per Calendar Day

3	Outside of Zone 2, up to 3,000 airline miles from the Oregon border and within the continental United States.	Round trip coach airfare from Portland, Oregon plus \$100 per Calendar Day
4	Outside of Zone 3 or outside of the continental United States.	Round trip coach airfare from Portland, Oregon plus \$150 per Calendar Day

Calendar Day charges begin on the first day the Agency's inspector begins travel to begin work at the fabrication site, and continue without interruption through the final day of travel back to the State. The Contractor will be notified in writing of the dates of beginning and ending of Calendar Days used in computing payment reduction.

This Subsection applies to all fabricated items or manufactured Materials that are inspected by Agency personnel, which include, but are not limited to:

- Structural steel fabrication;
- Prestressed concrete members;
- Precast concrete;
- Signs;
- Preservative treatment of wood products;
- Epoxy coating of reinforcing steel; and
- Other items specifically identified in the Specifications as requiring fabrication site or in-plant inspection by the Agency.

Section 00170 - Legal Relations and Responsibilities

Description

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

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

Provisions and Requirements

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

(a) Federal Agencies:

Agriculture, Department of
 Forest Service
 Natural Resource Conservation Service

Army, Department of the
 Corps of Engineers

Commerce, Department of
 National Marine Fisheries Service

Defense, Department of

Energy, Department of

Environmental Protection Agency (EPA)

Federal Energy Regulatory Commission

Geology Survey

Health and Human Services, Department of

Homeland Security, Department of
 U.S. Coast Guard (USCG)

Housing and Urban Development, Department of

Interior, Department of
 Heritage, Conservation, and Recreation Service
 Bureau of Indian Affairs
 Bureau of Land Management
 Bureau of Mines
 Bureau of Reclamation
 Geological Survey
 Minerals Management Service
 Office of Surface Mining, Reclamation, and Enforcement

Minerals Management Service

Solar Energy and Energy Conservation Bank

U.S. Fish and Wildlife Service

Labor, Department of Mine Safety and Health Administration
 Occupational Safety and Health Administration (OSHA)

Transportation, Department of
 Federal Highway Administration

Water Resources Council

(b) State of Oregon Agencies:

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

(c) Local Agencies:

City Councils
 County Commissioners, Boards of
 Design Commissions
 Historical Preservation Commissions
 Lane Regional Air Pollution Authority (LRAPA)
 Planning Commissions
 Port Districts
 Special Districts

(d) Oregon Federally Recognized Tribal Governments:

Burns Paiute Tribe
 Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
 Confederated Tribes of Grand Ronde
 Confederated Tribes of Siletz
 Confederated Tribes of Umatilla Indian Reservation
 Confederated Tribes of Warm Springs
 Coquille Tribe
 Cow Creek Band of Umpqua Indians
 Klamath Tribe

00170.02 Permits, Licenses, and Taxes - As required to accomplish the Work, the Contractor shall do the following:

- Obtain all necessary permits and licenses, except for those noted in 00170.03;

- Pay all applicable charges, fees and taxes, whether currently existing or adopted during the term of the Contract, except for those noted in 00170.03;
- Give all notices required by applicable Laws or under the terms of the Contract;
- Comply with ORS 274.530 relating to lease of stream beds by Oregon Division of State Lands;
- License, in the State of Oregon, all vehicles subject to licensing;
- Comply with ORS 477.625 and ORS 527.670 relating to clearing and fire hazards on forest lands; and
- Comply with all orders and permits issued by a governmental authority, whether local, State, or federal.

00170.03 Furnishing Right-of-Way and Permits- Unless required to be obtained in the name of the Contractor, the Agency will obtain and pay for the following when they are required by the applicable Laws or by Plans or Specifications:

- All necessary Rights-of-Way;
- Permits required for crossing or encroaching upon navigable streams;
- Permits required for removing materials from or depositing materials in waterways;
- Permits required for operating in Agency-controlled source of Materials or disposal area;
- System development fees charged by local units of government;
- Building construction permits, not including specialty work such as heating, ventilation, air conditioning, or electrical;
- Cost of referencing and replacing endangered survey monuments; and
- Environmental permits, including erosion control permits.

00170.04 Patents, Copyrights, and Trademarks - Prior to use of designs, devices, materials, or processes protected by patent, copyright, or trademark, the Contractor shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of legal right.

The Contractor shall indemnify, defend and hold harmless the Agency and all third parties and political subdivisions having a possessory or ownership interest or regulatory authority over the Project or Project Site from claims of patent, copyright or trademark infringement, and from costs, expenses and damages the Contractor or Agency may be obligated to pay as a result of such infringement during or after completing the Work.

00170.05 Assignment of Antitrust Rights - The Contractor irrevocably assigns to the Agency any claim for relief or cause of action the Contractor acquires during the term of the Contract, or which may accrue thereafter, by reason of any violation of:

- Title 15 (Commerce and Trade), United States Code;
- ORS 646.725; and
- ORS 646.730.

In connection with this assignment, it is an express obligation of the Contractor to take no action that would in any way impair or diminish the value of the rights assigned to the Agency according to the provisions of this Subsection. Further, it is the express obligation of the Contractor to take all action necessary to preserve the rights assigned. It is an express obligation of the Contractor to advise the Agency's legal counsel:

- In advance, of its intention to commence any action involving such claims for relief or causes of action;
- Immediately upon becoming aware of the fact that an action involving such claims for relief or causes of action has been commenced by some other person or persons;
- The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of the Contractor's assignment to the Agency according to the provisions of this Subsection; and
- Immediately upon the discovery of any such antitrust claim for relief or cause of action.

In the event any payment is made to the Contractor under any such claims for relief, the Contractor shall promptly pay the full sum over to the Agency. In the event the Contractor fails to make such payment, the Agency may deduct the amount from monies due or to become due the Contractor under the Contract.

00170.07 Record Requirements - For purposes of this Subsection the term "Contractor" includes the Contractor, all subcontractors, Material Suppliers, and providers of rented operated Equipment (except non-DBE truck drivers), at all tiers, for all subcontracts with first-tier Subcontractors, all subcontracts between the first-tier Subcontractors and their subcontractors and any other lower tier subcontracts, and "Related Entities" as that term is defined in OAR 731-005-0780. The Material Suppliers included in this definition are those for Aggregates, Asphalt Cement Concrete, Portland Cement Concrete and the supply and fabrication of structural steel items or Material Suppliers that provide quotes.

(a) Records Required - The Contractor shall maintain all records, whether created before or after execution of the Contract, or during Contract performance, or after Contract completion, to clearly document:

- The Contractor's performance of the Contract or a subcontract;
- The Contractor's ability to continue performance of the Contract or a subcontract; and
- All claims arising from or relating to performance under the Contract or a subcontract.

These records shall include all records, including fiscal records, regardless of when created for the Contractor's business. The records for the Contractor's business include without limitation the:

- Bidding estimates and records, worksheets, tabulations or similar documents.
- Job cost detail reports, including monthly totals.
- Payroll records (including without limitation the ledger or register, and tax forms) and all documents which establish the periods, individuals involved, the hours for the individuals and the rates for the individuals.
- Records that identify the Equipment used by the Contractor and subcontractors in the performance of the Contract or subcontracts, including without limitation, Equipment lists, rental contracts and any records used in setting rental rates.
- Invoices from vendors, rental agencies, and subcontractors.
- Material quotes, invoices, purchase orders and requisitions.
- Contracts with subcontractors and contracts with Material Suppliers, Suppliers and providers of rented equipment.
- Contracts or documents of other arrangements with any Related Entity as defined in OAR 731-005-0780.
- General ledger.
- Trial Balance.
- Financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial statement notes).
- Income tax returns.
- All worksheets used to prepare bids or claims, or to establish the cost components for the Pay Items, including without limitation, the labor, benefits and insurance, Materials, Equipment, and subcontractors.

The following are examples, but not an exhaustive list, of records that would be included, if generated by the Contractor. If the Contractor generates such records, or equivalent records, they are included among the records subject to 00170.07.

- Daily time sheets and supervisor's daily reports.
- Collective bargaining agreements.
- Earnings records.
- Journal entries and supporting schedules.

- Insurance, welfare, and benefits records.
- Material cost distribution worksheet.
- Subcontractors' and lower tier subcontractors' payment certificates.
- Payroll and vendor's cancelled checks.
- Cash disbursements journal.
- All documents related to each and every claim together with all documents that support the amount of damages as to each claim.
- Additional financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial notes) preceding the execution of the Contract and following final payment of the Contract.
- Depreciation records on all business Equipment maintained by the business involved, its accountant, or other Entity. (If a source other than depreciation records is used to develop cost for the Contractor's internal purposes in establishing the actual cost of owning and operating Equipment, all such other source documents.)

The Contractor shall maintain all fiscal records in material compliance with generally accepted accounting principles, or other accounting principles that are accepted accounting principles and practices for the subject industry and adequate for the nature of the Contractor's business, and in such a manner that providing a complete copy is neither unreasonably time consuming nor unreasonably burdensome for the Contractor or the Agency. Failure to maintain the records in this manner shall not be an excuse for not providing the records.

The Contractor shall include in its subcontracts, purchase orders, and all other written agreements, a provision requiring all subcontractors, Material Suppliers and providers of rented operated Equipment, (except non-DBE truck drivers), at all tiers to comply with 00170.07. The Contractor shall also require all subcontractors, Material Suppliers, and providers of rented operated Equipment, (except non-DBE truck drivers), at all tiers and Related Entities to include in their contracts, purchase orders, and all other written agreements, a provision requiring all lower tier subcontractors, Material Suppliers and providers of rented operated Equipment (except non-DBE truck drivers) to comply with 00170.07. The Material Suppliers to which this applies are those for Aggregates, Asphalt Cement Concrete, Portland Cement Concrete and the supply and fabrication of structural steel items or Material Suppliers that provide Material quotes and Related Entities as defined in OAR 731-005-0780.

Access to Records - The Contractor shall provide the Engineer access to or a copy of all Contractor records upon request. A Project Manager's authority to request or access records is subject to OAR 731-005-0780(9). During the record retention period the Engineer, employees of the Agency, representatives of the Agency, or representatives of regulatory bodies or units of government may:

- Inspect, examine and copy or be provided a copy of all Contractor records;
- Audit the records, a Contract or the performance of a Contract;
- Inspect, examine and audit the records when, in the Agency's sole discretion, the records may be helpful in the resolution of any claim, litigation, administrative proceeding or controversy arising out of or related to a Contract.

Reasons for access to audit, inspect, examine and copy records include without limitation, general auditing, reviewing claims, checking for collusive bidding, reviewing or checking payment of required wages, performance and contract compliance, workplace safety compliance, evaluating related Entities, environmental compliance, and qualifications for performance of the Contract, including the ability to perform and the integrity of the Contractor.

Where such records are stored in a computer or in other digital media, the Engineer may request, and the Contractor shall provide, a copy of the data files and such other information or access to software to allow the Engineer review of the records.

Nothing in 00170.07 is intended to operate as a waiver of the confidentiality of any communications privileged under the Oregon Evidence Code. Nothing in 00170.07 limits the records or documents that can be obtained by legal process.

(c) Record Retention Period – Except for records subject to the Oregon Public Records Law (ORS 192.001 et seq.), which must be retained in accordance with State retention schedules, the Contractor shall maintain the records and keep the records accessible and available at reasonable times and places for at least 3 years from the date of final payment under the Contract, or until the conclusion of all audits, litigation, administrative proceedings, disputes and claims arising out of or related to the Contract, whichever date is later.

(d) Public Records Requests - If records provided under this section contain any information that may be considered exempt from disclosure as a trade secret under either ORS 192.501(2) or ORS 646.461(4), or under other grounds specified in Oregon Public Records Law, ORS 192.410 through ORS 192.505, the Contractor shall clearly designate on or with the records the portions which the Contractor claims are exempt from disclosure, along with a justification and citation to the authority relied upon. Entire records or documents should not be designated as a trade secret or otherwise exempt from disclosure. Only specific information within a record or document should be so designated.

To the extent allowed by the Oregon Public Records Law or other applicable law related to the disclosure of public records, Agency will not disclose records or portions of records the Contractor has designated as trade secrets to a third party, who is not a representative of the Agency, to the extent the records are exempt from disclosure as trade secrets under the Oregon Public Records Law or other applicable law, except to the extent Agency is ordered to disclose in accordance with the Oregon Public Records Law or by a court of competent jurisdiction. Application of the Oregon Public Records Law or other applicable law shall determine whether any record, document or information is actually exempt from disclosure addition, in response to a public records request, the Agency will not produce or disclose records so identified as exempt by the Contractor to any person other than representatives of the Agency, and others with authorized access under 00170.07(b), without providing the Contractor a copy of the public records request, unless:

The Contractor consents to such disclosure; or

Agency is prohibited by applicable law or court order from providing a copy of the public records request to the Contractor.

If the Agency receives a public records request for records that a third party has designated as exempt and the requestor institutes an action to have the records produced, the third party whose records are being sought will be solely responsible for defending against the disclosure of such records.

00170.10 Required Payments by Contractors - The Contractor shall comply with ORS 279C.505 and ORS 279C.515 during the term of the Contract.

(a) Prompt Payment by Contractor for Labor and Materials - As required by ORS 279C.505, the Contractor shall:

- Make payment promptly, as due, to all Entities supplying labor or Materials under the Contract;
- Pay all contributions or amounts due the Industrial Accident Fund, whether from the Contractor or a Subcontractor, incurred in the performance of the Contract;
- Not permit any lien or claim to be filed against the State or any political subdivision thereof, on account of any labor or Material furnished in performance of the Contract; and
- Pay to the Department of Revenue all sums withheld from employees according to ORS 316.167.

(b) Prompt Payment by Contractor to First-Tier Subcontractor(s) - According to ORS 279C.580(3)(a), after the Contractor has determined and certified to the Agency that one or more of its Subcontractors has satisfactorily performed subcontracted Work, the Contractor may request payment from the Agency for the Work, and shall pay the Subcontractor(s) within 10 Calendar Days out of such amounts as the Agency has paid to the Contractor for the subcontracted Work.

(c) Interest on Unpaid Amount - If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract within 30 Days after the Contractor's receipt of payment, the Contractor or first-tier Subcontractor shall owe the Entity the amount due plus interest charges that begin at the end of the 10 day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b). As required by ORS 279C.515(2), the rate of interest on the amount due shall be 9 percent per annum. The amount of interest shall not be waived.

(d) Agency's Payment of the Contractor's Prompt Payment Obligations - If the Contractor fails, neglects or refuses to make prompt payment of any invoice or other demand for payment for labor or services furnished to the Contractor or a Subcontractor by any Entity in connection with the Contract as such payment becomes due, the Agency may pay the Entity furnishing the labor or services and charge the amount of the payment against monies due or to become due the Contractor under the Contract. (The Agency has no obligation to pay these Entities, and ODOT will not normally do so, but will refer them to the Contractor and the Contractor's Surety.)

The payment of a claim by the Agency in the manner authorized in this Subsection shall not relieve the Contractor or the Contractor's Surety from obligations with respect to any such claims.

(e) Right to Complain to the Construction Contractors Board - If the Contractor or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

(f) Notice of Claim Against Bond - An Entity (which by definition includes a natural person) claiming not to have been paid in full for labor or Materials supplied for the prosecution of the Work may have a right of action on the Contractor's Payment Bond as provided in ORS 279C.600 and ORS 279C.605.

The Commissioner of the Bureau of Labor and Industries (BOLI) may have a right of action on the Contractor's and Subcontractors' public works bonds and Payment Bonds for workers who have not been paid in full, as provided in ORS 279C.600 and ORS 279C.605.

00170.20 Public Works Bond - Before starting Work, the Contractor and subcontractors shall each file with the Construction Contractors Board, and maintain in full force and effect, a separate public works bond, in the amount of \$30,000 unless otherwise exempt, as required by ORS 279C.830(3) and ORS 279C.836. The Contractor shall verify subcontractors have filed a public works bond before the subcontractor begins Work.

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

The Contractor shall not interfere with waterway navigation or impair navigable depths or clearances, except as U.S. Coast Guard or Corps of Engineer permits allow.

00170.60 Safety, Health, and Sanitation Provisions - The Contractor shall comply with all federal, State, and local Laws, regulations, executive orders, and directives and policies concerning safety, health, and sanitation standards. The Contractor shall not require workers to perform Work under conditions that are hazardous, dangerous, or unsanitary.

Workers exposed to traffic shall wear upper body garments or safety vests that are highly visible and meet the requirements of 00225.27.

Workers exposed to falling or flying objects or electrical shock shall wear hard hats.

Upon their presentation of proper credentials, the Contractor shall allow inspectors of the U.S. Occupational Safety and Health Administration (OSHA) and the Oregon Occupational Safety and Health Division (OR-OSHA) to inspect the Work and Project Site without delay and without an inspection warrant.

Pursuant to ORS 468A.710 and ORS 468A.715, the Contractor or a Subcontractor who performs Project Work involving asbestos abatement shall possess a valid DEQ asbestos abatement license.

00170.61 Industrial Accident Protection:

(a) Workers' Compensation - The Contractor shall provide workers' compensation coverage for on-the-job injuries as required by 00170.70(d).

(b) Longshoremen's and Harbor Workers' Compensation - If Work to be performed is over or adjacent to navigable waters, the Longshoremen's and Harbor Workers' Compensation Act, (Chapter 18,

Title 33 of the USC) may apply, and the Contractor shall be responsible for complying with its provisions (which may include the provision of additional workers' compensation benefits to employees).

00170.62 Labor Nondiscrimination - The Contractor shall comply with all Laws concerning equal employment opportunity, including without limitation those prohibiting discrimination because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation,

00170.63 Payment for Medical Care - According to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

00170.65 Minimum Wage and Overtime Rates for Public Works Projects:

(a) General - The Contractor is responsible for investigating local labor conditions. The Agency does not imply that labor can be obtained at the minimum hourly wage rates specified in State or federal wage rate publications, and no increase in the Contract Amount will be made if wage rates paid are more than those listed.

(b) State Prevailing Wage Requirements - The Contractor shall comply with the prevailing wage provisions of ORS 279C.800 through ORS 279C.870.

(1) Minimum Wage Rates - The Bureau of Labor and Industries (BOLI) determines and publishes the existing State prevailing wage rates in the publication "Prevailing Wage Rates for Public Works Contracts in Oregon". The Contractor shall pay workers not less than the specified minimum hourly wage rate according to ORS 279C.838 and ORS 279C.840 and shall include this requirement in all subcontracts.

See the Project Wage Rates page included with the Appendix for additional information about which wage rates apply to the project and how to access the applicable wage rates.

The applicable BOLI wage rates will be included in the Contract.

(2) Payroll and Certified Statements - As required in ORS 279C.845, the Contractor and every subcontractor 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 upon the project.

The Contractor and subcontractors shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

(3) Additional Retainage:

a. Agency - As required in ORS 279C.845(7) the Agency will retain 25% of any amount earned by the Contractor on the project until the Contractor has filed the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. The Agency will pay to the Contractor the amount retained within 14 Days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

b. Contractor - As required in ORS 279C.845(8) the Contractor shall retain 25% of any amount earned by a first tier subcontractor on the project until the first tier subcontractor has filed with the Agency the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. Before paying any amount retained, the Contractor shall verify that the first tier subcontractor has filed the certified statement. Within 14 Days after the first tier subcontractor files the required certified statement the Contractor shall pay the first tier subcontractor any amount retained.

(4) Owner/Operator Data - For a project funded by the FHWA, the Contractor shall furnish data to the Engineer for each owner/operator providing trucking services. Furnish the data before the time the services are performed and include without limitation for each owner/operator:

- Drivers name;
- Copy of driver's license;
- Vehicle identification number;
- Copy of vehicle registration;
- Motor vehicle license plate number;
- Motor Carrier Plate Number;
- Copy of ODOT Motor Carrier 1A Permit; and Name of owner/operator from the side of the truck.

(c) State Overtime Requirements - As a condition of the Contract, the Contractor shall comply with the pertinent provisions of ORS 279C.540.

(1) Maximum Hours of Labor and Overtime Pay -According to ORS 279C.540, no person shall be employed to perform Work under this Contract for more than 10 hours in any 1 Day, or 40 hours in any 1 week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, the Contractor shall pay the employee at least time and a half pay:

- For all overtime in excess of 8 hours a day or 40 hours in any 1 week when the work week is 5 consecutive days, Monday through Friday; or
- For all overtime in excess of 10 hours a day or 40 hours in any 1 week when the work week is 4 consecutive days, Monday through Friday; and
- For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

For additional information on requirements for overtime and establishing a work schedule see OAR 839-025-0050 and OAR 839-025-0034.

(2) Notice of Hours of Labor - The Contractor shall give written notice to employees of the number of hours per day and days per week the employees may be required to work. Provide the notice either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees.

(3) Exception - The maximum hours of labor and overtime requirements under ORS 279C.540 will not apply to the Contractor's Work under this Contract if the Contractor is a party to a collective bargaining agreement in effect with any labor organization. For a collective bargaining agreement to be in effect it shall be enforceable within the geographic area of the project, and its terms shall extend to workers who are working on the project (see OAR 839-025-0054).

(d) State Time Limitation on Claim for Overtime - According to ORS 279C.545, any worker employed by the Contractor is foreclosed from the right to collect any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 Days from the completion of the contract, provided the Contractor posted and maintained a circular as specified in this provision. Accordingly, the Contractor shall:

Cause a circular, clearly printed in boldfaced 12-point type containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed to perform Work; and Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

(e) Additional Requirements When Federal Funds are Involved - When federal funds are involved, the following requirements shall apply in addition to the requirements of 00170.65(a) through 00170.65(d). The Contractor shall include these provisions in all subcontracts as well as ensure that all Subcontractors include these provisions in their lower tier subcontracts.

(1) FHWA Requirements - For Federal-Aid projects, the Contractor shall comply with the provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts".

(2) Minimum Wage Rates - The Contractor shall pay each worker in each trade or occupation employed to perform any work under the contract not less than the existing State (BOLI) prevailing wage rate or the applicable federal prevailing wage rate required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), whichever is higher. The Contractor shall include this provision in all subcontracts.

- See the Project Wage Rates page included with the Special Provisions for additional information about which wage rates apply to the project and how to access the applicable wage rates.
- The applicable Davis-Bacon and BOLI wage rates will be included in the Contract.

(3) Payroll and Certified Statements - In addition to providing the payroll information and certified statements required under ORS 279C.845 (see 00170.65(b-2)), the Contractor and every subcontractor shall submit written certified statements that also meet the requirements in Section IV of FHWA Form 1273 except the Contractor and every subcontractor shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

(4) Overtime - With regard to overtime pay, the Contractor shall comply with the overtime provision affording the greatest compensation required under FHWA Form 1273 and ORS 279C.540.

00170.70 Insurance:

(a) Insurance Coverages - The Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, the insurance coverages listed below. The Contractor may, contractually obligate an appropriate subcontractor to obtain, at the subcontractor's expense or at the Contractor's expense, and keep in effect during the term of the Contract, pollution liability coverage, asbestos liability, lead liability, or automobile liability with pollution coverages, or such other types of insurance coverage that, before execution of the Contract, the Agency approves as types of insurance coverage that may be obtained by appropriate subcontractors. If both the Contractor and an appropriate subcontractor will perform pollution related Work or other Work that would be covered by the other above-described types of insurance permitted to be obtained by an appropriate subcontractor, the insurance coverages listed below that correspond to such Work shall be obtained, at the Contractor's or subcontractor's expense, and shall cover the liability of the Contractor and the subcontractor, either under the same or separate insurance policies.

- **Commercial General Liability** - Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Agency. This insurance shall include personal and advertising injury liability and products and completed operations coverage. Coverage may be written in combination with Commercial Automobile Liability Insurance with separate limits for Commercial General Liability and Commercial Automobile Liability. Coverage shall be written on an occurrence basis. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

If the Contractor's Commercial General Liability Insurance limits are less than the required limits stated above, the Contractor shall obtain Excess or Umbrella Liability Insurance with sufficient limits that when added to the Contractor's Commercial General Liability Insurance limits the total combined limits of Commercial General Liability Insurance and Excess or Umbrella Liability Insurance equal or exceed the above-stated Commercial General Liability Insurance limits required for this Project. The above-stated combined single limit per occurrence and the above-stated annual aggregate limit must each be met. Excess or Umbrella Liability Insurance coverage shall extend to the same perils, terms, and conditions as the underlying Commercial General Liability Insurance coverage.

- **Pollution Liability** - If indicated by Special Provision, Pollution Liability Insurance covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage resulting from sudden and accidental pollution, gradual pollution, and related clean-up costs incurred by the Contractor, or by the subcontractor if the coverage is obtained by the subcontractor, while performing Work required by the Contract. If the coverage is obtained by the Contractor, the

coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Pollution Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions. The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provisions. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

- **Asbestos Liability** - If indicated by Special Provision, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, The Contractor or subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Lead Liability** - If indicated by Special Provision, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, the Contractor or subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the separate policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Commercial Automobile Liability** - Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. 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 indicated in the Special Provisions. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.
- **Commercial Automobile Liability with Pollution Coverage** - If indicated by Special Provision, the Contractor, or the subcontractor, if the coverage is obtained by the subcontractor, shall provide Commercial Automobile Liability Insurance with Pollution coverage covering the Contractor's liability, or the liability of an appropriate subcontractor, if the coverage is obtained by the subcontractor, for bodily injury and property damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. If the coverage is obtained by the Contractor, the coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability with Pollution Coverage and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in the Special Provisions or the amount required by the U.S. Department of Transportation, whichever is greater. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.

Commercial Automobile Liability with Pollution Coverage is required for this Project because the Project includes pollution related Work. If the Contractor will be performing pollution related Work, this coverage covering the Contractor must be provided. If an appropriate subcontractor, but not the Contractor, will perform the pollution related Work, Commercial Automobile Liability with Pollution Coverage covering the subcontractor, but not the Contractor, must be provided, however, the Contractor shall provide Commercial Automobile Liability insurance coverage covering the Contractor as provided in the Commercial Automobile Liability bullet above. If both the Contractor and an appropriate subcontractor will be performing pollution related Work, Commercial Automobile Liability with Pollution Coverage covering both the Contractor and the subcontractor shall be provided, and the Contractor may provide the coverage covering both the Contractor and the subcontractor, or the Contractor and the subcontractor may provide their own, separate Commercial Automobile Liability with Pollution coverage.

(b) Tail Coverage - If any of the required liability insurance coverages of 00170.70(a) are on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months or the entire term of any warranty period, whichever is longer. The Contractor shall furnish certification of "tail" coverage as described, or continuous "claims made" liability coverage for 24 months following Contract completion or the entire term of any warranty period, whichever is longer. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before

the effective date of the Contract. If Continuous "claims made" coverage is used, the Contractor shall keep the coverage in effect for a duration of not less than 24 months from the end of the Contract. This will be a condition of Final Acceptance.

(c) Additional Insured - The liability insurance coverages of 00170.70(a) shall include the Agency, the Agency's governing body, board, or Commission and its members, and the Agency's officers and employees as Additional Insureds, but only with respect to the Contractor's activities to be performed under the Contract. When federal transportation funding is involved, the liability coverages of 00170.70(a) shall also include the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers, members and employees as additional insureds, but only with respect to the Contractor's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of 00170.70(a) that are permitted by the Agency to be obtained by an appropriate subcontractor shall include all of the foregoing as Additional Insureds and shall also include Contractor and its officers and employees as Additional Insureds.

(d) Workers' Compensation - All employers, including the Contractor and its Subcontractors, if any, that employ subject workers who are performing Work or providing labor or Materials under the Contract in the State shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. The Contractor shall ensure that each of its Subcontractors complies with these requirements.

The Contractor shall certify in the Contract that the Contractor is registered by the Oregon Workers' Compensation Division either as a carrier-insured employer, a self-insured employer, an exempt employer, or is an independent contractor who will perform the Work without the assistance of others.

The Contractor shall ensure that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

(e) Notice of Cancellation or Change - The Contractor shall not cancel, change materially, or take any action showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from the Contractor or its insurer(s) to the Agency. The Contractor shall be responsible for ensuring that insurance coverage(s) obtained by an appropriate subcontractor, as permitted by the Agency under 00170.70(a), are not cancelled, changed materially, or have any action taken by the subcontractor showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from the Contractor or the insurer(s) to the Agency. Any failure to comply with the reporting provisions of this insurance shall not affect the coverage(s) provided to the 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 and employees.

(f) Certificate(s) of Insurance - As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the Agency at the time(s) provided in 00130.50(a). As evidence of insurance coverages required by this Contract but permitted by the Agency under 00170.70(a) to be obtained by an appropriate subcontractor, the Contractor shall furnish Certificate(s) of Insurance to the Agency for such coverages together with the Contractor's request under 00180.21 for approval of the subcontract with that subcontractor. The Certificate(s) will specify all of the parties who are Additional Insureds. The Contractor shall obtain, or ensure that the appropriate subcontractors obtain, insurance coverages required under this Contract from insurance companies or entities acceptable to the Agency and authorized to issue insurance in the State. The Contractor, or the appropriate subcontractor, but not the Agency, shall be responsible for paying all deductibles, self-insured retentions and/or self-insurance included under these provisions.

(g) Builders' Risk - If indicated by Special Provision, the Contractor shall obtain, at its expense, and keep in effect during the term of the Contract, Builders' Risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for an amount equal to at least the value indicated in the Special Provisions. Any deductible shall not exceed \$50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or \$50,000, whichever is greater. The policy shall include the Agency as loss payee.

00170.71 Independent Contractor Status - The service or services to be rendered under this Contract are those of an independent contractor. The Contractor is not an officer, employee, or agent of the State as those terms are used in ORS 30.265.

00170.72 Indemnity/Hold Harmless - To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, the Contractor shall indemnify, defend (with counsel approved by the Agency) and hold harmless the Agency, Agency's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies, and when federal transportation funding is involved the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to the following:

- Any damage, injury, loss, expense, inconvenience or delay described in this Subsection.
- Any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects.
- Any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract.
- The negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- Any lien filed upon the project or bond claim in connection with the Work.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subsection.

In claims against any person or entity indemnified under this Subsection by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts other employee benefit acts.

00170.74 Employee Drug Testing Program - As required by ORS 279C.505(2), the Contractor shall have in place, and maintain during the period of the Contract, an employee drug-testing program. The Agency retains the right to audit and/or monitor the program. On request by the Engineer, the Contractor shall furnish a copy of the employee drug-testing program.

00170.78 Conflict of Interest - The Contractor shall not give or offer any gift, loan, or other thing of value to any member of the Agency's governing body or employee of the Agency in connection with the award or performance of any Contract.

The Contractor shall not rent, lease, or purchase Materials, supplies, or Equipment, with or through any Agency employee or member of the Agency's governing body.

No ex-employee of the Agency who has worked for the Agency on any phase of the Project within the prior 2 years may be employed by the Contractor to perform Work on the Project.

00170.79 Third Party Beneficiary - There are no third-party beneficiaries of the Contract, unless federal transportation funding is involved then the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers and members and employees, are third-party beneficiaries of the Contract.

00170.80 Responsibility for Damage to Work:

(a) Responsibility for Damage in General - The Contractor shall perform Work, and furnish Materials and Equipment for incorporation into the Work, at the Contractor's own risk, until the entire Project has been completed and accepted by the Agency. The Contractor shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Work, except as otherwise provided in this Section.

(b) Repair of Damage to Work — Until Final Acceptance, the Contractor shall promptly rebuild, repair, restore, and make good damages to all portions of the permanent or temporary Work, except to the extent the Agency has assumed responsibility according to the provisions of (c) below. Perform all repairs of damage to Work at no additional cost to the Agency, except for repairs necessitated by damage caused by:

- Acts of God or Nature, as defined in Section 00110; or
- Actions of governmental authorities.

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

The Engineer will process a maximum of two forms per month and return the forms within 7 Calendar Days indicating each item as "approved" or "denied".

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

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

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

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

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

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

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

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

(d) Vandalism and Theft - Vandalism includes damage to or destruction of Work or portions of Work that remain on the Project Site resulting from vandalism, criminal mischief, arson, or other criminal or illegal behavior.

The Contractor shall provide reasonable protection of the Work from vandalism until Third Notification.

Theft includes the loss of Work or portions of Work that are lost or stolen or otherwise unaccounted for from the Project Site or from Materials or fabrication locations. The Contractor shall remain solely responsible for all losses caused by theft, including without limitation theft that occurs in conjunction with vandalism.

00170.82 Responsibility for Damage to Property and Facilities:

(a) In General - As used in this Subsection, the term "Contractor" shall include the Contractor's agents, Subcontractors, and all workers performing Work under the Contract; and the term "damage" shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature.

The Contractor shall be solely responsible for damages arising from:

- The Contractor's operations;
- The Contractor's negligence, gross negligence, or intentional wrongful acts; and
- The Contractor's failure to comply with any Contract provision.

The Agency may withhold funds due the Contractor or the Contractor's Surety until all lawsuits, actions, and claims for injuries or damages are resolved, and satisfactory evidence of resolution is furnished to the Agency.

(b) Protection and Restoration of Agency Property and Facilities - The following requirements apply to highways, highway Structures and other improvements that are existing, under construction, or completed. The Contractor shall:

- Provide adequate protection to avoid damaging Agency property and facilities;
- Be responsible for damage to Agency property and facilities caused by or resulting from the Contractor's operations; and
- Clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by the Engineer.

(c) Protection and Restoration of Non-Agency Property and Facilities - The Contractor shall determine the location of properties and facilities that could be damaged by the Contractor's operations, and shall protect them from damage. The Contractor shall protect monuments and property marks until the Engineer has referenced their location and authorized their removal. The Contractor shall restore property or facilities damaged by its operations to the condition that existed before the damage, at no additional compensation.

The Contractor shall provide temporary facilities when needed, e.g., to maintain normal service or as directed by the Engineer, until the required repair, rebuilding, or replacement is accomplished.

The Contractor shall protect specific service signs, e.g., business logos, and tourist-oriented directional signs (TODS) from damage, whether the signs are to remain in place or be placed on temporary supports. The Contractor shall repair or replace damaged signs at no cost to the Agency. Liquidated damages will be assessed against the Contractor in the amount of \$200 per day for each sign out of service for more than 5 Calendar Days because of the Contractor's operations. The parties agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate.

00170.85 Responsibility for Defective Work - The Contractor shall make good any defective Work, Materials or Equipment incorporated into the Work, according to the provisions of Section 00150.

(a) Latent Defects - The Contractor shall remain liable for all latent defects resulting from causes other than fraud or gross mistakes that amount to fraud until the expiration of the Performance Bond, Warranty Bond, or warranty period, whichever expires last. The Contractor shall remain liable for all latent defects resulting from fraud or gross mistakes that amount to fraud regardless of when those latent defects may be discovered, and regardless of whether such discovery occurs outside any applicable Performance Bond, Warranty Bond, or warranty period.

(b) Contractor Furnished Warranties:

(1) Contractor Warranty for Specific Items - For those Items with Specifications referencing this 00170.85(b-1) warranty, the Contractor warrants that the Work for those Items, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated into the Work, shall meet the technical and performance Specifications required under the Contract. The warranty period will be identified in each applicable Specification or elsewhere in the Contract and will begin on the date of Second Notification. The Contractor shall be responsible for making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship.

When the Agency makes written notification of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

This warranty provision shall survive expiration or termination of the Contract.

(2) General Warranty for Local Public Agency Projects - For those Contracts that are developed, advertised, awarded, and administered by Local Public Agencies, and are not on the National Highway System, this 00170.85(b-2) warranty applies.

The Contractor shall warrant all Work and workmanship, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated in the Work, for 1 year (unless otherwise specified) from the date of Third Notification, except that warranties according to 00170.85(b-1) and manufacturers' warranties and extended warranties according to 00170.85(c) shall not be abridged.

The Contractor shall be responsible for meeting the technical and performance Specifications required, making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from occurrences beginning during the warranty period and are the result of defects in Materials, Equipment, and workmanship. The Contractor shall be responsible for all costs associated with completing the repair of the defects and for associated Work including but not limited to permitting, mobilization, traffic control, erosion control, surface restoration, site cleanup and remediation caused by, or resulting in whole or in part from, defects in Materials, Equipment, or workmanship, and other Work determined by the Engineer to be necessary to complete the repair of the defects.

Within 10 Calendar Days of the Agency's written notice of defects, the Contractor, or the Contractor's Surety, shall vigorously and continuously correct and repair the defects and all related damage. If the Contractor or the Contractor's Surety fails to correct and repair the defects, the Agency may have the correction and repair done by others. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

In the event of an emergency, where delay could result in serious loss or damage, the Agency may make emergency corrections and repairs, without written notice. The Contractor or Contractor's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

Corrections, repairs, replacements or changes shall be warranted for an additional 1 year period (unless otherwise specified) beginning on the date of the Agency's acceptance of the corrections, repairs, replacements or changes.

Without limiting the general applicability of other survival clauses under the Contract, this warranty provision shall survive expiration or termination of the Contract.

(c) Manufacturer Warranties and Guarantees:

(1) Manufacturer Warranties - For those Specification Sections referencing this 00170.85(c-1) Subsection, the Contractor shall furnish Warranties from the Manufacturer and signed by a Manufacturer's Representative.

The warranty period will be specified in the applicable Specification Section for which it applies. The warranty period will begin on the date the Engineer issues Third Notification unless otherwise specified in the Contract.

When the Agency makes written notification to the Manufacturer of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

Warranty work shall be performed when weather permits. If, in the opinion of the Engineer, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Agency.

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

(2) Trade Practice Guarantees - For those Items installed on the Project that have customary trade practice guarantees, the Contractor shall furnish the guarantees to the Engineer at the completion of the Contract.

00170.89 Protection of Utility, Fire-control, and Railroad Property and Services; Repair; Roadway Restoration:

(a) Protection of Utility, Fire-Control, and Railroad Property and Services; Coordination - The Contractor shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control authorities during performance of the Work. The Contractor shall cooperate with and facilitate the relocation or repair of all Utilities and Utility services, as required under 00150.50, and of Railroad and fire-control property and railways.

The Contractor shall conduct no activities of any kind around fire hydrants until the local fire-control authority has approved provisions for continued service.

The Contractor shall immediately notify any Utility, Railroad, or fire-control authority whose facilities have been damaged.

If an Entity has a valid permit from the proper authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, the Contractor shall allow the permit holder to perform the work.

(b) Restoration of Roadway after Repair Work - The Contractor shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Engineer. All restoration work required as a result of Contractor's failure to protect Utilities, Railroads, railways and fire-control facilities shall be at the Contractor's expense. Restoration which constitutes Extra Work will be paid as Extra Work.

00170.92 Fencing, Protecting Stock, and Safeguarding Excavations - The Contractor shall be responsible for loss, injury, or damage that results from its failure to restrain stock and persons.

(a) At the Contractor's Expense - The Contractor shall restrain stock to lands on which they are confined using temporary fences or other adequate means. The Contractor shall provide adequate

temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

The Contractor shall repair, at Contractor's expense and to the Engineer's satisfaction, fences damaged by the Contractor's operations and the operations of the Contractor's agents, employees and Subcontractors.

(b) At the Agency's Expense - The Contractor shall construct fences, or move and reconstruct fences, as shown on the Contract Documents or as directed by the Engineer. The Contractor shall tear down and remove fencing within the Right-of-Way when no longer needed, as part of the removal Work described in and paid for according to Section 00310.

00170.93 Trespass - The Contractor shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

00170.94 Use of Explosives - The Contractor shall comply with all Laws pertaining to the use of explosives. The Contractor shall notify anyone having facilities near the Contractor's operations of Contractor's intended use or storage of explosives. The Contractor shall be responsible for all damage resulting from its own, its agents' and employees', and its Subcontractors' use of explosives. (see 00330.41(e) and Section 00335)

Section 00180 - Prosecution and Progress

00180.00 Scope - This Section consists of requirements for assignment of the Contract, subcontracting, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

00180.05 Assignment/Delegation of Contract - Unless the Agency gives prior written consent, the Contractor shall not assign, delegate, sell, or transfer to any Entity, or otherwise dispose of any Contract rights or obligations, including without limitation:

- The power to execute or perform the Contract; or
- Any of its right, title or interest in the Contract.

Any attempted assignment, delegation, or disposition without prior Agency consent shall be void.

Such Agency consent will not normally be given except for the assignment of funds due under the Contract, as provided in 00180.06.

If written Agency consent is given to assign, delegate, or otherwise dispose of any Contract rights or obligations, it shall not relieve the Contractor or its Surety of any part of their responsibility under the Contract.

00180.06 Assignment of Funds Due under the Contract - Assignment of funds due or to become due under the Contract to the Contractor will not be permitted unless:

- The assignment request is made on the form acceptable to the Agency;
- The Contractor secures the written consent of the Contractor's Surety to the assignment; and
- The Engineer approves the assignment.

00180.10 Responsibility for Contract - The Contractor shall direct and coordinate the operations of its employees, Subcontractors and agents performing Work, and see that the Engineer's orders are carried out promptly. The Contractor's failure to direct, supervise and control its employees, Subcontractors and agents performing Work will result in one or more of the following actions, or other actions as the Engineer deems appropriate:

- Suspension of the Work;
- Withholding of Contract payments, as necessary to protect the Agency;
- Ordering removal of individuals from the Project Site; or
- Termination of the Contract.

Contractor is not entitled to any additional compensation or additional time if the Engineer elects to pursue any of the above actions.

00180.15 Agency's Right to Do Work at Contractor's Expense - Except as otherwise provided in 00150.75 and 00220.60, if the Contractor neglects to prosecute the Work properly or fails to perform any provision of the Contract, the Agency may, after 2 Calendar Days' written notice, correct the deficiencies at the Contractor's expense. In situations where the Engineer reasonably believes there is danger to life or property, the Agency may immediately and without notice correct the deficiencies at the Contractor's expense.

Action by the Agency under this provision will not prejudice any other remedy it may have.

00180.20 Subcontracting Limitations:

(a) General – The Contractor's own organization shall perform Work amounting to at least 30% of the original Contract Amount. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the Subcontract(s).

(b) Own Organization - The term "own organization", as used in Section 00180, includes only employees of the Contractor, Equipment owned or rented by the Contractor, Incidental rental of operated

Equipment, and Materials and Equipment to be incorporated into the Work purchased or produced by the Contractor.

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

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

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

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

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

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

00180.21 Subcontracting:

(a) General - The Contractor shall not subcontract or perform any portion of the Contract by other than the Contractor's own organization without the Agency's prior written consent. A request for consent to subcontract, at any tier, solely for the furnishing of a labor force will not be considered.

A written request for consent to subcontract any portion of the Contract at any tier shall be submitted to the Engineer, and when required by the Engineer, shall be accompanied by background information showing that the organization proposed to perform the Work is experienced and equipped for such Work. The Agency will review the Contractor's submission to verify compliance with Contract requirements, confirm the percentage of Work subcontracted, and evaluate the proposed Subcontractor's ability to perform the Work. If the Agency approves the Contractor's request to subcontract, the Agency will provide written notice of its determination to give or withhold consent to the Contractor's request as follows:

- If the subcontractor is not providing any of the insurance coverages as permitted under 00170.70(a), the Agency will respond within 7 Calendar Days after the Engineer's receipt of the request.
- If the subcontractor is providing any of the insurance coverages as permitted under 00170.70(a), the Agency will respond within 35 Calendar Days after the Engineer's receipt of the request. (28 Calendar Days for the Agency to review and approve the Certificates of Insurance required by 00170.70(f) plus 7 Calendar Days to review and approve the subcontract request.)

(b) Submittal of Requests - The Contractor must submit requests for consent to subcontract any portion of the Contract, at any tier, on the Agency's form, available from the Engineer. The Contractor shall attach a duplicate original subcontract agreement. The Contractor must also submit in writing any amendments or modifications proposed to Agency-approved subcontract agreements, at any tier, before

the affected Work begins. The Agency's written consent will be required before such amendments or modifications become effective.

(c) Substitution of Disclosed Subcontractors - The Contractor may only substitute a previously undisclosed first-tier Subcontractor according to the provisions of ORS 279C.585. The Contractor shall provide the Engineer with a written notification that identifies the name of the proposed new Subcontractor and the reason for the substitution. Authorized reasons for substitution are limited to the following circumstances (see ORS 279C.585(1) through ORS 279C.585(10)):

- The disclosed Subcontractor fails or refuses to execute a written contract that is reasonably based either upon the Project Plans and Specifications, or the terms of the Subcontractor's written Bid, after having had a reasonable opportunity to do so;
- The disclosed Subcontractor becomes bankrupt or insolvent;
- The disclosed Subcontractor fails or refuses to perform the contract;
- The disclosed Subcontractor fails or refuses to meet the bond requirements of the prime Contractor that had been identified prior to the Bid submittal;
- The Contractor demonstrates to the Agency that the Subcontractor was disclosed as the result of an inadvertent clerical error;
- The disclosed Subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board;
- The Contractor determines that the Work performed by the disclosed Subcontractor is not in substantial compliance with the Plans and Specifications, or that the Subcontractor is substantially delaying or disrupting the progress of the Work;
- The disclosed Subcontractor is ineligible to work on a public improvement according to the applicable statutory provisions;
- The substitution is for "good cause" as defined by State Construction Contractors Board rule; or
- The substitution is reasonably based on the Contract alternates chosen by the Agency.

(d) Terms of Subcontracts - Subcontracts shall provide that work performed under the subcontract shall be conducted and performed according to the terms of the Contract. Compliance with 00170.07 is required. All subcontracts, including Contractor's with the first-tier Subcontractors and those of the first-tier Subcontractors with their subcontractors, and any other lower tier subcontracts shall contain a clause or condition that if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

(1) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within 10 Calendar Days out of amounts the Agency pays to the Contractor under the Contract.

(2) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor.

(3) A clause that requires the Contractor, except as otherwise provided in this subsection, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

- Notifies the Subcontractor in writing at least 45 Calendar days before the date on which the Contractor makes the change; and
- Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(4) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within 30 Calendar Days after receiving payment from the Agency, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not

make in accordance with the payment clause included in the subcontract under 00180.21(d-1). The Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the Agency or the Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and ends on the date on which the amount due is paid; and shall be computed at the rate specified in 00170.10(c).

(5) A clause that requires the Contractor's first-tier Subcontractor to include a payment clause and an interest penalty clause that conform to the standards of ORS 279C.580 (see 00180.21(d-1) and 00180.21(d-4)) in each of the first-tier Subcontractor's subcontracts and to require each of the first-tier Subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Material supplier.

These payment clauses shall require the Contractor to return all retainage withheld from the Subcontractor, whether held by the Contractor or the Agency, as specified in 00195.50(d).

As required by ORS 279C.800 through ORS 279C.870, subcontracts shall include:

- A provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work on the Project, unless exempt.
- A provision requiring that the workers shall be paid not less than the specified minimum hourly rate of wage.

(e) Contractor's Responsibilities - As a condition of the Agency's grant of consent to subcontract, whether or not stated in the subcontract agreement itself, the Contractor shall remain solely responsible for administration of the subcontract, including but not limited to:

- Performance of subcontracted Work;
- Progress of subcontracted Work;
- Payments for accepted subcontracted Work; and
- Disputes and claims for additional compensation regarding subcontracted Work.

The Engineer's consent to subcontract will not create a contract between the Agency and the Subcontractor, will not convey to the Subcontractor any rights against the Agency, and will not relieve the Contractor or the Contractor's Surety of any of their responsibilities under the Contract.

(f) Failure to Comply - Failure to comply with 00180.21 will be cause for the Engineer to take action reasonably necessary to obtain compliance. This action may include, but is not limited to:

- Suspension of the Work;
- Withholding of Contract payments as necessary to protect the Agency; and
- Termination of the Contract.

Contractor is not entitled to any additional compensation or additional time if the Engineer elects to pursue any of the above actions.

00180.22 Payments to Subcontractors and Agents of the Contractor - To the extent practicable, the Contractor shall pay in the same units and on the same basis of measurement as listed in the Schedule of Items for subcontracted Work or other Work not done by the Contractor's own organization. In making payment to Subcontractors and to its other agents performing Work and furnishing Materials and Equipment to be incorporated into the Work, the Contractor shall assume all losses resulting from overpayment.

If requested, the Engineer may make estimates of the Work quantities performed by Subcontractors or by others on the Project, and of Materials eligible for advances on Materials in the progress payments. These estimates are approximate only, and will be made in units of measure as listed in the Schedule of Items. The Agency does not guarantee the accuracy of these estimates, and an incorrect estimate will not bind the Agency in final settlement.

If requested in writing by a first-tier Subcontractor, the Contractor shall send to the Subcontractor, within 10 Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to the Agency, or pay document provided by the Agency to the Contractor, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.

00180.30 Materials, Equipment, and Work Force - The Contractor shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute the Work. The Contractor shall use only Equipment of adequate size and condition to meet the requirements of the Work and Specifications, and to produce a satisfactory quality of Work. Upon receipt of the Engineer's written order, the Contractor shall immediately remove, and not use again on the Project without the Engineer's prior written approval, Equipment that, in the Engineer's opinion, fails to meet Specifications or produce a satisfactory product or result.

The work force shall be trained and experienced for the Work to be performed. Upon receipt of the Engineer's written order, the Contractor shall immediately remove from the Project Site, and shall not employ again on the Project without the Engineer's prior written approval, any supervisor or employee of the Contractor or its Subcontractors who, in the Engineer's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If the Contractor fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment and personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Engineer may terminate the Contract under the provisions of 00180.90(a).

00180.31 Required Materials, Equipment, and Methods - The Engineer's decisions under this Section are final.

(a) General - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, the Contractor shall use the Equipment or methods specified unless otherwise authorized by the Engineer in writing.

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

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

- The proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency and utility; or
- Due to reasons beyond the control of the Contractor, the specified Materials or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence.

(2) Submittal of Request - The Contractor shall submit requests for substitution to the Engineer, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

(c) Substitution of Equipment Specified to Perform Work - The Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain portions of the Work, the Contractor may submit a request to the Engineer to use Equipment of a different size or type. The request will not be considered as a cost reduction proposal under 00140.70. The request shall:

- Be in writing and include a full description of the Equipment proposed and its intended use;
- Include the reasons for requesting the substitution; and
- Include evidence, obtained at the Contractor's expense and satisfactory to the Engineer, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Engineer will consider the Contractor's request and will provide a written response to the Contractor, either permitting or denying use of the proposed Equipment.

Permission may be granted on a trial basis to test the quality of Work actually produced, subject to the following:

- There will be no cost to the Agency, either in Contract Amount or in Contract Time;
- The permission may be withdrawn by the Engineer at any time if, in the Engineer's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract;
- If permission is withdrawn, the Contractor shall perform the remaining Work with the originally-specified Equipment; and
- The Contractor shall remove and replace non-specification Work resulting from the use of the Contractor's proposed Equipment, or otherwise correct it as the Engineer directs, at no additional compensation.

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

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

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

00180.40 Limitation of Operations:

(a) In General - The Contractor shall comply with all Contract provisions and shall:

- Conduct the Work at all times so as to cause the least interference with traffic, and
- Not begin Work that may allow damage to Work already started.

(b) On-Site Work - The Contractor shall not begin On-Site Work until the Contractor has:

- Received Notice to Proceed;
- Filed with the Construction Contractors Board the public works bond as required in 00170.20;
- An approved Project Work schedule;
- An approved Traffic Control Plan;
- An approved Pollution Control Plan;
- An approved Erosion and Sediment Control Plan;
- Met with the Engineer at the required preconstruction conference; and
- Assembled all Materials, Equipment, and labor on the Project Site, or has reasonably assured that they will arrive on the Project Site, so the Work can proceed according to the Project Work schedule.

00180.41 Project Work Schedules - The Contractor shall submit a Project Work schedule meeting the requirements of this Subsection to the Engineer. The Project Work schedule is intended to identify the sequencing of activities and time required for prosecution of the Work. The schedule is used to plan, coordinate, and control the progress of construction. Therefore, the Project Work schedule shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities. Sufficient detail shall also include all required double shifts, overtime work, or combination of both necessary to complete Contract Work within the Contract Time.

Contractor's activity related to developing, furnishing, monitoring, and updating these required schedules is Incidental.

The Contractor shall submit a supplemental "look ahead" Project Work schedule each week to the Engineer. The "look ahead" Project Work schedule is supplemental to the Type A, B, or C schedule specified below. The supplemental "look ahead" Project Work schedule shall:

- Identify the sequencing of activities and time required for prosecution of the Work.
- Provide for orderly, timely, and efficient prosecution of the Work.
- Contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities.

The supplemental "look ahead" Project Work schedule shall be written in common terminology and show the planned Work activities broken down into logical, separate activities by area, stage, and size and include the following information:

- The resources the Contractor, subcontractors, or services will use.
- The locations of each activity that will be done including the limits of the work by mile posts, stations, or other indicators.
- The time frames of each activity by Calendar Days, shifts, and hours.
- All anticipated shoulder, lane, and road closures.

At a minimum, the Contractor shall prepare a bar chart that:

- Shows at least 3 weeks of activity including the week the bar chart is issued.
- Uses a largest time scale unit of 1 Calendar Day. Smaller time scale units may be used if needed.
- Is appropriate to the activities.
- Identifies each Calendar Day by month and day.

Include the Contract name, Contract number, Contractor's name, and date of issue on each page of the bar chart.

The Contractor shall submit the supplemental "look ahead" Project Work schedule starting at First Notification and continuing each week until Second Notification has been issued and all punch list items and final trimming and cleanup has been completed. The Contractor shall meet with the Engineer each week to review the supplemental "look ahead" Project Work schedule. If the Engineer or the Contractor determines that the current supplemental "look ahead" Project Work schedule requires changes or additions, either notations can be made on the current schedule or the Engineer may require the submittal of a revised supplemental "look ahead" Project Work schedule. Review of the current and subsequent supplemental "look ahead" Project Work schedules does not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

One of the following Type "A", "B", or "C" schedules will be required under the Contract. The type of schedule will be identified in the Special Provisions.

(a) Type "A" Schedule - When a Type "A" schedule is required, the Contractor shall do the following:

(1) Schedule - 5 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer one digital copy of a Project Work schedule, including a time-scaled bar chart and narrative, showing:

- Expected beginning and completion dates of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00221.06.

The schedule shall show detailed Work activities as follows:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Materials samples and shop drawings;
- Fabrication, installation, and testing of special Materials and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in Calendar Days; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in Calendar Days.
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

Each page of the bar chart shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch by 36 inch, using multiple sheets when needed.

Within 7 Calendar Days after the preconstruction conference, the Engineer and the Contractor shall meet to review the Project Work schedule as submitted. The Engineer will review the schedule for compliance with all Contract Time limitations and other restraints. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract. Within 10 Calendar Days of this meeting, the Contractor shall resubmit to the Engineer four copies of the Project Work schedule, including required revisions.

(2) Review by the Engineer - The Project Work schedule may need revision as the Work progresses. Therefore, the Contractor shall periodically review the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule.

The Contractor shall compile an updated Project Work schedule incorporating any changes to the Project completion time(s). The bar chart shall reflect the updated information. The Contractor shall submit four copies of the updated Project Work schedule to the Engineer within 7 Calendar Days after the meeting. The report shall include without limitation the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

(b) Type "B" Schedule - When a Type "B" Schedule is required, the Contractor shall do the following:

(1) Initial Schedule - 5 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer one digital copy of a time-scaled bar chart Project Work schedule showing:

- Expected beginning and completion date of each activity, including all staging; and
- Elements of the Traffic Control Plan as required under 00221.06.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

- (2) Detailed Schedule** - In addition to the above requirements, and within 30 Calendar Days after the Notice to Proceed, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled bar chart Project Work schedule indicating the critical course of the Work. The digital copy shall be compatible with MS Project, or another scheduling program approved by the Engineer.

Detailed work schedule activities shall include the following:

- Construction activities;
- The time needed for completion of the utility relocation work;
- Submittal and approval of Material samples and shop drawings;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment; and
- Duration of Work, including completion times of all stages and their sub phases.

For each activity, the Project Work schedule shall list the following information:

- A description in common terminology;
- The quantity of Work, where appropriate, in common units of measure;
- The activity duration in normal workdays; and
- Scheduled start, completion, and time frame shown graphically using a time-scaled bar chart.

The schedule shall show the Work broken down into logical, separate activities by area, stage, or size. The duration of each activity shall be verifiable by manpower and Equipment allocation, in common units of measure, or by delivery dates.

The bar chart shall be prepared as follows:

- The length of bar shall represent the number of normal workdays scheduled.
- The time scale shall be appropriate for the duration of the Contract.
- The time scale shall be in normal workdays (every day except Saturday, Sunday, and legal holidays).
- The smallest unit shown shall be 1 Calendar Day.
- The first day and midpoint of each month shall be identified by date.
- Distinct symbols shall be used to denote multiple shift, holiday, and weekend Work.

The bar chart drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the bar chart shall be drawn on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

Within 10 Calendar Days after submission of the Project schedule the Engineer and the Contractor shall meet to review the Project schedule as submitted. Within 10 Days of the review meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the Project schedule, including required revisions.

The accepted Project schedule shall represent all Work, as well as the planned sequence and time for the Work. Review of this and subsequent schedules by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

(3) Review and Reporting - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

a. Review with the Engineer - The Contractor shall perform ongoing review of the Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the Project Work schedule.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include commencement and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it.

The Contractor shall evaluate this information and compare it with the Contractor's project schedule. If necessary, the Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit one digital and four paper copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

b. Progress Report - The Contractor shall submit a progress report to the Engineer each month. The report shall include the following:

- Sufficient narrative to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule; and
- Proposed corrective actions.

(c) Type "C" Schedule - When a Type "C" Schedule is required, the Contractor shall do the following:

(1) Initial Schedule - 10 Calendar Days prior to the preconstruction conference, the Contractor shall provide to the Engineer one digital copy of a time-scaled bar chart Project Work schedule. The digital copy shall be compatible with MS Project, or another scheduling program approved by the Engineer. The initial schedule shall show:

- The expected beginning and completion date of each activity, including all stages and phases;
- The time needed for completion of the utility relocation work; and
- The elements of the traffic control plan as required under 00221.06.

A logic diagram and a time-scaled bar chart will be acceptable in lieu of a time-scaled logic diagram.

The initial schedule shall show all Work intended for the first 60 Days of the Contract to the level of detail described in (2) below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

(2) Detailed Project Work Schedule - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide the Engineer one digital copy and four paper copies of a detailed time-scaled critical path method (CPM) network Project Work schedule and

computer analysis printout, both clearly indicating the critical path. The digital copy shall be compatible with MS Project, or another scheduling program approved by the Engineer. The first submitted detailed time-scaled critical path method (CPM) network Project Work schedule shall also contain a listing of the quantity of Work for each activity, when appropriate, in common units of measure.

Detailed work schedule activities shall include the following:

- Construction activities;
- Any limitations of operation specified in 00180.40;
- The time needed for completion of the utility relocation work;
- Implementation of TCP for each stage and phase;
- Submittal and approval of Material samples, mix designs, and shop drawings;
- Agency timeframes to process and return Contractor submitted plans, working drawings, equipment lists and other submittals;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment;
- Duration of Work, including completion times of all stages and their sub-phases; and
- Specified cure times for all concrete elements.

The activities shall be separately identifiable by coding or use of sub-networks or both. The duration of each activity shall be verifiable and consistent with the description in the Project narrative required in (3) below.

Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. In the restraints, include those activities from any Project Work schedule that initiated the sub-network as well as those restrained by it.

The time scale used on the Contractor's detailed time-scaled critical path method (CPM) network Project Work schedule shall be appropriate for the duration of the activities and the Project duration. The time scale shall be in normal workdays, defined as every day except Saturday, Sunday and legal holidays, with calendar dates identified no less than the first and midpoint of each calendar month. The smallest unit shown shall be 1 Day. The network shall show the length of the activity or part scaled to accurately represent the number of normal workdays scheduled. Distinct symbols or graphics shall be used to show multiple shift, holiday, or weekend work.

The schedule network drawing(s) shall include a title block showing the Contract name and number, Contractor's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the drawings shall be on a reasonable size of paper up to a maximum of 36 inch x 36 inch, using multiple sheets when needed.

The Contractor shall include a tabulation of each activity in the computer mathematical analysis of the network diagram. The following information represents the minimum required for each activity:

- Event (node) number(s) for each activity;
- Maintain event (node) numbers throughout the Project;
- Activity description;
- Original duration of activities (in normal workdays);
- Estimated remaining duration of activities (in normal workdays);
- Earliest start date and actual start date (by calendar date);
- Earliest finish date and actual finish date (by calendar date);
- Latest start date (by calendar date);
- Latest finish date (by calendar date); and
- Slack or float time (in workdays).

Computer print-outs shall consist of at least a node sort and an "early start/total-float" sort.

Within 14 Calendar Days after submission of the detailed time-scaled critical path method (CPM) network Project Work schedule, the Engineer and the Contractor shall meet to review the detailed time-scaled critical path method (CPM) network Project Work schedule as submitted. Within 7 Calendar Days of the meeting, the Contractor shall resubmit to the Engineer one digital and four paper copies of the detailed time-scaled critical path method (CPM) network Project Work schedule, including required revisions.

This first accepted detailed time-scaled critical path method (CPM) network Project Work schedule, also called the accepted Project Work schedule, shall represent all Work, as well as the planned sequence and time for the Work. Review and acceptance of any Project Work schedules and Project narratives by the Engineer shall not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

(3) Project Narrative - In addition to the above requirements, and within 30 Calendar Days after First Notification, the Contractor shall provide to the Engineer a final written Project narrative that discusses the planning, coordinating, scheduling and resourcing of the Work. The Project narrative shall include the following written description:

- Plans for staging the project.
- All critical activities.
- All near critical activities defined as those with less than 30 Days of float.
- All subcontractor activities that are critical, near critical, and those that are greater than two weeks in duration.
- Labor resourcing, by stage and phase, to include the number of crews, average crew size and planned night/weekend shifts including that of subcontractors.
- Equipment allocation, by stage and phase to include mobilization, demobilization and planned activities including that of subcontractors.
- Notifications required under the Contract during each stage and phase which may include but is not limited to road closures, lanes closures, night work, cold plane pavement removal, and pile driving.
- Provide discussion on addressing reasonably predictable weather conditions and their impact on all weather sensitive activities. Also, provide discussion on other weather limitations that may affect the project schedule.
- Submittal and approval of material samples, mix designs, and shop drawings.
- Procurement of critical materials.
- Plans for dealing with "unique" construction items.
- Coordination of utilities and any immediate concerns for impacts/delays.
- Constructability issues.
- Cost Reduction Proposals and/or immediate requests for changes to the specifications.
- Concerns/issues that need to be addressed within the first 90 Days following First Notification.

The accepted Project narrative shall represent all critical and near critical Work, as well as the planned sequence and time for the Work.

(4) Review and Reporting - The Project Work schedule may require revision as the Work progresses. Therefore, the Contractor shall monitor and when necessary revise the Project Work schedule as follows:

- a. Review with the Engineer** - The Contractor shall perform ongoing review of the accepted Project Work schedule and progress of the Work with the Engineer. If the Engineer or the Contractor determines that the accepted Project Work schedule no longer represents the Contractor's own plans or expected time for the Work, a meeting shall be held between the Engineer and the Contractor. At this meeting, the Contractor and the Engineer shall review Project events and any changes for their effect on the accepted Project Work schedule. After any necessary action has been agreed upon, the Contractor shall make required changes to the accepted Project Work

schedule and associated Project narrative. Upon acceptance by the Engineer, this will become the new accepted Project Work schedule and associated Project narrative.

The Contractor shall collect information on all activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders that have been issued. Information shall include actual start and completion dates on activities started or completed, or if still in progress, the remaining time duration.

The Contractor shall develop detailed sub-networks to incorporate changes, Additional Work, and Extra Work into the Project Work schedule. Detailed sub-networks shall include all necessary activities and logic connectors to describe the Work and all restrictions on it. The restraints shall include those activities from the Project Work schedule that initiated the sub-network as well as those restrained by it. The procedure for acceptance of the revised or updated Project Work schedule as the new accepted Project Work schedule will be as provided above.

The Contractor shall evaluate this information each month and compare it with the accepted Project Work schedule. The Contractor shall make an updated bar chart schedule to incorporate the effect changes may have on the Project completion time(s). For any activity that has started, the Contractor shall add a symbol to show the actual date the activity started and the number of normal workdays remaining until completion. For activities that are finished, a symbol shall be added to show the actual date. The Contractor shall submit, digitally and in paper, copies of the updated bar chart to the Engineer within 7 Days after the progress meeting, along with a progress report as required by "b." below.

b. Progress Report - Each month the Contractor shall submit a progress report and an update of the Project Work schedule to the Engineer. The report and updated schedule shall be submitted both digitally and in paper copy and shall include the following:

- A sufficient description, in narrative form, to describe the past progress, anticipated activities, and stage Work;
- A description of any current and expected changes or delaying factors and their effect on the construction schedule;
- Proposed corrective actions;
- Proposals to keep the Project on schedule in the event of a delay; and
- Any changes to the logic as compared to the accepted Project Work schedule.

(d) Substitution of Schedules - When a Type "A" schedule is required, a Type "B" or Type "C" schedule may be substituted for the Type "A" schedule.

When a Type "B" schedule is required, a Type "C" schedule may be substituted for the Type "B" schedule.

(e) Specified Contract Time Not Superseded by Schedule Revisions - The completion dates in any Project Work schedule and any revised or updated Project Work schedules shall be within the Contract Time(s) specified for the Project, or within adjusted Contract Times approved according to 00180.80(c). Acceptance of any Project Work schedule or any revised or updated Project Work schedules shall not constitute approval of any completion dates that exceed such Contract Time(s). If the Contractor believes that additional Contract Time is due, the Contractor shall submit, with a revised Project Work schedule, a request for adjustment of Contract Time according to 00180.80(c). A request for an adjustment of Contract Time will be evaluated using the most recently accepted Project Work schedule.

(f) Float Time - Float time shown on the Project Work schedule, including any time between a Contractor's scheduled completion date and the specified Contract Time(s), does not exist for the exclusive use of either party to the Contract and belongs to the Project.

(g) Schedules Do Not Constitute Notice - Submittal of a Project Work schedule, with supporting Project narrative, does not constitute or substitute for any notice the Contractor is required under the terms of the Contract to give the Agency.

(h) Failure to Provide Schedule - The Project Work schedule is essential to the Agency. The Contractor's failure to provide the schedule, schedule information, progress reports, Project narratives, or

schedule updates when required will be cause to suspend the Work, or to withhold Contract payments as necessary to protect the Agency, until the Contractor provides the required information to the Engineer.

00180.42 Preconstruction Conference - Unless otherwise approved in writing by the Engineer, before any Work is performed and within 30 Calendar Days of the Notice to Proceed, the Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon.

00180.43 Commencement and Performance of Work - From the time of commencement of the Work to the time of Final Acceptance the Contractor shall:

- Provide adequate Materials, Equipment, labor, and supervision to perform the Work;
- Perform the Work as vigorously and as continuously as conditions permit, and according to a Project Work schedule that ensures completion within the Contract Time or the adjusted Contract Time;
- Not voluntarily suspend or slow down operations without prior written approval from the Engineer; and
- Not resume suspended Work without the Engineer's written authorization.

00180.50 Contract Time to Complete Work:

(a) General - The time allowed to complete the Work or Pay Item is stipulated in the Solicitation Documents, and will be known as the "Contract Time". (see 00110.20)

(b) Kinds of Contract Time - The Contract Time will be expressed in one or more of the following ways:

(1) Fixed Date Calculation - The calendar date on which the Work or Pay Item shall be completed; or

(2) Calendar Day Calculation - The number of Calendar Days from a specified beginning point in which the Work or Pay Item shall be completed.

(3) Work Day Calculation - The number of Work Days from a specified beginning point in which the Work or Pay item shall be completed.

(c) Beginning of Contract Time - When the Contract Time is stated in Calendar Days, counting of Contract Calendar Days will begin with the fifteenth Calendar Day following the date of the Notice to Proceed. When the Contract Time is stated in Work Days, counting of Contract Work Days will begin with the 10th Work Day following the date of the Notice to Proceed or the first day of work, whichever comes first.

(d) Recording Contract Time - All Contract Time will be recorded and charged to the nearest one-half Day.

For Fixed Date Contracts, normally expected inclement weather conditions are considered in the Engineer's selection of the completion date, and time extensions will only be considered for reasons shown in 00180.50(e) and for weather conditions which in the opinion of the Engineer have an extraordinarily low statistical probability. Low statistical probability will be determined using historical weather data from a government website for the previous 10 years in which weather that occurs within 7 years of the 10-year period is considered reasonable and predictable.

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

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

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

(e) Exclusions from Contract Time - Regardless of the way Contract Time is expressed in the Contract, certain Calendar Days will not be charged against Contract Time. These exclusions will be allowed when the Contractor is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature;
- Court orders enjoining prosecution of the Work;
- Strikes, labor disputes or freight embargoes that, despite the Contractor's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations. "Strike" and "labor dispute" may include union action against the Contractor, a Subcontractor, a Materials supplier, or the Agency; or
- Suspension of the Work by written order of the Engineer for reasons other than the Contractor's failure or neglect.

(f) Time Calculation Protest - In the event the Contractor disputes the accuracy of the statement of Contract Time charges, it shall immediately contact the Engineer and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Contractor shall submit a formal written protest to the Engineer within 7 Calendar Days of the date the Engineer mailed or delivered the statement. Failure to submit a formal written protest within the 7 Calendar Day period constitutes the Contractor's approval of the time charges, or adjusted time charges, itemized in the statement.

(g) End of Contract Time - When the Engineer determines that the On-Site Work has been completed, except for the items listed below, the Engineer will issue a Second Notification.

The Second Notification will list:

- The date the time charges stopped;
- Final trimming and cleanup tasks (see 00140.90);
- Equipment to be removed from the Project Site;
- Minor corrective work not involving additional payment to be completed; and
- Submittals, including without limitation all required certifications, bills, forms, warranties, certificate of insurance coverage (00170.70(b)), and other documents, required to be provided to the Engineer before Third Notification will issue.

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

00180.60 Notice of Delay - The Contractor shall notify the Engineer of any delay that will likely prevent completion of the Work or a Pay Item by the date specified in the Project Work schedule. The notice shall be in writing and shall be submitted not later than 7 Calendar Days of when the Contractor knew or should have known of the delay. The notice shall include, to the extent available, the following:

- The reasons or causes for the delay;
- The estimated duration of the delay and the estimated resulting cumulative delay in Contract completion;
- Except for 00180.50(e) and 00180.65 delays, whether or not the Contractor expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Contractor expects to accelerate due to the delay; and
- Whether or not the Contractor expects to request additional compensation due to the delay. Except for 00185.50(e) and 00180.65 delays, failure to include this information will constitute waiver of the Contractor's right to later make such a request.

00180.65 Right-of-Way and Access Delays - Right-of-Way and access delays will be taken into consideration in adjusting Contract Time, and in approving additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Contractor:

- Necessary Rights-of-Way;

- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for the Contractor's use; or
- Access to, or rights of occupancy of, buildings and other properties the Contractor is required to enter or to disturb according to Contract requirements.

If the ending date of an anticipated delay is stated in the Special Provisions, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

00180.70 Suspension of Work:

(a) General - The Engineer has authority to suspend the Work, or part of the Work, for any of the following causes:

- Failure of the Contractor to correct unsafe conditions;
- Failure of the Contractor to carry out any provision of the Contract;
- Failure of the Contractor to carry out orders issued by the Engineer, the Agency, or any regulatory authority;
- Existence of conditions unsuitable to proper or safe performance of the Work; or
- Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Contractor shall not resume Work without the Engineer's written authorization. Contractor is not entitled to any additional compensation or additional time if the Engineer suspends the Work or part of the Work.

(b) Contractor's Responsibilities during and after Suspension - During periods of suspension of the Work, the Contractor shall continue to be responsible for protecting and repairing the Work according to 00170.80, and for ensuring that a single designated representative responsible for the Project remains available according to 00150.40(b).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Contractor shall perform the following at no additional compensation:

- Replace or repair any Work, Materials, and Equipment to be incorporated into the Work that was lost or damaged because of the temporary use of the Project Site by the public; and
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Engineer.

(c) Compensation and Allowances for Suspension - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than the Contractor's failure or neglect. (refer to 00180.50(e), 00180.65, and 00195.40)

00180.80 Adjustment of Contract Time:

(a) General - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Contractor, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time". Except as provided in 00180.65 and 00195.40, an adjustment of Contract Time shall be the Contractor's only remedy for any delay arising from causes beyond the control of the Contractor.

(b) Contractor's Request Not Required - The Engineer may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Engineer may also increase Contract Time in the event of Right-of-Way and Access delays (see 00180.65), and those delays due to causes beyond the Contractor's control specified in 00180.50(e). The Engineer will promptly inform the Contractor of adjustments made to Contract Time according to this Subsection, and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration in the Special Provisions, the Engineer will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

(c) Contractor's Request Required - In the event the Contractor believes that additional Contract Time is due, the Contractor shall submit to the Engineer a timely request for adjustment of Contract Time. The Engineer will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revised Project Work schedule submitted according to 00180.41, for comparison with the last revision of the Project Work schedule; or
- Are not otherwise deemed waived and are submitted within 15 Days after the date of Second Notification, if Second Notification has been issued.

The Engineer will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Project Work schedule. The Engineer will not authorize, nor the Agency pay, acceleration costs incurred by the Contractor prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Contractor's request for adjustment of Contract Time shall be submitted to the Engineer on a form provided by, or in a format acceptable to, the Engineer, and shall include a copy of the written notice required under 00180.60. The request shall include without limitation:

- Consent of the Contractor's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Engineer to evaluate the asserted justification for the amount of additional Contract Time requested;
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current approved Project Work schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion.

(d) Basis for Adjustment of Contract Time - In the adjustment of Contract Time, the Engineer will consider causes that include, but are not limited to:

- Failure of the Agency to submit the Contract and bond forms to the Contractor for execution within the time stated in 00130.50, or to submit the Notice to Proceed within the time stated in 00130.90;
- Errors, changes, or omissions in the Supplemental Drawings, quantities, or Specifications;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;
- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in 00195.40;
- Causes cited in 00180.50(e); and
- Right-of-way and access delays referenced in 00180.65.

The Engineer will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect the specified or Adjusted Contract Time;
- Delays that affect the Contractor's planned early completion, but that do not affect the specified or adjusted Contract Time;

- Shortage or inadequacy of Materials, Equipment or labor;
- Work stoppage required by the Engineer to determine the extent of Work defects
- Time for the Contractor to correct the Work defects from date of notification of the defects until the correction work is completed and has been approved by the Engineer. Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in 00180.50(e);
- Different area of Material source in 00160.40(a);
- Substitution of Equipment in 00180.31(c);
- Reasonably predictable weather conditions; or
- Other matters within the Contractor's control or Contract responsibility.

(e) Consideration and Response by Agency - The Engineer will only consider a Contractor's request for Contract Time adjustment submitted according to the requirements of 00180.80(c). The Engineer may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

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

The Engineer will review a properly submitted request for Contract Time adjustment, and within a reasonable time will advise the Contractor of the Engineer's findings. If the Contractor disagrees with the Engineer's findings, the Contractor may request review according to the procedure specified in 00199.40.

00180.85 Failure to Complete on Time; Liquidated Damages:

(a) Time is of the Essence - Time is of the essence in the Contractor's performance of the Contract. Delays in the Contractor's performance of the Work may inconvenience the traveling public, interfere with business and commerce, and increase cost to the Agency. It is essential and in the public interest that the Contractor prosecute the Work vigorously to Contract completion and within Contract Time or adjusted Contract Time.

The Agency does not waive any rights under the Contract by permitting the Contractor to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

(b) Liquidated Damages - Delays in the Contractor's performance of the Work will cause the Agency to sustain damages; increase risk to, inconvenience, and interfere with the traveling public and commerce; and increase costs to taxpayers. Because the Agency finds it is unduly burdensome and difficult to demonstrate the exact dollar value of such damages, the Contractor agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount(s) determined as specified below for each Calendar Day the Work remains incomplete after the expiration of the Contract Time or adjusted Contract Time applicable to that Work. The liquidated damages shall constitute payment in full only of damages incurred by the Agency due to the Contractor's failure to complete the Work on time.

Payment by the Contractor of liquidated damages does not release the Contractor from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Contractor's failure to fully perform the Contract according to its terms.

If the Contract is terminated according to 00180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages will be assessed against the Contractor for the duration of time reasonably required to complete the Work.

00180.90 Termination of Contract and Substituted Performance:

(a) Termination for Default - Termination of the Contract for default may result if the Contractor:

- Fails to comply with the requirements for records;
- Violates any material provision of the Contract;

- Disregards applicable laws and regulations or the Engineer's instructions;
- Refuses or fails to supply enough Materials, Equipment or skilled workers for prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to Subcontractors;
- Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
- Has a receiver appointed because of the Contractor's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination; or
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

If the Contract is terminated by the Agency, upon demand the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of all Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the Agency because of the Contractor's breach of Contract; or
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the terms of 00195.50, except that the Engineer will be entitled to withhold sufficient funds to cover costs incurred by the Agency as a result of the termination. Final payment to the Contractor will be made according to the provisions of Section 00195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

(b) Substituted Performance - According to the Agency's procedures, and upon the Engineer's recommendation that sufficient cause exists, the Agency, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety 10 Calendar Days' written notice, may:

- Terminate the Contract;
- Substitute the Contractor with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of Materials not on the Project Site, for which the Contractor received progress payments under 00195.50;
- Take possession of Equipment on the Project Site that is to be incorporated into the Work;
- Take possession of Equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments under 00195.50; and
- Finish the Work by whatever method the Agency deems expedient.

If, within the 10 Calendar Day notice period provided above, the Contractor and/or its Surety corrects the basis for declaration of default to the satisfaction of the Engineer, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Engineer, the Contract will not be terminated.

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

The Engineer will provide the Contractor and the Contractor's Surety 7 Calendar Days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments under 00195.50.

If the Contract is terminated for public convenience, neither the Contractor nor its Surety shall be relieved of liability for damages or losses suffered by the Agency as a result of defective, unacceptable or unauthorized Work completed or performed.

Compensation for Work terminated by the Engineer under this provision will be determined according to the provisions of 00195.70(b)

Section 00190 - Measurement of Pay Quantities

Description

00190.00 Scope - The Engineer will measure pay quantities for accepted Work according to the United States standard measure unless otherwise provided in the Contract. Unless otherwise specified in the Contract, the Engineer will round off all quantity computations using the following convention:

- The final significant digit will not be changed when the succeeding digit is less than 5.
- The final significant digit will be increased by one when the succeeding digit is 5 or greater.

The measurement provisions contained in the Specifications for each Pay Item will supplement or modify the above convention by:

- Imposing measurement limitations
- Describing measurement or computation procedures
- Giving conversion factors or adjustment conditions
- Providing for determination of reasonably accurate and representative Pay Item quantities

Measurements required or allowed to be made by the Contractor will be subject to the Engineer's verification. The Engineer's decision about measurement is final.

00190.10 Measurement Guidelines - Measurement of quantities will be made on the following bases, unless otherwise specified in the Contract:

(a) Unit Basis - Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.

(b) Length Basis - Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Engineer.

(c) Area Basis - Area will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) at least to the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.

(d) Weight Basis - Weight will be pound or ton, unless otherwise specified in the Contract and will be determined as follows:

(1) Pound - Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 1.0 pound unless otherwise specified in the Contract.

Provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

(2) Ton - Ton weight will be determined on Contractor-provided scales as required under 00190.20 unless otherwise allowed by the Specifications. Weight by ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.

If bituminous materials, portland cement, lime, and similar bulk Materials are shipped by truck or rail, the supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on the Contractor-provided vehicle scales.

Shipping invoice weights of the supplier's truck or transport shall be subject to periodic check weighing on the Contractor's vehicle scales, or other scales designated, according to 00190.20. If the check weight is less than the supplier weight by more than 0.4%, the discrepancy will be resolved by the Engineer.

No payment will be made:

- For quantities in excess of the supplier weight
- When Materials have been lost, wasted, or otherwise not incorporated into the Work
- For additional hauling costs resulting from the check weighing

(e) Volume Basis - Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract and will be measured at least to the nearest 0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.

Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.

When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).

(f) Time Basis - Time will be hour, Day, or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 Day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.

(g) Standard Manufactured Items - If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract.

(h) Lump Sum Basis - Lump sum, when used, means the Work described shall be completed and accepted without measurement unless changes are ordered in writing by the Engineer. If estimated quantities of the Work to be performed are listed in the Special Provisions, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the Contract Documents. Computations based on the details and dimensions shown on the Contract Documents are not guaranteed to equal estimated quantities.

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

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

00190.20 Contractor to Provide Vehicle Weigh Scales:

(a) General - If the Specifications require measurement by weighing on vehicle weigh scales, the Contractor shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Engineer's approval, weights may be determined by plant or hopper scales according to 00190.30. Contractor-provided scales shall be furnished, installed and maintained by the Contractor or its supplier, or, subject to the Engineer's approval, may be commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Pay Items to be measured by weight shall include all Contractor costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; and for transporting Materials to the scales or to check weighing.

(b) Requirements - The scales shall conform to ORS 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

- Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State;
- Technically suitable for weighing the Materials;

- Properly installed and maintained; and
- Accurate to the required tolerances.

The weight of any Materials weighed by anyone other than the Engineer will be subject to check weighing as the Engineer directs.

(c) Approaches - Vehicle scale approaches shall be:

- At each end of the scale platform;
- Straight and in line with the platform; and
- Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing.

(d) Inspections - Contractor shall have all scales certified, that is inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company as follows:

- Before use if installed at a new site;
- 60 Calendar Days after initial inspection;
- Every 6 months thereafter; and
- When the Engineer directs additional inspections.

No Materials weighed on scales without current certifications according to this Subsection will be accepted. The Contractor shall provide a copy of all required certifications to the Engineer.

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

If additional inspections directed by the Engineer confirm that the scale accuracy is within the required tolerances, the Agency will pay the cost for inspecting and testing the scales. If the scale accuracy is not within these tolerances, the Contractor shall pay the cost for inspecting and testing the scales.

(e) Inspection Results - If an inspection indicates the scales have been under-weighing (indicating less than the true weight), the Agency will make no additional payment to the Contractor for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true weight), the weights will be reduced for Materials received after the time the Engineer determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

(f) Contractor-Provided Weigh Technician - The Contractor shall provide a technician to operate Contractor-provided vehicle weigh scales. The Agency may observe procedures and require check weighing according to the following:

(1) Scale with Automatic Printer - If the scales have an automatic weigh memo printer that does not require manual entry of gross weight information, the Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth Day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on projects where more than 2,000 tons of all types of Materials are received from a scale. The Contractor shall provide the Engineer with the results of the check weighing.

(2) Scale Without Automatic Printer - If the scales require manual entry of gross weight information, the Agency may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Contractor shall inform the Engineer of his intent to use a scale without an automatic printer at least 3 working Days before weighing begins or before the Contractor changes to a scale that does not have an automatic printer. The Contractor shall pay costs for the weigh witness. The hourly cost of the weigh witness will be as stated in the Special Provisions. In addition, the Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to 00190.20(b) and 00190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Contractor-provided weight are acceptable.

The Engineer will resolve discrepancies found by check weighing. Agency employee costs for check weighings will be paid by the Agency. The Contractor shall pay all other costs resulting from the check weighings, including without limitation the use of other scales.

If more than 50 tons per Day of all types of Materials are received from a scale, the Contractor shall make random check weighings at least every tenth day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by the Engineer. The Contractor shall make at least one check weighing on all projects where materials are received from a scale without an automatic printer. The Contractor shall provide the Engineer with the results of the check weighing.

(3) Duties of Weigh Technician - The Contractor's weigh technician shall:

- Determine twice a Day, or as otherwise directed by the Engineer, the empty haul weights (tare weights) of hauling vehicles, unless vehicles are tared before each load;
- Furnish daily a listing of the tare weights if 10 or more loads are hauled during that Day;
- Furnish a note listing the net weight for each consecutive ten loads with the following load;
- Furnish a daily listing of the net weights and total weight for each type of Material hauled during that Day; and
- Furnish a legible, serially numbered weigh memo for each load of Materials to the Agency's Materials receiver at the point of delivery, or as directed by the Engineer. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of vehicle, driver and weigh technician.

(g) Agency-Provided Weigh Technician - If the Contractor provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, the Agency will provide a weigh technician at the Contractor's expense. The hourly cost for the weigh technician will be as stated in the Special Provisions. The Contractor shall provide a weighhouse for the weigh technician according to Section 00205. The Agency's weigh technician will:

- Determine tare weights;
- Prepare weigh memos for each load;
- Compile the weigh records; and
- Not participate in the production of Materials or the loading of haul vehicles.

00190.30 Plant Scales - The Contractor, with the Engineer's written approval, may weigh plant-mixed Materials on scales that have either:

- An automatic weight batching and mixing control printer system; or

- A weigh hopper printer system.

Any additional costs resulting from the use of these scales shall be borne by the Contractor. Check weighing will be done according to 00190.20(f).

Except for 00190.20(c) regarding approaches, the Contractor's use of plant scales shall comply with all provisions of 00190.20.

The Engineer's approval for the Contractor's use of plant scales to determine pay weights will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine weights within the tolerances allowed by state law.

Section 00195 - Payment

Description

00195.00 Scope and Limit:

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

Payment constitutes full compensation to the Contractor for furnishing all Materials, Equipment, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of 00170.80. The Contractor shall include the costs of bonds and insurance for the Project in the unit price for each Pay Item of Work to be performed.

(b) Essential or Incidental Materials or Work - When the Specifications state that the unit price for a Pay Item is compensation for certain Materials or Work essential or Incidental to the Pay Item, the same Materials or Work will not be measured or paid under any other Pay Item.

00195.20 Changes to Plans or Character of Work:

(a) Insignificant Changed Work - If the changes made under 00140.30 do not significantly change the character or unit cost of the Work to be performed under the Contract, the Agency will pay for such work at the Pay Item price.

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

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

(b) Significant Changed Work - If the changes made under 00140.30 significantly alter the character, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. The Contractor shall not be entitled to compensation for any loss in profits resulting from elimination of, reduction of, or other change to, a part of the Work.

Any adjustments may be less than, but will not be more than the amount justified by the Engineer on the basis of the established procedures set out in Section 00196 for determining rates for Extra Work, but those procedures shall account for the decrease or elimination of Work as well as for increases in the Work. This does not limit the application of Section 00199.

The term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or unit cost from that involved or included in the originally proposed construction.

Significant is defined as:

- a) An increase or decrease of more than 25 percent of the total cost of the Work calculated from the original bid quantities and the unit contract prices; or,
- b) An increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition b) above, a major item is defined as any item that amounts to 10 percent or more of the original total contract price.

00195.30 Differing Site Conditions - Upon written notification, as required in 00140.40, the Engineer will investigate the identified conditions. If the Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an

adjustment in the Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. The Engineer will notify the Contractor as to whether or not an adjustment of the Contract is warranted.

No Contract adjustment which benefits the Contractor will be allowed unless the Contractor has provided the required written notice. Any such adjustments will be made according to 00195.20.

00195.40 Unreasonable Delay by the Agency - If the Contractor believes that performance of all or any portion of the Work is suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of the Agency, or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due the Contractor because of the suspension, delay or interruption, the Contractor shall immediately file a written notice of delay according to 00180.60. The Contractor shall then promptly submit a properly supported request for any additional compensation, Contract Time, or both, according to the applicable provisions in 00180.60 through 00180.80 and Section 00199.

The Engineer will promptly evaluate a properly submitted request for additional compensation. If the Engineer determines that the delay was unreasonable, and that the cost required for the Contractor to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Engineer will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Engineer will notify the Contractor of the determination and whether an adjustment to the Contract is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless the Contractor has provided the written notice required by 00180.60;
- For costs incurred more than 10 Calendar Days before the Engineer receives the Contractor's properly submitted written request;
- For any portion of a delay that the Engineer deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract; or
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection.

00195.50 Progress Payments and Retained Amounts:

- (a) **Progress Payments** - The Agency's payment of progress payments, or determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d), shall not be construed as Final Acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If the Contractor uses these estimates as a basis for making payments to Subcontractors, the Contractor assumes all risk and bears any losses that result.

- (1) **Progress Estimates** - At the same time each month, the Engineer will make an estimate of the amount and value of Pay Item Work completed. The amount of Work completed will be the sum of the estimated number of units completed for unit price Pay Items plus the estimated percentage completed of lump sum Pay Items.

The estimated value of the Work completed will then be determined by using the Contract unit price for unit price Pay Items, and by using one of the following methods to determine the value of the lump sum Pay Items:

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

The amounts to be allowed for lump sum Pay Items in progress payments will not exceed the reasonable value of the Work performed, as determined by the Engineer.

Incidentals such as formwork, falsework, shoring, and cribbing shall be included in the unit prices for the various Pay Items requiring their use, unless specified as a separate Pay Item. No payment will be made for Pay Items that include Incidentals until units or portions of such Pay Item Work are in place and completed. The costs of Incidentals will be paid in proportion to the percentage of Pay Item Work completed.

(2) Value of Materials on Hand - The Engineer will also make an estimate of the amount and value of acceptable Materials on hand, i.e., already delivered and stored according to 00195.60(a), to be incorporated into the Work.

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

(4) Limitations on Value of Work Accomplished - In determining the "value of Work accomplished", the Engineer's estimate will be based on the unit prices for the various Pay Items. Any amounts not included in progress payments due to substantial mathematical unbalancing of Pay Item prices will be included in the final payment issued according to 00195.90(b).

(5) Reductions to Progress Payments - With each progress payment, the Contractor will receive a Contract payment voucher and summary setting forth the value of Work accomplished reduced by the following:

- Amounts previously paid;
- Amounts deductible or owed to the Agency for any cause specified in the Contract;
- Additional amounts retained to protect the Agency's interests according to Subsection (e) below.

(b) Retainage - The amount to be retained from progress payments will be 5% of the value of Work accomplished, and will be retained in one of the forms specified in Subsection (c) below. No retainage will be withheld from Work performed as Force Account Work, escalation/de-escalation, or other items decided by the Agency.

As provided in 00170.65(a) additional retainage of 25% of amounts earned will be withheld and released according to ORS 279C.845 when the Contractor fails to file the certified statements required in ORS 279C.845, FHWA Form 1273, and 00170.65.

(c) Forms of Retainage - Moneys retained by the Agency under ORS 279C.570(7) shall be retained in a fund by the contracting Agency and paid to the contractor in accordance with ORS 279C.570. Upon written request from the Contractor, other forms of acceptable retainage are specified below in Subsections (1) through (3). "Cash, Alternate A" is the Agency-preferred form of retainage. If the Agency incurs additional costs as a result of the Contractor's election to use a form of retainage other than Cash, Alternate A, the Agency may recover such costs from the Contractor by a reduction of the final payment.

(1) Cash, Alternate A - Retainage will be deducted from progress payments and held by the Agency until final payment is made according to 00195.90, unless otherwise specified in the Contract.

The Agency will deposit the cash retainage withheld in an interest-bearing account in a bank, trust company, or savings association for the benefit of the Agency, as provided by ORS 279C.560(5). Interest earned on the account shall accrue to the Contractor. Amounts retained and interest earned will be included in the final payment made according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor will be released to the Contractor according to 00195.50(d).

(2) Cash, Alternate B (Retainage Surety Bond) - Upon receipt of an approved retainage surety bond, the Agency will limit the amount of cash retainage withheld to \$10,000. The surety bond must be in the bond form provided by the Agency. The bond must be provided by the same Surety that provides the Performance and Payment Bonds.

If the Contractor elects this form of retainage, the Agency will withhold from progress payments up to 5% of the value of the Work accomplished as cash retainage until the retained amount equals \$10,000. After that amount is retained, no further cash retainage will be withheld until the additional required retainage that would have been withheld exceeds the face amount of the retainage surety bond provided. Thereafter, retainage will be withheld from progress payments according to these Specifications. According to 00195.50(b), if at any time the Agency determines that satisfactory progress is not being made on the Work, the Agency may withhold up to 5% of the value of the Work accomplished from subsequent progress payments.

If an acceptable retainage surety bond is provided, the Contractor shall notify all Subcontractors of the existence of the retainage surety bond and shall advise them of their rights under ORS 279C.560(7) and ORS 701.435.

Amounts of retainage withheld under the provision will be included in the final payment according to 00195.90.

Any retainage withheld on Work performed by a Subcontractor shall be released to the Contractor according to 00195.50(d).

(3) Bonds and Securities, and Other Instruments - In accordance with ORS 279C.560, unless the Agency finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, the Agency will approve the Contractor's written request to deposit bonds, securities or other instruments with the Agency or in a custodial account or other account satisfactory to the Agency with an approved bank or trust company, to be held instead of cash retainage for the benefit of the Agency. In such event, the Agency will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor.

Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to the Agency and shall be of a kind approved by the Agency or the Director of the Oregon Department of Administrative Services, including but not limited to:

- Bills, certificates, notes or bonds of the United States;
- Other obligations of the United States or agencies of the United States;
- Obligations of a corporation wholly owned by the federal government;
- Indebtedness of the Federal National Mortgage Association;
- General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon;
- Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Agency may require to protect its interests. When the Engineer determines that all requirements for the protection of the Agency's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor.

(d) Reduction of Retainage - As the Work progresses, the amounts to be retained under (b) of this Subsection are subject to reduction in the Engineer's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, the Engineer may, without application by the Contractor, reduce the retained amount to 100% of the value of the Work remaining.
- For a project funded by the FHWA, a Subcontractor has satisfactorily completed all of its Work, it may request release of retainage for that Work from the Contractor. The Contractor shall request reduction of retainage in the amount withheld for the Subcontractor's Work after certifying to the Agency that the Subcontractor's Work is complete, and that all contractual requirements pertaining to the Subcontractor's Work have been satisfied. Within 60 Calendar Days of the end of the month in which the Agency receives the Contractor's certification regarding the Subcontractor's Work, the Agency will either notify the Contractor of any deficiencies which require completion before release of retainage, or verify that the Subcontractor's Work complies with the Contract and release all retainage for that Work with the next scheduled progress

payment. Within 10 Calendar Days of receipt of retainage, the Contractor shall pay to the Subcontractor all such retainage released except for latent defects or warranty.

- The Agency will only release retainage for satisfactorily completed portions of the Work represented by Pay Items in the Schedule of Items, or by Pay Items added by Change Order. Work not represented by a Pay Item, but which constitutes part of an uncompleted Pay Item, will not be regarded as satisfactorily completed Work for the purposes of this Subsection.

If retainage has been reduced or eliminated, the Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in 00195.50(b).

(e) Withholding Payments - The Engineer may withhold such amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Contractor has:

- Complied with all orders issued by the Engineer according to the Specifications; and
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and Agency employees that the Contractor is obliged to defend. (see 00170.72)

Notwithstanding ORS 279C.555 or ORS 279C.570 or 00195.50(d), if a Contractor is required to file certified statements on the prevailing rate of wages, but fails to do so, the Agency will retain 25% of any amount earned as required in 00170.65.

(f) Prompt Payment Policy - Payments shall be made promptly according to ORS 279C.570.

00195.60 Advance Allowance for Materials on Hand::

(a) General - If the total value of Materials on hand is at least \$1,000 or the total value of a single class of Materials on hand is at least \$500, the Engineer may authorize an advance allowance for the Materials in the progress payments. The Agency will not make advance allowances on the Materials unless the following three conditions are satisfied:

(1) Request for Advance Allowance - If Materials on hand meet the requirement of (2) below, an advance allowance will be made if:

- A written request for advance allowance for Materials on hand has been received by the Engineer at least five 5 Calendar Days before the pay period cutoff date; and
- The request is accompanied by written consent of the Contractor's Surety, if required by the Agency.

(2) Stored or Stockpiled Conditions - The Materials shall have been delivered and/or acceptably stored or stockpiled according to the Specifications and as follows:

- At the Project Site;
- On Agency-owned property;
- On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Agency to enter upon the property and remove Materials for at least six 6 months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency; or
- On property outside the State of Oregon on which the property owner has authorized storage in writing, provided that such storage location is allowed by the Special Provisions or authorized in writing by the Engineer. The permit must allow the Agency to enter upon the property and remove Materials for at least six 6 months after completion of the Project. The Contractor shall furnish a copy of the written permission to the Agency.

To be eligible for advance allowance, the Materials shall:

- Meet Specification requirements;
- Have the required Materials conformance and quality compliance documents on file with the Engineer (see Section 00165);
- Be in a form ready for incorporation into the Work; and

- Be clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project.

(3) Responsibility for Protection - The Contractor has full control and responsibility for the protection of Materials on hand from the elements and against damage, loss, theft, or other impairment until the entire Project has been completed and accepted by the Agency.

If Materials are damaged, lost, stolen, or otherwise impaired while stored, the monetary value advanced for them, if any, will be deducted from the next progress payment.

If these conditions in 00195.60(a-1) through 00195.60(a-3) have been satisfied, the amount of advance allowance, less the retainage described in 00195.50, will be determined by one of the following methods as elected by the Engineer:

- Net cost to the Contractor of the Materials, f.o.b. the Project Site or other approved site; or
- Price (or portion of it attributable to the Materials), less the cost of incorporating the Materials into the Project, as estimated by the Engineer.

(b) Proof of Payment - The Contractor shall provide the Engineer with proof of payment to the Materials suppliers for purchased Materials within 30 Calendar Days of the date of the progress payment that includes the advance allowance.

If proof of payment is not provided, sums advanced will be deducted from future progress payments, and the Engineer will not approve further prepayment advance allowance requests.

(c) Terminated Contract - If the Contract is terminated, the Contractor shall provide the Agency immediate possession of all Materials for which advance allowances have been received, as provided above. If, for any reason, immediate possession of the Materials cannot be provided, the Contractor shall immediately refund to the Agency the total amount advanced for the Materials. The Agency may deduct any amount not so refunded from final payment.

00195.70 Payment under Terminated Contract - Payment for Work performed under a Contract that is terminated according to the provisions of 00180.90 will be determined under (a) or (b) of this Subsection.

(a) Termination for Default - Upon termination of the Contract for the Contractor's default, the Agency will make no further payment until the Project has been completed. The Agency will make progress payments to the party to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs, as determined by the Engineer, to complete the Project.

Upon completion of the Project, the Engineer will determine the total amount that the defaulting Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work (the "cost of the Work").

If the cost of the Work, less the sum of all amounts previously paid to the Contractor, exceeds the expense incurred by the Agency in completing the Work, including without limitation expense for additional managerial and administrative services, the Agency will pay the excess to the Contractor, subject to the consent of the Contractor's Surety.

If the expense incurred by the Agency in completing the Work exceeds the Contract Amount, the Contractor or the Contractor's Surety shall pay to the Agency the amount of the excess expense.

The Engineer will determine the expense incurred by the Agency and the total amount of Agency damage resulting from the Contractor's default. That determination will be final as provided in 00150.00.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Contractor will be made as provided in Subsection (b) below.

(b) Termination for Public Convenience:

(1) General - Full or partial termination of the Contract shall not relieve the Contractor of responsibility for completed or performed Work, or relieve the Contractor's Surety of the obligation for any just claims arising from the completed or performed Work.

(2) Mobilization - If mobilization is not a separate Pay Item, and payment is not otherwise provided for under the Contract, the Agency may pay the Contractor for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by the Contractor to the Engineer.

(3) All Other Work - The Agency shall pay the Contractor at the unit price for the number of Pay Item units of completed, accepted Work. For units of Pay Items partially completed, payment will be as mutually agreed, or, if not agreed, as the Engineer determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Agency will purchase Materials left on hand according to 00195.80.

00195.90 Final Payment:

(a) Final Estimate - As soon as practicable after Final Inspection of the Project, as provided in 00150.90, the Engineer will prepare a final estimate of the quantities of the Pay Items performed. With this estimate of quantities as a base, the total amount due the Contractor will be determined according to the terms of the Contract including without limitation any amounts due for Extra Work performed.

(b) Final Payment - The amount of final payment will be the difference between the total amount due the Contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, and after Final Acceptance of the Project along with the "Certificate of Compliance", final payment will be mailed to the Contractor's last known address as shown in the records of the Agency.

Beginning 30 Calendar Days after the date of Third Notification, interest will begin to accrue at the rate established by ORS 279C.570 on any money due and payable to the Contractor as final payment, determined as described above. No interest will be paid on money withheld due to outstanding amounts owed by the Contractor under the provisions of 00170.10.

(c) No Waiver of Right to Make Adjustment - The fact that the Agency has made any measurement, estimate, determination or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, determination of satisfactory completion of Pay Items or Work or release of retainage under 00195.50(d) or payment for any part of the Work, shall not prevent either party from:

- Showing the true amount and character of the Work;
- Showing that any measurement, estimate, determination or certification is incorrect;
- Recovering from the other party damages that may have been suffered because the other party failed to comply with the Contract.

00195.95 Error in Final Quantities and Amounts:

(a) Request for Correction of Compensation - If the Contractor believes the quantities and amounts detailed in the final Contract payment voucher, prepared by the Engineer according to 00195.90, to be incorrect, the Contractor shall submit an itemized statement to the Engineer detailing all proposed corrections.

This statement must be submitted to the Engineer within 90 Calendar Days from the date the voucher was mailed to the Contractor, according to 00195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Agency. This does not limit the application of Section 00199.

(b) Acceptance or Rejection of Request:

(1) Consideration of Request - The Engineer will consider and investigate the Contractor's request for correction of compensation submitted according to 00195.95(a), and will promptly advise the Contractor of acceptance or rejection of the request in full or in part.

(2) Acceptance of Request - If the Engineer accepts the Contractor's request(s) in full or in part, the Engineer will prepare a post-final Contract payment voucher, including all accepted corrections, and will forward it to the Contractor.

(3) Rejection of Request - If the Engineer rejects the request(s) in full, the Engineer will issue a written notice of rejection and mail it to the Contractor.

(4) Contractor Objection to Revised Voucher or Notice of Rejection - If the Contractor disagrees with the revised voucher or notice of rejection, the Contractor may request review according to the procedure specified in 00199.40. If the Contractor fails to submit a request for 00199.40 review within 30 Calendar Days after the Engineer mails a post-final Contract payment voucher or notice of rejection, the Contractor waives all rights to a claim based on errors in quantities and amounts.

If the Engineer rejects the Contractor's request on the basis that the issue was not one that qualified for treatment under this Section, no review according to 00199.40 will be allowed.

Section 00196 - Payment for Extra Work

Description

00196.00 General - Only work not included in the Contract as awarded but deemed by the Engineer to be necessary to complete the Project (see 00140.60) will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made according to 00195.20.

Compensation for Extra Work will be paid only for Work authorized in writing by the Engineer and performed as specified. Work performed before issuance of the Engineer's written authorization shall be at the Contractor's risk. Extra Work will be paid as determined by the Engineer, according to 00196.10 and 00196.20.

Provisions and Requirements

00196.10 Negotiated Price - If the Engineer can reasonably determine a price estimate for Extra Work, the Engineer may then give written authorization to the Contractor to begin the Extra Work. As soon as practicable, but within 10 Calendar Days after that authorization, the Contractor shall respond in writing to the Engineer's Extra Work price estimate by submitting to the Engineer an Extra Work price quote. The price quote shall detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit
- Other costs associated with the proposed Extra Work

Pending approval of the price quote, the Engineer will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, the Engineer will review the price quote and advise the Contractor if it is accepted or rejected. The Engineer will not accept a price quote that cannot be justified on a Force Account basis. If the Contractor's price is accepted, the Engineer will issue a Change Order, and the Extra Work will be paid at the accepted price.

00196.20 Force Account - If the Engineer and the Contractor cannot agree on a price for the Extra Work, the Engineer may issue a Force Account Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be made according to Section 00197.

Section 00197 - Payment for Force Account Work

00197.00 Scope - The Materials, Equipment and labor rates and procedures established in this Section apply to Extra Work ordered by the Engineer to be performed as Force Account Work. With the exceptions identified in 00197.01(b), these rates and procedures also apply to other Work when according to other Sections this Section 00197 applies, including without limitation the following:

- 00140.70 - Cost Reduction Proposals
- 00195.20 - Changes to Plans or Character of Work
- 00195.30 - Differing Site Conditions
- 00199.30(b) - Claims Requirements

00197.01 General:

(a) Extra Work on a Force Account Basis - Before ordering Force Account Work, the Engineer will discuss the proposed work with the Contractor, and will seek the Contractor's comments and advice concerning the formulation of Force Account Work specifications. The Engineer is not bound by the Contractor's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment and labor to be used on the approved Force Account Work; and
- Determine the time of the Contractor's performance of the ordered Force Account Work.

Force account work performed by Subcontractors will be measured and paid for on the same basis and in the same manner as force account work performed directly by the Contractor.

If the Engineer orders the performance of Extra Work as Force Account Work, the Engineer will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that day. The Engineer and the Contractor shall sign the record daily to indicate agreement on the Materials, Equipment, labor, and Special Services used for the Force Account Work performed on that day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by the Engineer, except those furnished and paid under rental rates for use of Equipment;
- Equipment which the Engineer considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour;
- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work;
- Special Services; and
- The Engineer's and Contractor's signatures confirming its accuracy.

(b) Other Work - When according to other Sections this Section 00197 applies, the following exceptions apply to the Work under those other Sections, except for Extra Work ordered by the Engineer to be performed as Force Account Work.

00197.01(a) does not apply.

Cost Efficiency - Agency will not be responsible for additional costs that are a direct or indirect result of the Contractor's inefficient means and methods or that reasonably could have been avoided if the Materials, Equipment, labor or services had been obtained at a more commercially reasonable cost.

Standby Time - Equipment that is necessary for the Work but is not being operated to progress the Work will be considered to be on standby and will be limited to the standby rates and hour limitations in 00197.20(e). Equipment costs will be limited to a combination of operating time and standby time of not more than 8 hours in a 24 hour period or 40 hours in a 1 week period. The Equipment must be onsite and available for use to be eligible for standby time.

- For a period of 7 or fewer Calendar Days: If a continuous period of standby time for a piece of Equipment does not exceed 7 Calendar Days, the accumulated standby cost for that continuous period of standby time shall be limited to the standby rates and hour limitations in 00197.20(e).

- For a period of more than 7 Calendar Days: Unless the Engineer has otherwise agreed in advance in writing, if a continuous period of standby time for a piece of Equipment exceeds 7 Calendar Days, the accumulated standby cost shall be limited to:
 - For the first 7 Calendar Days, the standby rates and hour limitations in 00197.20(e), and
 - For the portion of the continuous period of standby time after the first 7 Calendar Days, the lesser of:
 - The standby rates and hour limitations in 00197.20(e); or
 - The cost for moving that piece of Equipment to and from the Project Site according to 00197.20(d).

00197.10 Materials:

(a) General - The Contractor will be paid for Materials actually used in the Force Account Work as directed by the Engineer, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the supplier to the purchaser, whether the purchaser is the Contractor, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

(b) Trade Discount - If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Agency, even though the discount may not have actually been taken. The Agency will not take any discounts for prompt or early payment, whether or not offered or taken.

(c) Not Directly Purchased From Supplier - If Materials cannot be obtained by direct purchase from and direct billing by the supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the Engineer, but not more than the purchaser paid for the Materials. No markup other than actual handling costs will be permitted.

(d) Purchaser-Owned Source - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source on Pay Items, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

00197.20 Equipment:

(a) General - Equipment approved by the Engineer to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated or on standby if so ordered by the Engineer. Equipment hours will be recorded on the daily record to the nearest quarter hour.

Except as modified by these provisions, Equipment use approved by the Engineer will be paid at the rental rates given in the most current edition of the Rental Rate Blue Books for Construction Equipment ("Blue Book"), Volumes 1, 2, and 3, published by Penton Media, Inc., and available from Equipment Watch (phone 1-800-669-3282).

(b) Equipment Description - On the billing form for Equipment costs, the Contractor shall submit to the Engineer sufficient information for each piece of Equipment and its attachments to enable the Engineer to determine the proper rental rate from the Blue Book.

(c) Rental Rates (without Operator):

(1) Rental Rate Formula - Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate} \times \text{Rate Adjustment Factor}}{176 \text{ hours/month}} + \text{Hourly Operating Rate}$$

Some attachments are considered "standard Equipment" and are already included in the monthly base rate for the Equipment. That information can be obtained from Equipment Watch.

(2) Monthly Base Rate - The monthly base rate used above for the machinery and for attachments represents the major costs of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.

(3) Rate Adjustment Factor - The rate adjustment factor used above will be determined as per page iii of each section of the Blue Book.

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

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

If multiple attachments are included with the rental Equipment, and are not considered "standard Equipment", only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by the Engineer as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than \$5, or for unlisted Equipment that has a fair market value of \$400 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the work, may be rejected by the Engineer or accepted and paid for at reduced rates.

(d) Moving Equipment - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, its On-Site Work location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on Pay Item or related Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with the Contractor's own forces, transportation costs will include the rental rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment, without attachments, plus the Equipment operator's wage.

(e) Standby Time - If ordered by the Engineer, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than \$1 per hour will not be paid. Payment will be limited to not more than 8 hours in a 24-hour period or 40 hours in a 1 week period.

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

- If approved by the Engineer, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type;
- Request Equipment Watch to furnish a written response for a rental rate on the Equipment, which shall be presented to the Engineer for approval; or
- Request that the Engineer establish a rental rate.

(g) Outside Rental Equipment - If Contractor-owned or Subcontractor-owned Equipment is not available, and Equipment is rented from outside sources, payment will be based on the actual paid invoice.

If the invoice specifies that rental rate does not include fuel, lubricants, field repairs, and servicing, an amount equal to the Blue Book hourly operating cost may be added for those items that were excluded.

The Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of 00180.20(c) apply to owner-operated Equipment.

00197.30 Labor - The Contractor will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations, as follows:

(a) **Wages** - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current, prevailing rates in the locality of the Project.

(b) **Required Contributions** - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required under statutory law and these Specifications. The actual cost of industrial accident insurance is the National Council on Compensation Insurance (NCCI) rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Contractor.

(c) **Required Benefits** - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits when such other benefits are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

The cost of labor calculated under this Subsection will also be subject to the applicable markups in 00197.80.

No work will be authorized which involves workers which would be paid overtime unless overtime is authorized in advance by the Engineer.

00197.40 Invoices for Special Services - Invoices for Special Services that reflect current market pricing may be accepted without complete itemization of Materials, Equipment, and labor costs, if the itemization is impractical or not customary. The invoice for Special Services shall show credit for commercial trade discounts offered or available.

No percentage markup will be allowed other than that specified in 00197.80.

00197.80 Percentage Allowances - To the Contractor's actual costs incurred, as limited in this Section 00197, amounts equal to a percentage markup of such costs will be allowed and paid to the Contractor as follows:

Subsection	Percent
00197.10 Materials	17
00197.20 Equipment	17
00197.30 Labor	22
00197.40 Special Services	17

When a Subcontractor performs ordered Force Account Work, the Contractor will be allowed a supplemental markup of 8% on each Force Account Work order.

These allowances made to the Contractor will constitute complete compensation for overhead, general and administrative expense, profit, and all other Force Account Work costs that were incurred by the Contractor, or by other forces that the Contractor furnished. No other reimbursement, compensation, or payment will be made.

00197.90 Billings - Billings for Force Account Work by the Contractor shall be submitted for the Engineer's approval on forms provided by the Agency or approved by the Engineer. Billings for Materials (other than Incidental items out of the inventory of the Contractor or Subcontractors), rental Equipment from sources other than the Contractor or Subcontractors, and Special Services, shall be accompanied by copies of invoices for the goods and services. The invoices shall be fully itemized showing dates, quantities, unit

prices, and complete descriptions of goods and services provided. Invoices for amounts of \$10 or less per invoice are not required, unless requested by the Engineer.

Costs included on the billings shall comply with 00197.01(a) and 00197.10 through 00197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount to less than \$10.

Section 00199 - Disagreements, Protests, and Claims

Description

00199.00 General - This Section details the process through which the parties agree to resolve any disagreement concerning additional compensation or concerning a combination of additional compensation and Contract Time. (See 00180.80 for disagreements and claims concerning additional Contract Time only, and 00195.95 for disagreements and claims concerning correction of final compensation.) The Agency will not consider direct disagreements, protests, or claims from Subcontractors, Materials suppliers, or any other Entity not a party to the Contract.

Provisions and Requirements

00199.10 Procedure for Resolving Disagreements - When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Contractor shall first pursue resolution through the Engineer of all issues in the dispute, including without limitation the items to be included in the written notice in 00199.20. If the discussion fails to provide satisfactory resolution of the disagreement, the Contractor shall follow the protest procedures outlined in 00199.20. If the Engineer denies all or part of the Contractor's protest, and the Contractor desires to further pursue the issues, the Contractor shall submit a claim for processing according to 00199.30.

00199.15 Inappropriate Protest or Claim - It shall be presumed that the Contractor submits a protest or claim for additional compensation in good faith, based upon facts which reasonably support the Contractor's position and with full knowledge and understanding of the injury done to the Agency when notice of differing Project Site conditions or claims for additional compensation are not submitted in a timely manner as required under the Contract. Accordingly, the submission of a protest or claim without the concurrent submission of evidence that reasonably supports the protest or claim, or the submission of a protest or claim in an untimely manner will constitute a waiver of the protest or claim.

00199.20 Protest Procedure - If the Contractor disagrees with anything required in a Change Order or other written or oral order from the Engineer, including any direction, instruction, interpretation, or determination, or if the Contractor asserts a disagreement or dispute on any other basis, except 0195.95, that, in the Contractor's opinion, entitles or would entitle the Contractor to additional compensation or a combination of compensation and Contract Time, the Contractor shall do all of the following in order to pursue a protest and preserve its claim:

(a) Oral Notice - Give oral notice of protest to the Engineer and outline the areas of disagreement before starting or continuing the protested Work.

(b) Written Notice - File a proper written notice of protest with the Engineer within 7 Calendar Days after receiving the protested order. In the notice the Contractor shall:

- Describe the acts or omissions of the Agency or its agents that allegedly caused or may cause damage to the Contractor or to the Project, citing specific facts, persons, dates and Work involved;
- Describe the Contractor's proposed alternative to the Work ordered, if any, which will avoid damage to Contractor or to the Project;
- Describe the nature of the damages;
- Cite the specific Contract provision(s), if any, that support the protest;
- Include the estimated dollar cost, if any, of the protested Work, and furnish a list of estimated Materials, Equipment and labor for which the Contractor might request additional compensation; and
- If additional compensation is estimated to be due, include the estimated amount of additional time required, if any.

FAILURE TO COMPLY WITH THIS NOTICE REQUIREMENT RENDERS THE NOTICE IMPROPER AND SHALL CONSTITUTE A WAIVER OF ANY CLAIM FOR ADDITIONAL COMPENSATION OR A COMBINATION OF ADDITIONAL COMPENSATION AND CONTRACT TIME FOR ANY PART OF THE PROTESTED WORK.

(f) Records – Contractor must keep complete records of all costs and time incurred throughout the protested Work, and allow the Engineer access to those and other supporting records. Provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with the Engineer.

(g) Comparison of Records - Provide the Engineer adequate facilities for keeping cost and time records of the protested Work. The Contractor and the Engineer will compare records and either bring them into agreement at the end of each day, or record and attempt to explain any differences.

(h) Work to Proceed - In spite of any protest, proceed promptly with the Work ordered by the Engineer.

(i) Evaluation of Protest - The Engineer will promptly evaluate all protests, after the Contractor has fully complied with the requirements described in 00199.20(b). If the protest is denied, the Engineer will notify the Contractor in writing of the reasons for full or partial denial. If a protest is found to be valid, the Engineer will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to 00180.80.

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

(j) Protest Evaluation by Third Party Neutral - If the Engineer agrees that the Contractor has fully complied with the requirements described in 00199.20(b), and if the Engineer fully or partially denies, in writing, the Contractor's protest according to 00199.20(f), the Contractor may request that a mutually selected Third Party Neutral review the protest. Procedures for selecting, using, and paying for the cost of the Third Party Neutral will be specified by Change Order.

If the Contractor does not accept the Engineer's evaluation of the protest, or either the Contractor or Engineer disagrees with the resolution recommended by the Third Party Neutral, the Contractor may pursue a claim as described in 00199.30. If the engineer disagrees with the recommendation of the Third Party, the engineer has the option to pursue arbitration and litigation per **00199.40 (c)**.

00199.30 Claims Procedure:

(a) General - If the Contractor believes that additional compensation is due, or a combination of additional compensation and Contract Time, and has pursued and exhausted all the procedures provided in 00199.10 and 00199.20 to resolve a disagreement and protest, the Contractor may file a claim.

The Agency's Contract is with the Contractor. There is no contractual relationship between the Agency and any subcontractors, Suppliers or any Entity other than the Contractor. It is the Contractor's responsibility to fully evaluate any claim before presenting it to the Agency. In addition, when a claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the Contractor remains solely responsible for presenting the claim to the Agency.

Claims that include Work done or costs incurred by subcontractors, Suppliers, or any Entity other than the Contractor will not be considered by the Agency unless the Contractor has:

- Completed and provided its own written evaluation of the claim;
- Verified by its own independent review and evaluation of the amount of compensation sought; and
- Certified the claim in accordance with 00199.30(b) (Part 10).

(b) Claims Requirements - At any time during the progress of the Work, but not later than 45 Calendar Days following the date of the Second Notification, the Contractor shall submit to the Engineer in writing, claims for additional compensation or a combination of additional compensation and Contract Time additional to that specified in the Contract. For a claim not submitted within the 45 day limit, that has not met the requirements of 00199.20, or is not filed as provided in 00199.30, the Contractor waives any claim for additional compensation or for additional compensation and Contract Time, and the Agency may reject the claim.

Written claims to the Engineer or the Agency by the Contractor shall be delivered to the Agency address shown in the Special provisions, unless a different address is agreed to by the Engineer, and shall be delivered:

- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Claims will be considered as having been received by the Agency:

- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

The Agency reserves the right at any time and at any step in the claim decision or review process to request additional information, records or documentation related to the claim or the Contract either directly or through agents working toward resolution of the disputed or claimed events and issues.

Claims shall be made in writing, and shall include all information, records and documentation necessary for the Agency to properly and completely evaluate the claim.

To be considered, claims for additional compensation, or for additional compensation and Contract Time, shall be completed according to 00199.30 and shall be submitted with the required information and in the format below and labeled as required below for each claimed issue:

(Part 1) Summary (label page 1.1 through page 1.?) - In the summary, include a detailed, factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim and the dates of when the event arose. Also include detailed facts supporting the Contractor's position relative to the Engineer's decision (see 00199.20(f));

(Part 2) Proof of notice (label page 2.1 through page 2.?) - Submit a copy of the written notice, with all attachments, that was given to the Agency. Include the date when that written notice and the date when oral notice was given.

(Part 3) Copies of the Contract Specifications that support the Contractor's claim (label page 3.1 through page 3.?).

(Part 4) Theory of entitlement supporting the claim (label page 4.1 through page 4.?) - Include a narrative of how or why the specific Contract Specifications support the claim and a statement of the reasons why such Specifications support the claim;

(Part 5) Itemized list of claimed amounts (label page 5.1 through page 5.?) - Claimed damages that resulted from the event with a narrative of the theories and records and documents used to arrive at the value of the damages;

(Part 6) Additional Contract Time requests (label page 6.1 through page 6.?) - If the claim is for a combination of additional compensation and Contract Time, submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed:

- Include the specific days and dates under claim;
- Provide detailed facts about the specific acts or omissions of the Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and
- A schedule evaluation that accurately describes the impacts of the claimed delay;
- (Also see 00180.80 for additional requirements regarding claims for Contract Time and causes that are eligible and ineligible for consideration.);

(Part 7) Copies of actual expense records (label page 7.1 through page 7.?) - Include documents that contain the detailed records and which support and total to the exact amount of additional compensation sought. Include the information and calculations necessary to support that amount. That amount may be calculated on the basis of Section 00197, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials;
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75 percent of those calculated under the provisions of 00197.20. For each piece of Equipment, the Contractor shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;
- Direct labor;
- Job overhead;
- General and administrative overhead; and
- Other categories as specified by the Contractor or the Agency;

(Part 8) Supporting records and documents (label page 8.1 through page 8.?) - Include copies of, or excerpts from the following:

- Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and
- Any daily reports or diaries related to the event, photographs or media that help explain the issue or event (optional), or all other information the Contractor chooses to provide (optional);

(Part 9) Certification (label page 9.1 through 9.?) - A certified statement, signed by a person authorized to execute Change Orders, by the Contractor, subcontractor, Supplier, or Entity, originating the claim, as to the validity of facts and costs with the following certification:

Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of \$_____, exclusive of interest) and is fully documented and supported under the Contract between the parties.

Signature: _____

Date: _____, 20____

Subscribed and sworn before me this ____ day of _____, 20____

Notary Public

My commission expires _____.

(Part 10) Contractor evaluation of a lower tier claim (label page 10.1 through 10.?) - If the claim includes Work done or costs incurred by any subcontractors, Suppliers, or any Entity other than the Contractor, the following are required:

- Data required by the other Subsections of 00199.30(b);
- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, separate evaluation of entitlement;
- Copies of the Contractor's, subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, independent verification and evaluation of the amount of damages sought; and
- A person authorized to execute Change Orders on behalf of the Contractor, subcontractor, Supplier and Entity, at all tiers above the level of which the claim originates, must sign a statement with the following certification:

Under penalty of law for perjury or falsification, the undersigned, (Name) (Title), (Company) certifies that this claim originating from the subcontractor, Supplier or Entity (Company) for additional compensation for Work on the Contract is a reasonable statement, independently verified, of the costs incurred (in the amount of \$_____, exclusive of interest) and is fully documented and supported under the Contract between the parties.

Signature: _____

Date: _____, 20__

Subscribed and sworn before me this ____ day of _____, 20__

Notary Public

My commission expires _____.

If the Engineer determines that additional information, records or documentation is needed to allow proper evaluation of the claim submittal, the Engineer will request the information, records or documentation. The Contractor shall submit to the Engineer within 14 Calendar Days, or as otherwise agreed by the parties, the required additional information, records and documentation.

If the Engineer determines that the claim submittal with the additional information, records and documentation submitted is incomplete and not accepted as a claim, the Engineer will notify the Contractor in writing and the submittal will be rejected and will not be considered under 00199.40.

(c) Records Requirements - The Contractor shall comply with 00170.07.

(d) Compliance Required - Full compliance by the Contractor with the provisions of this Section is a condition precedent to the commencement of any lawsuit by the Contractor to enforce any claim.

00199.40 Claim Decision; Review; Exhaustion of Administrative Remedies - The Agency intends to resolve all claims at the lowest possible administrative level. The Engineer will also determine whether multiple claims should be advanced separately or together.

If the Engineer denies the claim for additional compensation or a combination of additional compensation and Contract Time, in full or in part, according to 00199.40(a), the Contractor may request review of the denial. The disputed claim for additional compensation or a combination of additional compensation and Contract Time may then be resolved, in full or in part, at any of the progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

If the Engineer has denied a claim, in full or in part, for Contract Time only according to 00180.80, or has denied a claim, in full or in part, for correction of final compensation according to 00195.95, those disputed claims may then be resolved, in full or in part, at either of the two progressive steps of claim review procedure as specified in (b) through (c) of this Subsection.

A person authorized by the Contractor to execute Change Orders on behalf of the Contractor must be present and attend all claim hearings. For all claims, all of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

If, at any step in the claim decision or review process, the Contractor fails to promptly submit requested information or documentation that the Agency deems necessary to analyze the claim, the Contractor is deemed to have waived its right to further review, and the claim will not be considered properly filed and preserved.

(a) Decision by the Engineer - The Engineer will, as soon as practicable, consider, investigate, and evaluate a Contractor's claim for additional compensation, or for a combination of additional compensation and Contract Time, if submitted as required by 00199.30.

Once the Engineer determines the Agency is in receipt of a properly submitted claim, the Engineer will arrange a meeting, within 21 Calendar Days or as otherwise agreed by the parties, with the Contractor in order to present the claim for formal review and discussion.

If the Engineer determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Engineer will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Engineer will provide a written decision to the Contractor within 30 Calendar Days of the last Engineer-level meeting.

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

(b) Step 1: Community Development Director Level Review - The Contractor shall request that the Engineer arrange a meeting with the Community Development Director or the Community Development Director's designee, as determined by the Community Development Director, in order to present the denied or partially denied claim for formal review and discussion. The meeting will take place 21 Calendar Days of the Agency's receipt of, the request, or as otherwise agreed by the parties.

If the Community Development Director (or designee) determines that the Contractor must furnish additional information, records or documentation to allow proper evaluation of the claim, the Community Development Director (or designee) will schedule a second meeting, to be held within 14 Calendar Days, or as otherwise agreed by the parties, at which the Contractor shall present the requested information, records and documentation.

The Community Development Director (or designee) will provide a written decision to the Contractor within 30 Calendar Days of the last meeting with the Community Development Director (or designee).

The claim is subject to 00199.60, if not all of the records requested by the Community Development Director (or designee) were furnished. If applicable, advancement of the claim is subject to the provisions of 00199.60 regarding waiver and dismissal of the claim or portions of the claim.

If the Contractor does not accept the decision, the Contractor may, within 180 Calendar Days from the date of receipt of the Community Development Director (or designee) written decision or within 90 Calendar Days of the date of , whichever is later, initiate Step 2 as set forth in subsection (c) below.

(c) Step 2: Arbitration and Litigation-The Contractor must follow each step in order, and exhaust all available administrative remedies before resort to arbitration and litigation. Litigation of a claim that cannot be resolved in Step 1 shall be initiated by filing a complaint in the Circuit Court for the State of Oregon in Yamhill County that contains a stipulation to arbitration under ORS 36.410. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to the Court Arbitration Program set forth in ORS 36.400 to 36.425, Chapter 13 of the Oregon Uniform Trial Court Rules and the Circuit Court supplemental local rules concerning arbitration. Either party may seek, and shall be entitled to, an order directing the other party to submit to arbitration as provided herein and to judgment for its costs, expenses and attorney fees in obtaining and enforcing the order

In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Contract interpretation.

The Contract shall not be construed against either party regardless of which party drafted it. Other than as modified by the Contract, the applicable rules of contract construction and evidence shall apply. This Contract shall be governed by and construed according to the laws of the State of Oregon without regard to principles of conflict of laws.

Any dispute between the Agency and the Contractor that arises from or relates to this Contract and that is not resolved under the provisions of Section 00199 shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon in the county where the Agency's main office is located; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Subsection be construed as a waiver by the Agency on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THE CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

(d) Payment of Costs, Expenses and Attorney's Fees – The prevailing party shall be entitled to an award for reasonable costs and expenses incurred after the initiation of Step 2, including costs and expenses incurred for arbitration, trial de novo and on appeal. Costs and Expenses shall include, but shall not be limited to, reasonable attorney fees and expenses and arbitrator fees and expenses.

As used in this subsection 00199.40(d), "prevailing party" for an arbitration award means (1) a Contractor who has received an arbitration award, exclusive of interest, costs and expenses, that is more than the dollar amount claimed by the Contractor in its Final Documentation of Claim under 00199.20(d) or (2) the Agency if there is no arbitration award to the Contractor or if the arbitration award to the Contractor, exclusive of interest, costs and expenses, is less than the dollar amount of the award in the Step 1 decision. For all other arbitration awards, there shall not be a "prevailing party."

The award of costs and expenses after trial de novo shall be made as provided for in ORS 36.425. The award of costs and expenses after appeal from a judgment entered after trial de novo shall be to the prevailing party designated as such by the appeals court.

00199.50 Mediation - Notwithstanding the formal claims procedure specified above, the parties may enter into nonbinding mediation by mutual agreement at any time, in which case the parties may also agree to suspend the time requirements in Section 00199 pending the outcome of the mediation process. The rules, time and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between the Contractor and the Agency. Either party may terminate mediation at any time upon 5 Calendar Days' notice to the other, after which the time requirements of Section 00199 shall be automatically reinstated and shall resume from the point at which the time requirements were suspended.

00199.60 Review of Determination Regarding Records - If not all of the records requested by the Agency under 00199.40(c) Step 2 were provided, then the Agency will determine:

- If the records are of the type described in 00170.07; and
- If the records have not been maintained or the records, or access to the records, has not been provided to the Agency as required by 00170.07 and this Section; and
- If the records are material and necessary for proper evaluation of part or all of the claim; and
- The portions of the claim for which the records are material and necessary for proper evaluation.

If the Agency makes the foregoing determinations, then subject to the review process described below, all portions of the claim for which the Agency determined the records are material and necessary for proper evaluation are immediately waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the Agency may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the Agency makes this determination, the claim or portions of the claim will not be waived or dismissed under this provision.

If the Contractor does not accept the Agency written determination that the records are material and necessary for proper evaluation of part or all of the claim, and the portions of the claim for which the records are material and necessary, the Contractor may, within 14 Calendar Days of receipt of the Agency determination, request, in writing, a review of such determination by the Public Works Director (or designee). If the Contractor does not request a review of the Agency determination, the Agency determination shall then become the Agency's final determination as of the expiration of the time limit to request review.

If the Contractor requests the review, the Public Works Director (or designee) will schedule a review meeting within 14 Calendar Days, or as otherwise agreed by the parties, of when the Public Works Director (or designee) receives the written review request. The Agency and the Contractor will each have an opportunity to explain their respective positions at the review meeting in a manner determined by the Public Works Director (or designee).

Within 10 Calendar Days of the review meeting, the Public Works Director (or designee) will issue a written proposed finding of whether the records not maintained or not provided to the Agency, or for which access was not provided to the Agency, are material and necessary for proper evaluation of part or all of the claim. If the Public Works Director (or designee) makes that finding, then the Public Works Director (or designee) will also make a proposed written finding as to what portions of the claim the records are material and necessary and, therefore, waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the Public Works Director (or designee) may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the

Public Works Director (or designee) makes this determination, then the claim or portions of the claim will not be waived or dismissed under this provision.

The Public Works Director's (or designee) findings will be submitted to the Contractor. The Public Works Director's (or designee) findings are the Agency's final determination.

If the Agency's final determination is that the records are material and necessary for proper evaluation of part or all of the claim, then the claim or that portion of the claim for which the records are material and necessary is waived and irrevocably dismissed, unless the Contractor provides the records, or access to the records, to the Agency within 5 Calendar Days of the Agency's final determination. If the Contractor provides the records, or access to the records, within this time limit, the Agency will schedule a meeting with the Contractor within 14 Calendar Days or as otherwise agreed by the parties, to discuss the records.

The Agency's final determination that records are material and necessary for proper evaluation of part or all of the claim, and the Agency's final determination of the portions of the claim for which the records are material and necessary, shall be final and binding.

If the entire claim is waived and irrevocably dismissed pursuant to the Agency's final determination there will be no further decision by the Agency on the claim or further review of the claim under 00199.40 and the claim will not be eligible for mediation under 00199.50. If only portions of the claim are waived and irrevocably dismissed pursuant to the Agency's final determination, the Agency will provide a written decision to the Contractor regarding the remaining portions of the claim within 30 Calendar Days of the final Step 2 meeting, or the Agency's final determination regarding the records, whichever is later. There will be no further decision by the Agency on or further review under 00199.40 of the portions of the claim waived and irrevocably dismissed pursuant to Agency's final determination and those portions will not be eligible for mediation under 00199.



DIVISION 14

SECTION 14 24 23

**TECHNICAL SPECIFICATIONS FOR MODERNIZATION OF
ONE (1) HYDRAULIC PASSENGER ELEVATOR**

LOCATED AT

MCMINNVILLE COMMUNITY CENTER

600 NORTHEAST EVANS STREET

MCMINNVILLE, OR 97128

DATE: **5/27/2025**

VDA No. **77184/BG**



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DIVISION 14 – CONVEYING SYSTEMS
14 24 23 – Hydraulic Passenger Elevators

PART 1 - GENERAL

1.1 SUMMARY AND DEFINITIONS

A. Intent

1. This section includes:
 - a. Hydraulic passenger elevator modernization
2. The following outlines the scope of work covered in this Section:
 - a. Furnish and install car station, hall stations, controller/selector, electrical wiring in Machine Room/car/hoistway, power unit, seismic requirements for hydraulic system, door controller, car top inspection station, door hardware, Firefighter's Emergency Operation, all requirements of The Americans with Disability Act (ADA) and all other elevator components as listed in this Elevator Specification.
 - b. Retain existing car speed, capacity, and elevator entrance size.
3. Related equipment shall be designed, constructed, installed and adjusted to produce the highest results with respect to smooth, quiet, convenient and efficient operation, durability, economy of maintenance, and the highest standard of safety.
4. It is not the intent of these specifications to detail the construction and design of all parts of the equipment, but it is expected that the type, materials, design, quality of work and construction of each part shall be adequate for the service required, durable, properly coordinated with all other parts, and in accordance with the best commercial standards applicable and of the highest commercial efficiency possible.
5. Minimum requirements for design, materials, etc., are for certain parts of the equipment. Equivalent requirements approved by the Owner shall apply to such parts that are of special design, construction, or material and to which the specified requirements are not directly applicable. These minimum requirements shall be considered as establishing proportionate general minimum standards for all parts of the equipment.
6. The Owner may permit variations from the requirement of these specifications to permit use of the Contractor's standard equipment, provided such standard equipment is in every way adequate for the intended use and meets the full intent of these specifications. All such variations proposed by the manufacturer shall be called to the attention of the Owner and shall only be made if approved in writing prior to the award of the contract.
7. General requirements for design, materials and construction are intended primarily to apply to the parts of the equipment specifically mentioned. Parts may be of the standard design, materials and construction provided that, in the opinion of the Owner, such standards are in accordance with the best commercial practice and are fully adequate for the purpose of use. All such variations shall be made only with the Owner's written approval.
8. All equipment and component parts installed, supplied or provided under this contract shall be manufactured and distributed by a company servicing the vertical transportation industry.

- a. Apparatus shall conform to the design and construction standards referenced herein and shall be rated the best commercial grade suitable for this application.
 - b. Manufacturers of the apparatus shall provide technical support and parts replacements for their equipment and component systems for a minimum of twenty (20) years and issue such guarantee of support to the purchaser with written certification naming the final Owner of their product(s) to ensure the apparatus or systems remain maintainable regardless of who may be selected for future service.
9. It is understood that the entire system shall be designed, fabricated, modified and/or upgraded in full compliance with applicable local laws and code standards. The absence of a particular item or requirement shall not relieve the Contractor of the full and sole responsibility for such equipment, features and/or procedures.
 10. The Specifications are intended to include all engineering, material, labor, testing, and inspections needed to achieve work specified by the Contract Documents. Inasmuch as it is understood that any incidental work necessary to complete the project is also covered by the Specifications, bidders are cautioned to familiarize themselves with the existing job site conditions. Additional charges for material or labor shall not be permitted subsequent to execution of the Contract.
 11. Verify exact distances between points shown on their Shop Drawings by actual measurements at the site. This includes fit and finish of surface mount Hall fixtures and lanterns covering existing cutouts
 12. Bidders must report discrepancies or ambiguities occurring in the Specifications to the Owner for resolution prior to the bidding deadline, otherwise the Specifications shall be deemed acceptable in their existing form.

B. Termination of Existing Agreements

1. By submitting a bid, the existing maintenance provider agrees that any service contracts in effect for this elevator shall be terminated by the Owner should the project be awarded to another vendor upon thirty (30) day written notice to the Contractor by the Owner.
 - a. The contracts shall be terminated with no penalty to the Owner or Contractor.
 - b. Owner will be responsible for money owed the Contractor for services provided and work performed up until the date of cancellation.

C. Abbreviations and Symbols

1. The following abbreviations, Associations, Institutions, and Societies may appear in the Project Manual or Contract Documents:

ADA	Americans with Disabilities Act
AHJ	Authority Having Jurisdiction
AIA	American Institute of Architects
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
IBC	International Building Code

IEEE	Institute of Electrical and Electronics Engineers
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Agency
OSHA	Occupational Safety and Health Act

D. Codes and Ordinances / Regulatory Agencies

1. Work specified by the Contract Documents shall be performed in compliance with applicable Federal, State, and municipal codes and ordinances in effect at the time of Contract execution. Regulations of the Authority Having Jurisdiction shall be fulfilled by the Contractor and Subcontractors. The entire installation, when completed, shall conform with all applicable regulations set forth in the latest editions of:
 - a. Local and/or State laws applicable for logistical area of project work.
 - b. Building Code applicable to the AHJ.
 - c. Elevator Code applicable to the AHJ.
 - d. Safety Code for Elevators and Escalators, ASME A17.1 and all supplements as modified and adopted by the AHJ.
 - e. Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME A17.2.
 - f. Safety Code for Existing Elevators and Escalators, ASME A17.3, as modified and adopted by the AHJ.
 - g. Guide for Emergency Evacuation of Passengers from Elevators, ASME A17.4.
 - h. National Electrical Code (ANSI/NFPA 70).
 - i. American with Disabilities Act - Accessibility Guidelines for Buildings and Facilities and/or A117.1 Accessibility as may be applicable to the AHJ.
 - j. ASME A17.5/CSA-B44.1 - Elevator and Escalator Electrical Equipment.
2. The Contractor shall advise the Owner's Representative of pending code changes that could be applicable to this project and provide quotations for compliance with related costs.

E. Reference Standards

1. AISC - Specification for the Design, Fabrication and Erection of Structural Steel for Buildings
2. ANSI/AWS D1.1 - Structural Welding Code, Steel
3. ANSI/NFPA 80 - Fire Doors and Windows
4. ANSI/UL 10B - Fire Tests of Door Assemblies
5. ASTM D1785 - PVC Pipe
6. ASTM D2466 - PVC Pipe Fittings
7. ASTM D2564 - Cement for PVC Pipe and Fittings
8. ANSI/IEEE - 519-Latest Edition
9. ANSI/IEEE - Guide for Surge Withstand Capability (SWC) Tests
10. ANSI Z97.1 - Laminated/Safety Tempered Glass

F. Definitions

1. Defective Work: Operation or control system failure, including excessive malfunctions; performances below specified ratings; excessive wear; unusual deterioration or aging of materials

- or finishes; unsafe conditions; need for excessive maintenance; abnormal noise or vibration; and similar unusual, unexpected, and unsatisfactory conditions.
- 2. Provide: Where used in this document, provide shall mean to install new device, apparatus, system, equipment or feature as specified in this document.
- 3. Definitions in ASME A17.1 as amended or modified by the AHJ apply to work of this Section.

1.2 PERMITS AND SUBMITTALS

A. Permits

- 1. Prior to commencing work specified by the Contract Documents, the Contractor shall, at its own expense, obtain all permits or variances as may be required by the AHJ and provide satisfactory evidence of having obtained said permits and variances to both the Owner's Representative and Consultant.
- 2. File necessary drawings for approval of all Authorities Having Jurisdiction.
- 3. All relative costs shall be included in the base bid proposal with the understanding that corrective actions are covered under the specified scope of work.

B. Submittals

- 1. Prior to beginning the work, the Contractor shall submit and have approved copies of layout drawings, shop drawings and standard cuts. These items shall include:
 - a. A plan view of the machine room.
 - b. Machine assembly, controller, door equipment, signal fixtures Door panels, car and counterweight guides, travel cable, and cab enclosures/ interiors.
 - c. All specified additional accessories.
- 2. The Consultant and the Owner's Representative shall pass on the submittals with reasonable promptness and the Contractor shall be responsible to ensure that there will be no delay in their work or that of any other trade involved.
- 3. Approved filing and submittal requirements must be completed before equipment and related materials are ordered.
- 4. Copies of Department of Buildings' permits and/or governing authority's documents will be posted at the job site with copies issued to the Owner's Agent, Owner's Representative and Consultant.
- 5. Samples of wood, metal, plastic, paint or other architectural finish material applicable to this project shall be submitted for approval by the Owner.
- 6. It shall be understood that approval of the drawings and cuts by Owner's designee, Architect and/or Consultant shall be for general arrangement only and does not include measurements which are the Contractor's responsibility or approval of variations from the contract documents required by the AHJ.
- 7. The Contractor shall prepare a record log and maintain all submittals, shop drawings, catalog cuts and samples.
- 8. Submittals shall be provided to the City on the approved submittal form.

C. Measurements and Drawings

1. Drawings or measurements included with the bidding material shall be for the convenience of the bidders only and full responsibility for detailed dimensions lies with the Contractor.
2. In the execution of the work on the job, the Contractor shall verify all dimensions with the actual conditions.
3. Where the work of the Elevator Contractor is to join other trades, the shop drawings shall show the actual dimensions and the method of joining the work of the various trades.

D. Substitutions

1. Requests for substitutions will be considered under the following time limitations and situations:
 - a. Not less than ten (10) calendar days before bids are due.
 - b. Work or equipment specified becomes unavailable through unforeseen events such as strikes, loss of manufacturer's plant through fire, flood or bankruptcy.
2. When proposing a substitution, the Contractor represents that:
 - a. They have investigated the proposed substitution and have determined that it is equal to or better than the product specified.
 - b. They will guarantee the substitution in the same manner as the product specified.
 - c. They will coordinate and make other changes as required in the work as a result of the substitution.
 - d. They waive all claims for additional costs as a result of the substitution, with the exception of those identified above under "cost data".
3. The Owner will be sole judge of the acceptability of the proposed substitution.
4. The Owner and Consultant will have authority to approve or reject substitutions or to change the specified standards of quality. However, neither this authority to act under this provision nor any decision made in good faith, either to exercise or not to exercise this authority, shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any Sub-Subcontractor, any of their agents or employees or any other persons performing the work or offering to perform the work.

E. Keys

1. Provide three (3) keys of each type. Provide each set on a metal or plastic plate with markings for each key. Attach keys to each plate.
2. Fire Key Box:
 - a. Provide approved key lock box, located as per requirements of Oregon State Elevator Inspector. Provide in this lock box, one (1) Phase I fire re-call key, one (1) Phase II operation key, one (1) stop switch key, one (1) machine room key and any other keys required by Oregon State Elevator Inspector.

F. Diagnostic Tools

1. Prior to seeking final acceptance of the project, the Contractor shall deliver to the Owner any specialized tools required to perform diagnostic evaluations, adjustments, and/or programming changes on any microprocessor-based control equipment installed by the Contractor. All such tools shall become the property of the Owner.

- a. Owner's diagnostic tools shall be configured to perform all levels of diagnostics, systems adjustment and software program changes which are available to the Contractor.
 - b. Owner's diagnostic tools that require periodic re-calibration and/or re-initiation shall be performed by the Contractor at no additional cost to the Owner for a period equal to the term of the maintenance agreement from the date of final acceptance of the project.
 - c. The Contractor shall provide a temporary replacement, at no additional cost to the Owner, during those intervals in which the Owner might find it necessary to surrender a diagnostic tool for re-calibration, re-initiation or repair.
2. Contractor shall deliver to the Owner, printed instructions, access codes, passwords or other proprietary information necessary to interface with the microprocessor-control equipment.
3. Software / Firmware Updates
 - a. During the life of the equipment and subject to the term of the maintenance agreement, where revisions to firmware and/or software are issued by the control manufacturer or manufacturer of solid state and microprocessor-based subsystems subsequent to the beneficial use of the equipment, updates shall be provided so that the installation and spare circuit boards are current with respect to software and firmware versions.

G. Wiring Diagrams, Operating Manuals and Maintenance Data

1. Deliver to the Owner, two (2) identical volumes of printed information organized into neatly bound manuals prior to seeking final acceptance of the project.
2. The manuals shall also be submitted in electronic format on non-volatile media, incorporating raw 'CAD' and/or Acrobat 'PDF' file formats. Electronic manuals shall be properly indexed, bookmarked, and searchable.
3. Manuals, as well as electronic copies, shall contain the following:
 - a. Step-by-step adjusting, programming and troubleshooting procedures that pertain to the solid-state microprocessor-control and motor drive equipment.
 - b. Passwords or identification codes required to gain access to each software program in order to perform diagnostics or program changes.
 - c. A composite listing of the individual settings chosen for variable software parameters stored in the software programs of both the motion and dispatch controllers.
 - d. Method of control and operation.
4. Provide two (2) sets of "AS INSTALLED" straight-line wiring diagrams in both hard bound and electronic format in accordance with the following requirements:
 - a. Displaying name and symbol of each relay, switch or other electrical component utilized including identification of each wiring terminal.
 - b. Electrical circuits depicted shall include all those which are hard-wired in both the machine room and hoistway.
 - c. Supplemental wiring changes performed in the field shall be incorporated into the diagrams in order to accurately replicate the completed installation.

H. Demonstration

1. Prior to seeking final acceptance of the project, the Contractor shall conduct a program on-site with building personnel selected by the Owner.
2. The focus of the session shall include:
 - a. Instructions on proper safety procedures and who to contact for the purpose of assisting passengers that may become entrapped inside an elevator car.
 - b. Explain each control feature and its correct sequence of operation.

I. Patents

1. Patent licenses which may be required to perform work specified by the Contract Documents shall be obtained by the Contractor at its own expense.
2. The Contractor agrees to defend and save harmless the Owner, Consultant and agents, servants, and employees thereof from any liability resulting from the manufacture or use of any patented invention, process or article of appliance in performing work specified in the Contract Documents.

J. Advertising

1. Advertising privileges shall be retained by the Owner.
2. It shall be the responsibility of the Contractor to keep the job site free of posters, signs, and/or decorations.
3. Contractor's logo shall not appear on faceplates or entrance sills without the approval of the Owner.

1.3 QUALITY ASSURANCE

A. Materials and Quality of Work

1. All materials are to be new and of the best quality of the specified.
2. Installation of such materials shall be accomplished in a neat manner and be of the highest quality.
 - a. Should the Contractor receive written notification from the Owner stating the presence of inferior, improper, or unsound materials or quality of installation, the Contractor shall, within twenty-four (24) hours, remove such work or materials and make good all other work or materials damaged.
 - b. Should the Owner permit said work or materials to remain, the Owner shall be allowed the difference in value or shall, at its election, have the right to have said work or materials repaired or replaced as well as the damage caused thereby, at the expense of the Contractor, at any time within one (1) year after the completion of the work; and neither payment made to the Contractor, nor any other acts of the Owner shall be construed as evidence of acceptance and waiver.

B. Electrical Design Requirements (General)

1. The following typical requirements shall apply to all parts of the work and are supplementary to other requirements noted under the respective headings.

- a. The design and construction of the motors shall conform to the requirements of these specifications and to the ASME Standards for Rotating Electrical Machinery with revisions issued to the first day when the work of this Contract was advertised.
 - 1) Motors shall operate successfully under all loads and speeds and during acceleration and deceleration.
 - 2) Motors shall be designed for quiet operation without excessive heat.
 - 3) Insulation on motor coils and windings and on all insulated switch, relay, brake and other coils shall conform to the requirements of minimum Class "F" insulation, as defined in ANSI Standards for Rotating Electrical Machinery. All motors shall be impregnated twice.
 - 4) Switches, relays, etc., on controller, starter and signal panels and similar items on other parts of the equipment shall be the latest improved type for the condition of use. They shall function properly in full accordance with the requirements of the machines controlled and with the specified operating requirements of the elevator. Any of these parts showing wear or other injurious effects during the guarantee period to the extent that abnormal maintenance is required or indicated shall be replaced with proper and adequate parts by the Contractor.
 - 5) Contacts in elevator motor circuits which are intended to be opened by governors or other safety devices shall be copper to carbon or other approved non-fusing type.
 - 6) Where required, controllers and other component parts of the installation shall be labeled in accordance with the latest codes and standards as adopted and/or otherwise modified by the AHJ.
 - 7) Electrical equipment, motors, controllers, etc., installed under this contract shall have necessary CSA/US or UL/US listing as may be required by the AHJ. Equipment shall be labeled or tagged accordingly.

C. Materials, Painting and Finishes

1. Two (2) coats of rust inhibiting machinery enamel shall be applied to exposed ferrous metal surfaces in the pit that do not have a galvanized, anodized, baked enamel, or special architectural finishes.
2. Two (2) coats of rust inhibiting enamel paint to the machinery located within the machine room and secondary level (where applicable) as well as to the machine room floors.
3. Architectural metal surfaces of bronze or similar non-ferrous materials which are specified to be refinished, re clad and/or provided new, shall be sufficiently clear coated so as to resist tarnishing during normal usage for a period of not less than twelve (12) months after final acceptance by the Owner.
4. Identify all equipment including buffers, crosshead, safety plank, machine, controller, drive, governor, disconnect switch, etc., by 4" high numerals which shall contrast with the background to which it is applied. The identification shall be either decalcomania or stencil type.
5. Paint or provide decal-type floor designation not less than six (6) inches high on hoistway doors (hoistway side), facias and/or walls as required by Code at intervals not exceeding 7'-0". The color of paint used shall contrast with the color of the surface to which it is applied.

D. Accessibility Requirements

1. Locate door reopening devices at 5" and 29" above the finish floor when individual contact projection apparatus is employed.
2. Locate the alarm button and emergency stop switch at 35", and floor and control buttons not more than 48" above the finished floor. The alarm button shall illuminate when pressed for visual acknowledgement to user.
3. Provide raised markings in the panel to the left of the car call and other control buttons. Letters and numbers shall be a minimum of 5/8" and raised .03" and shall be in contrasting color to the call buttons and cover plate.
4. The centerline of new hall push button shall be 42" above the finished floor.
5. The hall arrival lanterns, or cab direction lantern provided shall sound once for the "up" direction and twice for the "down" direction. Design and locate fixtures per Federal standards.
6. Provide floor designations at each entrance on both sides of jamb at a height of 60" above the floor to the baseline of the floor designation.
7. Provide an audible signal within the elevator to tell passenger that the car is stopping or passing a floor served by the elevator.
8. Provide signal control timing for passenger entry/exit transitions per Federal and/or Local standards.
9. Ensure sill-to-sill running clearances do not exceed 1-1/4" at all landings served.
10. Provide visual call acknowledgment signal for car emergency intercommunication device.

E. Qualifications

1. The work shall be performed by a company specialized in the business of manufacturing, installing and servicing conveying systems of the type and character required by these specifications with a minimum of ten (10) years of experience.

1.4 DELIVERY / STORAGE / HANDLING / COORDINATION

A. Delivery and Storage of Material and Tools

1. Delivery, Storage and Handling:
 - a. Deliver materials to the site ready for use in the accepted manufacturer's original and unopened containers and packaging, bearing labels as to type of material, brand name and manufacturer's name. Delivered materials shall be identical to accepted samples.
 - b. Store materials under cover in a dry and clean location, off the ground.
 - c. Remove delivered materials which are damaged or otherwise not suitable for installation from the job site and replace with acceptable materials.
2. The Owner shall bear no responsibility for the materials, equipment or tools of the Contractor and shall not be liable for any loss thereof or damage thereto.
3. The Contractor shall confine storage of materials on the job site to the limits and locations designated by the Owner and shall not unnecessarily encumber the premises or overload any portion with materials to a greater extent than the structural design load of the Facility.

B. Removal of Rubbish and Existing Equipment

1. On a scheduled basis, the Contractor shall remove all rubbish generated in performing work specified in the Contract Documents from the job site.
2. Any component of the existing elevator plant that is not reused under the scope of work specified in the Contract Documents shall become property of the Contractor and, as such, shall be removed from the premises at the Contractor's sole expense.
3. The Contractor agrees to dispose of the aforementioned equipment and rubbish in accordance with any and all applicable Federal, State, and municipal environmental regulations, and further accepts all liability that may result from handling and/or disposing of said material.

C. Protection of Work and Property

1. The Contractor shall continuously maintain adequate protection of all their work from damage and shall protect the Owner's property from injury or loss arising out of this contract.
2. The Contractor shall make good any such damages, injury or loss, except such as may be directly caused by agents or employees of the Owner.
3. The Contractor shall provide all barricades required to protect open hoistways or shafts per OSHA regulations. Such protection shall include any necessary guards or other barricades for employee protections during and after the modernization procedure.

1.5 RELATED WORK

A. Work by Elevator Contractor Included in the Base Bid

1. The following requirements shall be applicable based on prevailing conditions at the site of work and/or mandated modifications for code compliance. All work to be included in Elevator Contractor scope as a Turnkey Project. Elevator contractor will be responsible for coordinating any sub tier work required to complete the job.
 - a. Provide new main line disconnect switch with shunt trip and auxiliary contacts for battery lowering.
 - b. Provide auxiliary power feeds with required distribution load center (circuit breaker panel) for intercommunication, cab lighting or other specialty devices existing or to be provided by the Elevator Contractor.
 - 1) Voltage shall be 110 VAC with one 15 Amp circuit breaker or fuse for lighting of each individual elevator car enclosure.
 - 2) Circuit breakers and/or fused disconnects shall be lockable in the "OFF" position in accordance with applicable code.
 - c. The top surface of any setback or projection in the hoistway that measures 2" or more in width shall be beveled at an angle of not less than 75 degrees from horizontal. Each bevel plate shall be constructed from prime painted 14-gauge cold-rolled steel and installed so as to conform with ASME A17.1 elevator safety code as modified by, and/or in addition to codes and standards accepted by the AHJ.
 - d. Provide the machine room with permanent lighting fixtures fitted with protective guards and a duplex GFI receptacle. Illumination shall be no less than 19 foot-candles at floor level. A light control switch must be provided immediately adjacent to the entrance door in accordance with code.

- e. Provide elevator pit with a 110 volt GFI duplex receptacle and a permanent lighting fixture equipped with protective guard. Illumination shall be no less than 10 foot-candles at pit floor level. A light control switch must be provided and so positioned as to be readily accessible from the pit entrance door or ladder.
- f. Where the pit extends more than 3 feet below the sill of the pit access door, provide a permanent fixed metal ladder.
 - 1) Ladder shall extend no less than 48" above the sill of the access door. Handgrips shall extend from the ladder to a point no less than 48" above the sill of the access door where the ladder does not comply.
 - 2) The rungs shall be a minimum of 16" wide. Where prevailing conditions prevent a 16" wide rung, the rung may be reduced to no less than 9".
 - 3) The rungs shall be spaced 12" on center.
 - 4) A clear distance of no less than 4 ½" from the centerline of the rungs and handgrips to the nearest permanent object in back of the ladder shall be provided.
- g. Provide necessary patching, repairing and installation of masonry and/or dry wall for smooth and legal elevator hoistways.
- h. Provide fire recall initiating devices and alarm system meeting the requirements of A17.1 and/or the Local Governing Authority as may be further specified.
- i. Where sprinkler fire protective systems are provided inside any elevator hoistway, machine room or associated machinery space, provisions shall be made for the disconnecting of the main line power supply from the affected elevator prior to activation. This means of disconnect shall be manually reset in accordance with code.
- j. Provide new code compliant sump, sump pump, and associated plumbing and electrical in Pit.
- k. Paint Machine Room floor light gray.
- l. Paint Pit floor light gray.

1.6 WARRANTY / MAINTENANCE SERVICES

A. Contract Close-Out, Guarantee and Warranties

- 1. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of one (1) year from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within one (1) year following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The one (1) year warranty period shall, with relation to such required repair, be extended one (1) year from the date of completion of such repair.

B. Maintenance Coverage

1. Elevator Contractor shall provide a WARRANTY FULL PREVENTIVE MAINTENANCE service for a period of one (1) year after date of the one (1) elevator is accepted by the State of Oregon Elevator Inspector, Owner, Elevator Consultant and all punch list items have been completed, and elevator is available for unconditional use by the Owner.
 - b. This includes all labor and material to perform routine Preventive Maintenance as well as any adjustments, lubrication, repairs, or parts replacements required to keep the equipment in good and safe operating order.
 - c. Elevator Contractor shall provide once a quarter Warranty Preventive Maintenance visits to the elevator, for the one (1) year period.
3. Elevator Contractor shall verify, in writing, that all Preventive Maintenance hours on-site have been provided to the Owner each and every quarter.
4. Elevator Contractor shall furnish written reports of each service call, whether routine or emergency, describing services performed.
5. Basic service work shall be performed during regular working hours of regular working days.
6. Emergency callback service shall be available on a twenty-four (24)-hour, seven (7)-day basis at no additional cost to the Owner.
7. Elevator Call Back Response Time shall be as follows: After call is placed from Owner to Elevator Contractor and received by Elevator Contractor's Dispatching service and until the Elevator Contractor's service person is at the reported elevator:
 - a. Person trapped in elevator-all hours-all days = 30-45 minutes.
 - b. Elevator Trouble Call-Monday thru Friday-8:00 am to 5:00 pm = 1 hour.
 - c. Elevator Trouble Call-Monday thru Friday-off hours, 5:00 pm to 8:00 am = 2 hours.
 - d. Elevator Trouble Call-Saturdays, Sundays and Holidays-all hours = 2 hours.
8. In performance of this Work, Contractor agrees to carry out all Work in strict compliance with all laws, Codes, rules and regulations set forth with regard to the equipment by municipal, state or federal authorities having jurisdiction in effect on the date of this contract.
9. Elevator Contractor shall protect all adjacent equipment, surfaces, etc. from damage and shall make good any damage thereto at Elevator Contractor's own expense.
10. Elevator Contractor shall clean up all Work areas and shall remove from the premises all debris resulting from Elevator Contractor's operations.
11. Elevator Contractor's service and repair personnel shall wear uniforms identifying them as employees of Elevator Contractor for ease of identification by Owner.
12. Elevator Contractor is to enforce strict discipline and order among their employees while on Owner's premises and shall be subject to the rules and regulations established by Owner.
13. Personnel deemed unacceptable by Owner, for any reason, will not be allowed to perform Work under this contract with Owner.
14. Elevator Contractor will be issued keys for the elevator Machine Room. Duplication of any Owner key is not allowed.
15. Any and all costs occurring due to the loss of keys by Elevator Contractor, including the changing of locks, shall be borne at the sole cost and expense of Elevator Contractor.
16. All labor furnished by Elevator Contractor shall be trained elevator mechanics, thoroughly skilled in elevator maintenance and directly employed and supervised by Elevator Contractor.
17. Use all reasonable care to maintain the elevator equipment in a proper and safe operating condition and to extend the life of the equipment.

18. Maintain the hoistway, pit, machinery, machinery room and any assigned Elevator Contractor Workspace in a clean, orderly condition, free of dirt, dust, oil and grease spills, trash and debris, at all times.
19. Replace burned out indicator lamps in cars and hall call stations during Preventive Maintenance visits.
20. Elevator Contractor shall conduct the following tests and any other tests required:
 - a. All tests required by the State of Oregon Elevator Inspection Department.
 - b. Written reports of these tests shall be submitted to Owner within five (5) days from completion and also as required to the Elevator Inspector. Seven (7) days prior notification shall be given so that a representative of Owner may witness said test or tests.
 - c. Elevator Contractor shall perform all required Firefighters' Service tests and maintain all required documentation. Written results of such testing shall be submitted to Owner one (1) week after such testing.
21. Elevator Contractor shall post a Preventive Maintenance Schedule and Work Log in the Machine Room.
 - a. The log shall include all entries for routine maintenance and repairs.
 - b. Entries shall include date Work is completed, brief description of Work completed and the Mechanic's name.
 - c. Owner may review and copy the log and maintenance schedule at any time.
22. Elevator Contractor's Preventive Maintenance Schedule and Work Log shall be submitted with the Modernization Bid.
23. Elevator Contractor shall maintain a complete set of wiring diagrams showing "as built" conditions with any changes or modifications to circuits resulting from control modifications, parts replacement or equipment upgrade. Owner retains sole possession of these wiring diagrams.
24. The wiring diagrams shall be kept in a neat and orderly fashion and be located in the Machine Room.
25. Elevator inspection fees shall be paid by Owner. Fees for re-inspection due to failure to eliminate deficiencies, which are the responsibility of Elevator Contractor, shall be paid by Elevator Contractor.
26. EXCLUSIONS:
 - a. Repairs required because of negligence, accident or misuse of the equipment by anyone other than Elevator Contractor, their employees, subcontractors, agents or other causes beyond Elevator Contractors' control except ordinary use.
 - b. Repairs and replacement pertaining to the car enclosure including removable panels, door panels, car doors, suspended ceilings, light fixtures, tubes and bulbs for general lighting, handrails, car finish, and flooring coverings, hoistway enclosure, hoistway entrance frames and sills and emergency telephone instruments.
 - c. Mainline power disconnect switches and breakers, fuses and feeders to the switches.
 - d. Elevator Contractor shall not be required, under this agreement, to install new attachments or devices, after the elevator is accepted by Elevator Inspector, Elevator Consultant and Owner, as may be recommended or directed in the future by insurance companies, federal, state, municipal or government authorities unless compensated for such installation. This applies to possible changes in the ASME A17.1 Elevator Code.
27. All Work to be performed, which is not included in this One Year Warranty Period shall be authorized by Owner by written notification to Elevator Contractor prior to commencement of the Work. The hourly rates, and material mark up from cost, will be as follows:

	Mechanic	Helper	Team
Straight Time	\$275.00	\$235.00	\$510.00
Straight Time + 70%	\$325.00	\$275.00	N/A
Straight Time + 100%	\$350.00	\$295.00	\$645.00

MATERIAL MARKUP: 12%

1.7 ALTERNATES AND VALUE ENGINEERING:

- A. The following alternatives are elective upgrades which constitute changes to the base scope of the specified work. Pricing for each alternate upgrade is requested from the bidder with costs indicated in the appropriate space in the Request for Proposal (RFP). Contractor shall take into consideration, as part of the alternative pricing, alternate work that is required either in lieu of, or in addition to, work specified in the base scope and shall not duplicate costs.**

1. Cab Interior Finishes:

- Provide new ½" thick plywood wall panels (finishes TBD during submittal phase-assume laminate panels for bidding). All Plywood shall conform to the requirements of ASME A17.1 flame spread index of 0 to 75 and (b) smoke development of 0 to 450.
- Provide new reveals between panels finished in #4 brushed Stainless Steel.
- Provide Stainless Steel pad hooks on all walls.
- Provide fire retardant pads for rear and side walls with metal grommet holes for the pad hook fastening.
- Provide new suspended ceiling finished in #4 brushed Stainless Steel with six (6) LED downlights.
- Provide one and one-half inch (1½") diameter round stainless-steel handrails on the rear and each side wall.

PART 2 - PRODUCTS

2.1 GENERAL DESCRIPTION

A. Hydraulic Elevator

- McMinnville Community Center - 600 Northeast Evans Street, McMinnville, OR 97128 US - Hydraulic Passenger Elevator

Quantity	1
Type	Hydraulic Elevator Passenger
Capacity (lbs)	4,000
Speed (fpm)	125

Number of Landings	3
Operation	Simplex Selective Collective Operation
Controller	New
Machine Type	Submersible
Machine Location	Adjacent
Power Unit	Submersible (Wet)
Hydraulic Jack / Cylinder	Conventional, In-ground
Car Door Type	2SSO
Car Door Size	42 (inches) wide x 84 (inches) depth
Power Supply	600V-3-60

2.2 MANUFACTURERS

A. Pre-Approved Equipment Manufacturers

1. The following manufacturer's equipment and materials have been pre-approved for use on this project. Other equipment not specifically mentioned shall be considered for approval on an individual basis.
 - a. Controller - GAL (GALaxy), Motion Control Engineering, Elevator Controls Corporation, Elevator Systems, Inc., Smartrise.
 - b. Tracks, Hangers, Interlocks and Door Operators - G.A.L., ECI.
 - c. Fixtures - G.A.L., Adams, EPCO, Monitor, E-Motive USA, C.E. Electronics, Innovation, PTL, MAD, National.
 - d. Door Protective Device - Janus, Adams, G.A.L., T.L. Jones, Tri-Tronics.
 - e. Cabs and Entrances/Entrance Door Panels - Accurate Elevator Door Corp, A&D Entrances, CEC Elevator Cab, EDI/ECI, Elite Elevator Cab, H&B Elevators, National Cab & Door, Tyler, Velis, Gunderlin, Peelle, Premier, Prestige, Regency, Columbia Elevator Products, United Cabs.
 - f. Motors - Imperial Electric, General Electric, Baldor, Reuland Electric.
 - g. Electrical Traveling Cables - Draka, James Monroe.
 - h. Hydraulic Systems/Components - Canton, ECS Corporation, Elevator Equipment Corporation, Mongrain Vertical Transport (MVT), MEI, Schumacher.
 - i. Freight Doors and Systems - Courion, EMS Group, Peelle.
 - j. Intercommunications/Telephones - Webb Electronics, K-Tec, Ring, Wurtec, Janus, approved equal.
2. Original Equipment Manufacturers may substitute their own branded equipment subject to the following:
 - a. All requirements of the specifications are met regarding performance, appearance, serviceability and support.
 - b. A full stock of all regular and critical replacement parts required for this project are maintained at a facility within fifty (50) miles of the project site.
 - 1) Any parts not stocked at the above-mentioned facility shall be identified with the location of the nearest source and shall be available for next-day delivery upon demand.

- c. All parts and software shall be made available for purchase to a qualified elevator maintenance firm with one (1) business day delivery without direct Owner involvement.
 - 1) Provide details of parts supply facility and a list of current parts pricing for all major components required for the installation.
- d. All specialized tools, equipment, software, and passwords, required to maintain, repair, adjust the operation, and perform code mandated inspections are provided to the Owner as part of the base installation.
 - 1) Updates to these items shall be available via the parts supply facility referenced above.
- e. Technical support of the product(s) shall be available to the Owner's elevator service provider.

2.3 CONTROL FEATURES / OPERATION

A. Motion Control

- 1. Smooth stepless acceleration and deceleration of the elevator car shall be provided in either direction of travel during both single and multiple floor runs.
- 2. Use digital logic to calculate optimum acceleration and deceleration patterns during each run.
- 3. Acceleration, deceleration, jerk, maximum velocity, leveling accuracy and elapsed flight time, for a typical elevator one floor run, shall not exceed values as further specified.

B. Simplex Selective Collective Operation

- 1. Provide simplex selective collective operation from a riser of hall push button stations.
- 2. The registration of one or more car calls shall dispatch the car to the selected floors.
 - a. The car shall also respond to registered hall calls in the same direction of travel.
 - b. Car and hall calls shall be canceled when answered.
- 3. Stops in response to calls that are registered in either the car or hall push button stations shall occur in the natural order of progression in which the floors are encountered, depending on the direction of car travel, and irrespective of the order in which calls are registered.
- 4. When the car has responded to the highest or lowest call, and calls are registered for the opposite direction, the car shall reverse direction automatically and respond to those registered calls.
- 5. When the car arrives at its last stop and reverses direction of travel, all previously registered car calls shall be automatically cancelled.
- 6. When the car arrives at a landing where both up and down hall calls are registered, it will answer the call in the direction of travel.
 - a. After a pre-determined delay, if no car call is registered, the car shall respond to calls registered for the opposite direction. Car doors shall close immediately, re-open and respond to the call for the opposite direction.
 - b. Hall lantern operation shall always correspond to direction of service.

7. When an empty car reverses direction at a landing with no hall calls, the doors shall not open and the hall lantern shall not operate.
8. If the car has no car calls registered and arrives at a floor where both up and down hall calls have been registered, the car shall respond to the hall call corresponding to the last direction of car travel. If, after making its stop, a car call is not registered and no other hall calls exist ahead of the car corresponding to its original direction of travel, the doors shall close and immediately reopen in response to the hall call for the opposite direction.
9. The car shall maintain its original direction at each stop until the doors are fully closed to permit a passenger to register a car call before the car reverses its direction of travel.

C. Independent Service Operation

1. The car operating station shall be equipped with a key-operated switch labeled "IND SER".
2. When placed in the "on" position the following shall occur:
 - a. Simplex elevator - existing hall call registrations shall extinguish and hall buttons shall remain inoperative as an indication to passengers that there is no elevator service.
3. During Independent Service Operation, the elevator doors shall remain open at any landing until the door close or a car call push button is pressed and maintained until the doors are fully closed.
4. If more than one (1) car call is registered, all registered car calls shall extinguish when the elevator stops in response to the first call.
5. Fire Emergency Recall shall automatically override Independent Service Operation and engage Phase I - Fire Emergency Recall Operation following a period of approximately forty-five (45) seconds.

D. Inspection Service Operation

1. Provide a key operated switch in the main car operating panel that, when turned to the 'ON' position, shall cause the elevator to be removed from service and placed in Inspection Service Operation.
2. Limited operation of the car shall be provided through pressing the Attendant Service up and down push buttons (if provided) or the highest or lowest car call push buttons (if up and down buttons are not provided) in the main car operating panel only.
3. The car shall move at a speed not to exceed 150 feet per minute (0.75 meters per second) as per code with both the hall and car door panels in the closed and locked position.
4. The Inspection Service switch shall be keyed differently than other typical keys used in the operation of the elevator. Keying shall be in accordance with Security Group Classifications as required by applicable code.
5. The top of the elevator car shall be equipped with a control for limited operation of the car during repairs, maintenance and inspection conducted in the hoistway. The transfer of control to the top of car operating device shall cause that device to be the sole means of control for the elevator.
 - a. Visual and audible indication shall be provided on the top of the car when Firefighters' Emergency Operation is initiated.
6. Power door operating equipment shall be rendered inoperative while the car is being operated in the Inspection Service mode with the exception of power closing of the door. The control system

shall maintain closing power on the door while the elevator is moving under Inspection Service Operation.

7. The in-car Inspection Service switch shall be rendered ineffective when the top of car inspection control is activated.
8. Machine Room Inspection Operation and Inspection Operation with open door circuits shall be provided in accordance with A17.1 Safety Code, as modified and adopted, where required or allowed by the AHJ.

E. Hoistway Access Operation

1. Provisions shall be made to allow access to the hoistway through the use of hoistway access switches.
2. Operating the access switch shall permit the car to move at a speed not to exceed 150 feet per minute (0.75 meters per second) as per code with the hall and car doors in the open position to obtain access to the top of the car or climb-in pit.
3. The car shall automatically stop motion when the car top is level with the hoistway door sill for access to top of car.
4. The access key switch(es) shall be keyed differently than other typical keys used in the operation of the elevator. Keying shall be in accordance with Security Group Classifications as required by applicable code.
5. Access operation shall be disabled when top of car inspection operation is in effect.

F. Firefighters' Emergency Operation

1. Firefighters Service Operation and devices shall meet applicable code requirements of the AHJ.
2. Contractor shall be responsible for compliance in all aspects of Firefighters Service including, but not limited to the mode of operation, initiation of operation, operating control and signaling devices as well as fixture engraving including operating instructions applicable to and where required by the AHJ.

G. Elevator Safety Requirements for Seismic Zone

1. Provide a safety valve in the oil supply line as close as possible to the cylinders to stop and hold the elevator with rated load when the oil flow rate exceeds the oil flow rate required for the operating speed in the "down" direction, but before it reaches 125% of the down speed oil flow rate.
2. Equip the pump unit with required supports to prevent displacement.

H. Floor Lockout Feature / Keyless - Card Reader Control / Wiring Provisions

1. Wiring: Provide six (6) pair of 20 gauge two (2) flexible conductor low voltage cables with an overall braided shield in the traveling cable of all elevators for card reader interface.
2. Include all software provisions in elevator controls for both car and hall security features.

I. Hydraulic Auto Lowering

1. Provide automatic battery powered lowering feature for the hydraulic elevator.

- a. In the case of normal power outage, the elevator shall be automatically lowered to the Main Lobby level.
 - b. The door shall open automatically to discharge passengers.
 - c. The elevator shall remain parked with its door closed and door open button operative until normal power is restored.
2. The control panel shall be located in the machine room or be an integral part of the control system.
 - a. It shall include necessary batteries, solid-state controls, charger, monitor lights and a test button.
3. Provide necessary terminals for connection to an auxiliary switch in main line disconnect provided by others.

J. Door Operation

1. Car and hoistway doors shall be arranged to operate in unison without excessive noise or slamming in either direction of travel.
 - a. Door opening speeds of two (2) feet per second shall be provided in conjunction with closing speeds of 1.0 foot per second in accordance with governing code.
 - b. Door operation shall be arranged to commence as the car enters its final leveling approach to a landing. In no case shall the door opening cycle conclude before the car comes to a complete stop at floor level.
2. Where the hoistway door and the car door are mechanically coupled, the kinetic energy of the closing door system shall be based upon the sum of the hoistway and the car door weights, as well as all parts rigidly connected thereto, including the rotational inertia effects of the door operator and the connecting transmission to the door panels.
3. The force necessary to prevent closing of the car and hoistway door from rest shall not exceed thirty (30) lbf. This force shall be measured on the leading edge of the door with the door at any point between one-third and two-thirds of its travel.
4. Door open and door close time shall be measured between the moment car door operation in either direction begins and the instant at which that cycle is completed.
5. When responding to either a car or corridor call, the amount of time that the elevator door remains stationary in the open position shall be adjustable up to sixty (60) seconds.
 - a. Door open dwell time for a corridor call shall be separate of that for a car call, and in both cases, dwell time shall be canceled whenever the car door protection device is momentarily interrupted by passenger transfers, followed by a reduced door open dwell time of approximately one (1) second (adjustable) after the door protection device is cleared of obstructions.
6. The operation of the door protective device by interruption of one or more infrared light beams (dual or multi-beam non-contact) during the close cycle shall cause the immediate reversing of the doors to the full open position.
7. The door closing cycle shall be arranged so that, in the event the door protective devices become continually obstructed after the normal door open dwell time has expired, and following a time

- interval of approximately thirty (30) seconds (adjustable), a warning tone shall sound and the door closing cycle shall commence at reduced speed and torque per applicable Code requirements.
8. Each car operating station shall be provided with a “door open” and “door close” push button.
 - a. Pressure on the “door open” button shall cause doors in the full open position to remain so and doors engaged in the close cycle to reverse direction and assume the full open position so long as pressure remains applied to the button.
 - b. The “door open” buttons shall also control the open cycle during Phase II - Emergency In-car Operation.
 - c. The “door close” push button shall function on Independent Service, Attendant Service and Phase II - Emergency In-car Operation as well as during normal automatic operations.
 9. Repeated attempts by the power door operator to open or close the door at any landing shall be monitored by the control system.
 - a. In the event the door fails to cycle properly after a preset (adjustable) number of attempts, the car shall either travel to the next stop or remove itself from service, depending upon whether the malfunction is in the open or close cycle.
 10. Each hoistway door shall be provided with an automatic self-closing mechanism arranged so that the door shall close and lock if the car should leave the landing while the hoistway door is unlocked.
 11. Car doors shall be arranged to prevent their being manually opened from inside the car unless the elevator is positioned within a floor landing zone.

2.4 MACHINE ROOM / SECONDARY EQUIPMENT

A. Control Equipment

1. Provide a microprocessor-based elevator control system.
2. Digital logic shall calculate optimum acceleration, deceleration and velocity patterns for the car to follow during each run.
3. Closed-loop distance and velocity feedback shall monitor the actual performance of the elevator car with the desired speed profile.
4. System operating software shall be stored in non-volatile memory.
 - a. Elevator control relays, contactors, switches, capacitors, resistors, fuses, circuit breakers, overload relays, power supplies, circuit boards, static motor drive units, wiring terminal blocks and related components shall be totally enclosed inside a free-standing metal cabinet with hinged access doors.
 - b. The motor drive may be located in its own cabinet where the physical size of the drive prohibits installation within the elevator signal controller cabinet.
 - c. All electrical wiring inside the control equipment cabinet shall be performed in a neat manner with field wiring terminated at stud blocks provided inside the control cabinet.
 - d. Each wiring terminal shall be clearly identified according to the nomenclature used on the “as built” wiring diagrams. No more than two (2) field wires may be connected to any single terminal stud.

- e. Spare wires shall be tagged according to their point of termination, bundled, and placed at the bottom of the control equipment cabinet.
- f. Each electrical component within the cabinet shall be permanently identified with symbols, identical to those used on the “as-built” wiring diagrams.
- g. A data plate that indicates the edition of the Code in effect at the time of installation and/or alteration shall be provided in accordance with applicable code and requirements of ASME A17.1 Code. The data plate shall be in plain view and securely attached on the mainline disconnect or on the controller.
- h. Control equipment shall comply with requirements of all applicable Sections of the ASME A17.1 Code as approved and adopted by the AHJ.
- i. The manufacturer’s standard on-board “LCD” display shall be incorporated on the main processor board and/or otherwise incorporated in the controller cabinet. The “LCD” shall be capable of providing alpha-numeric characters to view the operational status of the elevator and/or group functions depending on the application. The display shall provide the user with necessary information for troubleshooting and reprogramming of the basic system parameters.
 - 1) Where the “LCD” is not an integral part of the controller and troubleshooting/reprogramming requires the use of a separate tool, the tool shall be maintained in the machine room and accessible to service personnel. This tool, along with all technical documentation for the correct use of the tool, shall remain the property of the Owner.
 - 2) Password protection of critical programming features is required to prevent accidental changes to life-safety and other non-typical control settings.
 - 3) Where a separate dispatch or group control panel is provided, a separate “LCD” display shall be provided to view group functions.

B. Sound Reducing Protection

- 1. Provide the following treatments as a minimum.
 - a. Install a minimum of two (2) sound isolating couplings in the oil line in the machine room between pump and jack.
 - 1) Each coupling shall consist of two (2) machined flanges separated by two (2) neoprene seals to absorb vibration and to positively prevent metal-to-metal contact in the oil line.
 - 2) Build coupling in such a manner that they will be absolutely blow-out proof.
 - b. Install an oil-hydraulic muffler in oil line near power unit.
 - 1) The mufflers contain pulsation absorbing material inserted in a blow-out proof housing.
 - 2) Rubber hose without blow-out proof features will not be acceptable.
 - c. Provide sound reducing vibration isolation elements at all support points of elevator controllers and pump units.

- 1) The elements shall be similar to double deflection neoprene-in-shear mounts, as manufactured by Mason Industries.
 - 2) All bolts through isolation elements, where necessary, are to incorporate resilient washers and bushings.
- d. Locate the power unit at least one inch (1") from any walls.
 - e. Use flexible conduit with ground wire for pump unit connections.

C. Hydraulic Power Unit / Motor

1. Provide a self-contained power unit which includes:
 - a. Structural steel outer base.
 - b. Tank support.
 - c. Oil tight drip pan.
 - d. Floating inner base to prevent metallic contact for mounting the motor pump assembly.
 - e. Sound isolation panels to enclose the unit and reduce airborne noise.
2. Provide a reinforced oil reservoir with oil control unit which includes:
 - a. An oil fill strainer with air filter.
 - b. An oil level gauge assembly.
 - c. A self-cleaning strainer in the suction line.
3. The pump shall be for oil hydraulic elevator service with positive displacement screw type design for steady discharge with minimum vibration.
4. The drive shall be by multiple V-Belts and sheaves or directly driven by a submersible pump depending on the HP requirements of the system.
 - a. The use of submersible pumps having more than a 40 HP motor is unacceptable.
5. Pump drive motor control shall utilize solid state motor starter circuitry to provide reduced current starting and maximum protection of the motor.
6. The oil control unit shall be of the manufacturer's own design and shall include solid state motor starter technology or variable frequency motor control as well as relief, safety check valves and an electronic modulated oil control valve. The electronic valve shall:
 - a. Provide continuous short travel curve, independent of load and temperature.
 - b. Provide smooth acceleration and deceleration regardless of the load.
 - c. Maintain velocity control over a wide range of oil temperatures.
 - d. Allow the manual lowering of the elevator car in event of power failure and for use in servicing and adjusting the elevator mechanism.
 - e. Design the tank shut-off valve for isolating oil in the power unit tank to ensure each of servicing and adjusting the elevator mechanism without removing oil from the tank.

2.5 HOISTWAY EQUIPMENT

A. Guide Rails / Inserts / Brackets (Reuse)

1. Car guide rails, fishplates, rail brackets, backing support and related attachments shall be inspected to determine if unfavorable conditions exist that diminish the structural integrity of any component.
 - a. In the event substandard conditions are disclosed by means of this inspection, the Contractor shall immediately inform the Consultant as to the exact nature of said problems and then undertake whatever repairs and/or replacements the Consultant may deem appropriate to remedy the situation.
2. Each stack of guide rails shall be individually examined to determine if excessive compression has occurred from building settlement.
 - a. In the event such conditions are found to exist, each affected stack shall be cut off enough to relieve pressure.
 - b. Jacking bolts shall be provided underneath each stack of both car and counterweight guide rails.
3. Each stack of guide rails shall be realigned so that total deviation from plumb in any direction does not exceed 1/8" over the entire length of the hoistway and that DBG measurements never vary more than .030".
4. As required, car guide rails joints shall be individually filled, filed and sanded in order to eliminate minor variations in adjoining machined surfaces.

B. Roller Guides (Reuse)

1. The existing roller guide assemblies shall be retained and rebuilt for new.
 - a. Replace all worn rollers, bearings, shafts, pivot pins, tensioning devices, shock absorbers and adjustment hardware.
 - b. Realign guide stands to frame mountings.
 - c. Reset roller tensioning in conjunction with static balancing of the car enclosure after cab or other apparatus are installed.
 - d. Replace roller guide assemblies as necessary to meet the performance criteria specified herein.
2. Contractor may provide new roller guide assemblies, of equal or greater quality, in lieu of rebuilding the existing, as part of the base bid subject to the approval of the Consultant. Costs associated with replacement shall also be included in the base bid cost.

C. Electrical Conduit / Wiring / Traveling Cable

1. Electrical wiring shall be provided.
 - a. All wiring shall be stranded copper conductors, manufactured in compliance with ANSI/ASTM B174-71 and UL 62 requirements, and polyvinyl chloride insulation complying with ETT requirements of UL 62 and Article 400 of the National Electric Code.
 - b. Electrical wiring provided for hoistway interlock shall be of a flame-retardant type, capable of withstanding temperatures of at least 392 degrees Fahrenheit. Conductors shall be Type SF or equivalent.

- c. Each run of electrical conduit or duct shall contain no less than 10% spare wires and, in any case, no fewer than two (2) spare wires.
 - d. Crimp-on type wire terminals shall be used where possible.
2. Traveling cable shall be provided.
- a. Each traveling cable shall be provided with a flame- and water-resistant polyvinyl chloride jacket.
 - b. Electrical wiring shall consist of stranded copper conductors, manufactured in compliance with ANSI/ASTM B174-71 and UL 62 requirements, and polyvinyl chloride insulation complying with ETT requirements of UL 62 and Article 400 of the National Electric Code.
 - c. Each traveling cable shall contain no less than 10% spare wires.
 - d. Traveling cable exceeding 100' in length shall be provided with a steel wire rope support strand from which the cable shall be suspended.
 - e. Traveling cable must be contained within an approved electrical conduit to within 6' of the final suspension point in the hoistway.
 - f. Each traveling cable shall be arranged to provide no fewer than six (6) individually shielded pairs of 20-gauge wire and arranged to contain no less than one (1) coaxial cable for CCTV remote monitoring.
 - g. Traveling cable conductors that terminate at a hoistway center box shall be connected to stud blocks provided for that purpose.
 - 1) Each wiring terminal shall be clearly identified by its nomenclature as shown on the "as built" wiring diagrams and solderless, crimp-on type wire terminals shall be used where possible.
 - h. The attachment of a traveling cable to the underside of the elevator car shall be performed so that a minimum loop diameter of 30x the cable diameter is provided.
3. Rigidly supported EMT conduit, flexible metal conduit and galvanized steel trough shall be utilized throughout the hoistway.
- a. Both EMT and flexible conduit shall be connected on either end by use of compression fittings and secured in place with metal clamps sized in accordance with the diameter of conduit utilized.
 - 1) Wire or plastic wire ty-raps shall not constitute an acceptable means of fastening.
 - b. The use of flexible metal conduit shall be limited to runs not greater than three feet (3') in length.
 - c. All abandoned or unused electrical conduit shall be removed from the hoistway.
 - d. Existing conduit and wiring duct may be reused if suitable for the application.
 - 1) Reuse of existing conduit/duct shall be at the discretion of the Consultant.

D. Normal and Final Terminal Stopping Devices

1. Provide new normal terminal stopping devices to stop the car automatically from any speed obtained under normal operation within the top and bottom overtravel independent of the operating devices, final terminal stopping device and the buffers.
2. Provide new final terminal stopping devices to stop the car and counterweight automatically from the speed specified within the top clearance and bottom overtravel.
3. The terminal stopping devices shall have rollers with rubber or other approved composition tread to provide silent operation when actuated by the cam fixed to the top of the elevator.

2.6 PIT EQUIPMENT

A. Car Buffer (Reuse)

1. Existing car and counterweight buffers shall be reused.
 - a. Pit channels, related supports and fastenings shall be inspected for damage and to determine if the structural integrity of any component is diminished by the effects of rust or other unfavorable conditions.
 - 1) In the event defects are found, the Contractor shall immediately inform the Consultant and undertake whatever repair and/or replacement the Consultant may deem appropriate.
 - b. Surface rust shall be removed from all reused components.

B. Jack Unit (Reuse)

1. The existing jack shall be reused.
2. The jack shall undergo the following work:
 - a. Check plunger for smooth surface and eliminate burrs where necessary.
 - b. Verify plunger sections are securely attached with minimum seam.
 - c. Check stop-ring for proper fit.
 - d. Renew internal babbitt-lined, guide bearing, packing or seals where necessary.
 - e. Clean drip ring around cylinder top to provide adequate drainage.
 - f. Check mounting hardware and welds where applicable.
 - g. Check secure attachment of head.
 - h. Remove rust and apply rust inhibiting paint.

C. Overspeed (Rupture) Valve

1. An overspeed valve shall be provided and installed so that it will cause the flow of oil from the hydraulic jack through the pressure piping to cease when such flow exceeds a preset value relative to car speed in accordance with applicable codes.

D. Pit Stop Switch

1. Where pit depth does not exceed 67", each elevator pit shall be provided with a push/pull or toggle switch that is conspicuously designated "EMERGENCY STOP" and located so as to be readily

accessible from the hoistway entrance on the lowest landing served at a height of approximately 18" above the floor.

- a. This switch shall be arranged to prevent the application of power to the hoist motor and machine brake when placed in the "OFF" position.

2.7 HOISTWAY ENTRANCES

A. Hoistway Entrances (Reuse)

1. Hoistway entrance frames, headers and header supports shall be reused and refurbished.
 - a. Hoistway entrances that have become distorted or bent shall be straightened, plumbed, reset to the proper width dimension and reinforced as necessary.
 - b. Provide 14-gauge steel toe guards that extend 12" below any sill not protected by fascia.
 - 1) The toe guards shall extend the full width of the door and shall return to the hoistway wall at a 15-degree angle and be firmly fastened.
 - c. Remove oil, dirt and impurities on new and existing apparatus and give a factory coat of rust inhibitive paint to all exposed surfaces of struts, hanger supports, covers, fascia, toe guards, dust covers and other ferrous metal.

B. Slide Type Hoistway Entrance Door Panels (Reuse)

1. Hoistway entrance door panels shall be reused and refurbished.
 - a. Provide each door panel with two (2) removable laminated plastic composition guides, arranged to run in existing sill grooves with a minimum clearance.
 - 1) The guide mounting shall permit their replacement without removing the door from the hangers.
 - 2) A steel wear indicator shall be enclosed in each guide.
 - b. Provide lunar key access at all floors.

C. Tracks / Hangers / Closers (Reuse)

1. The existing hoistway door hangers and tracks shall be reused and rehabilitated.
2. Roller/hanger assemblies, consisting of the roller and eccentric, shall be cleaned, degreased and adjusted for proper operation.
3. Up-thrust shall be minimized through adjustment of the eccentric roller.
4. Worn rollers and eccentrics shall be replaced where needed.
5. Thoroughly clean the track of all dirt and grease accumulations to provide a smooth surface.
 - a. Where track liners are employed, new liners shall be provided.
6. Closers at each entrance shall be cleaned and pivot pins lubricated.

- a. Worn and/or defective sill closers as well as noisy spirators shall be replaced as required to maintain self-closing of the hoistway doors should the elevator leave the floor for any reason with the car door open.
- 7. In multi-speed door arrangements, provisions shall be made to interlock the individual panels so all panels close should the normal door panel relating means fail.

D. Interlocks / Unlocking Devices

- 1. Each set of landing doors shall be provided with a complete electromechanical interlock assembly.
 - a. Each interlock assembly shall consist of:
 - 1) A switch housing with contacts.
 - 2) Lock keeper.
 - 3) Clutch engagement/release subassembly.
 - 4) Associated linkages.

2.8 CAR EQUIPMENT / FRAME

A. Car Frame (Reuse)

- 1. The existing car frame assembly shall be refurbished to as new condition and reused.
- 2. Individual car frame members, platform isolation framework, door operator support structure, related bracing and hardware shall be inspected for any indication of damage or distortion.
 - a. Where damage is detected, the Contractor shall immediately inform the Consultant and then undertake corrective action deemed appropriate by the Consultant to remedy the condition.

B. Car Platform (Reuse)

- 1. The existing platform shall be modified to accommodate the new apparatus specified herein.
 - a. Where necessary, the underside of platform shall be refurbished and treated with fire-rated material.

C. Automatic Leveling / Releveling / Positioning Device

- 1. Equip the elevator with a floor leveling device which shall automatically bring the car to a stop within 1/4" of any floor for which a stop has been initiated regardless of load or direction of travel.
- 2. This device shall also provide for releveling which shall be arranged to automatically return the elevator to the floor in the event the elevator should move below or above floor level in excess of 1/4".
- 3. This device shall be operative at all floors served and whether the hoistway or car door is open or closed provided there is no interruption of power to the elevator.
- 4. A positioning device shall be part of the controller microprocessor systems.

- a. Position determination in the hoistway may be through fixed tape in the hoistway or by sensors fitted on each driving machine to encode and store car movement.
- b. Design the mechanical features and electrical circuits to permit accurate control and rapid acceleration and retardation without discomfort.

D. Top-of-Car Inspection Operating Station

1. An inspection operating station shall be provided on top of the elevator car.
2. This station shall be installed so that the controls are plainly visible and readily accessible from the hoistway entrance without stepping on the car.
3. When the station is operational, all operating devices in the car shall be inoperative.
4. Provide the following control devices and features:
 - a. A push/pull or toggle switch designated "EMERGENCY STOP" shall be arranged so as to prevent the application of power to the hoist motor or machine brake when in the "off" position.
 - b. A toggle switch designated "INSPECTION" and "NORMAL" to activate the top of car Inspection Service Operation.
 - c. Push button designated "Up", "Down" and "Enable" to operate the elevator on Inspection Service (the "Enable" button shall be arranged to operate in conjunction with either the "Up" or "Down" button).
 - d. An indicator light and warning buzzer that are subject to activation under Phase I - Fire Emergency Recall Operation.

E. Car Enclosure Work Light / Receptacle

1. The top and bottom of each car shall be provided with a permanent lighting fixture and 110 volt GFI receptacle.
2. Light control switches shall be located for easy accessibility from the hoistway entrance.
3. Where sufficient overhead clearance exists, the car top lighting fixture shall be extended no less than 24" above the crosshead member of the car frame.
4. Light bulbs shall be guarded so as to prevent breakage or accidental contact.

F. Master Door Power Operator System – VVVF/AC

1. Provide a heavy-duty master door operator on top of the elevator car enclosure for power opening and closing of the cab and hoistway entrance door panels.
2. The operator may be of the pivot/lever or belted linear drive type.
3. Operator shall utilize an alternating current motor, controlled by a variable voltage, variable frequency (VVVF) drive and a closed-loop control with programmable operating parameters.
 - a. System may incorporate encoder feedback to monitor positions with a separate speed sensing device or an encoderless closed-loop VVVF-AC control to monitor motor parameters and vary power applied to compensate for load changes.
4. The type of system shall be designated as a high-speed operator, designed for door panel opening at an average speed of two (2.0) feet per second and closing at approximately one (1.0) foot per second.

- a. Reduce the closing speed as required to limit kinetic energy of closing doors to within values permitted by ASME A17.1 as may be adopted and/or modified by the AHJ.
- 5. The door shall operate smoothly without a slam or abrupt motion in both the opening and closing cycle directions.
 - a. Provide controls to automatically compensate for load changes such as:
 - 1) Wind conditions (stack effect).
 - 2) Use of different weight door panels on multiple landings.
 - 3) Other unique prevailing conditions that could cause variations in operational speeds.
 - b. Provide nudging to limit speed and torque in conjunction with door close signaling/closing and timing devices as permitted by ASME A17.1 as may be adopted and/or modified by the AHJ. Nudging shall be initiated by the signal control system and not from the door protective device.
- 6. In case of interruption or failure of electric power from any cause, the door operating mechanism shall be so designed that it shall permit emergency manual operation of both the car and corridor doors only when the elevator is located in the floor landing unlocking zone.
 - a. The hoistway door shall continue to be self-locking and self-closing during emergency operation.
 - b. The door operator and/or car door panel shall be equipped with safety switches and electrical controls to prevent operation of the elevator with the door in the open position as per ASME A17.1 Code Standards.
 - c. Provide zone-lock devices as required by ASME A17.1 as may be adopted and/or otherwise modified by the AHJ.
- 7. Construct all door operating levers of heavy steel or reinforced extruded aluminum members.
- 8. Belts shall be designed for long life and operate noise free.
- 9. All components shall be designed for stress and forces imposed on the related parts, linkages and fixed components during normal and emergency operation functions.
 - a. All pivot points, pulleys and motors shall have either ball or roller-type bearings, oilite bronze bushings or other non-metallic bushings of ample size.
- 10. Provide operating data / data tag permanently attached to the operator as required by applicable code and standards.
- G. Car Door Zone Lock Restrictor (New on Existing Equipment)
 - 1. Retrofit the existing car door operator to incorporate a car door zone lock restrictor.
 - 2. In case of interruption or failure of electric power from any cause, the door operating mechanism shall permit emergency manual operation of both the car door and the hoistway door within the floor landing zone.
 - a. The hoistway door shall continue to be self-locking and self-closing.

- b. The door operator shall operate in conjunction with or be equipped with all gate switches and safety contacts required by ASME A17.1 Code.

H. Car Door Hangers / Tracks / Gate Switch

1. Provide sheave type two-point suspension hangers and track for each car door.
 - a. Sheaves shall be hardened steel, not less than 3-1/4 inches in diameter with sealed grease packed precision ball bearings.
 - b. The upthrust shall be taken by a roller mounted on the hanger and arranged to ride on the underside of the track.
2. The track shall be of formed cold rolled steel or cold drawn steel and shall be rounded on the track surface to receive the hanger sheaves.
 - a. The track shall be removable and shall not be integral with the header.
3. Provide a gate switch that mounts directly to the car door track.
 - a. The gate switch shall prevent movement of the elevator until such time as it signals the control equipment that the car door has physically closed.

I. Car Door Gate Switch

1. Provide a car door electrical safety (gate) switch that connects directly to the car door track.
 - a. The gate switch shall prevent movement of the elevator until such time as it signals the control equipment that the car door has physically closed.

J. Car Door Panel(s)

1. Provide no less than 1" thick, 14-gauge hollow metal flush construction panel(s), reinforced for power operation and insulated for sound deadening.
2. Paint the hoistway side of each panel black and face the cab side with 16-gauge sheet steel matching the existing returns or in selected material and finish as otherwise directed by Owner/Architect.
3. The panels shall have no binder angles and welds shall be continuous, ground smooth and invisible.
4. Drill and reinforce panels for installation of door operator hardware, door protective device, door gibs, etc.
 - a. Provide each door panel with two (2) removable laminated plastic composition guides, arranged to run in the sill grooves with minimum clearance.
 - b. The guide mounting shall permit their replacement without removing the door from the hangers.

K. Door Reopening Device / "3D"

1. Provide a combination infrared curtain and 3D door protection system.

2. The door shall be prevented from closing and will reopen when closing if any one of the curtain light rays is interrupted or should an object enter the 3D detection zone.
3. The door shall start to close when the protection system is free of any obstruction.
4. The infrared curtain and 3D zone protective system shall provide:
 - a. Protective curtain field not less than 71" above the sill.
 - b. 3D protective zone field not less than 61" above the sill.
 - c. Accurately positioned infrared lights to conform to the requirements of the applicable handicapped code.
 - d. Modular design to permit on board test operation and replacement of all circuit boards without removing the complete unit.
 - e. Self-contained, selectable 3D zone timeout feature to allow for closing at nudging speed with audible signal.
 - f. Automatic turning-off of the 3D zone in the event of three (3) consecutive 3D triggers.
 - 1) Light curtain shall continue to operate after 3D system timeout.
 - g. Selectable control of the 3D zone operation on an "always-on" or "as doors close" basis.
 - h. Controls to shut down the elevator when the unit fails to operate properly.
 - i. Provide audible and visual notification of pending door close.

2.9 FINISH / MATERIALS / SIGNAGE

A. Designation and Data Plates, Labeling and Signage.

1. Provide floor designation cast plates at each elevator entrance, on both sides of the jamb at a height of sixty (60) inches to the baseline of floor indication.
 - a. Floor number designations and Braille shall be 2" high, 0.03" raised and stud mounted.

2.10 FIXTURES / SIGNAL EQUIPMENT

A. General - Design and Finish

1. The design and location of the hall and car operating and signaling fixtures shall comply with the ADAAG and local requirements of the AHJ.
2. The operating fixtures shall be selected from the manufacturer's or a third party's premium line of fixtures.
3. Custom designed operating and signaling fixtures shall be as shown on the drawings or as approved by the Owner / Architect.
4. The layout of the fixtures including all associated signage and engraving shall be as approved by the Owner / Architect.
5. Where no special design is shown on the drawings, the buttons shall be as follows:
 - a. Stainless steel, convex raised type as selected by the Owner from the manufacturer's or a third party's premium line of push buttons.

- b. The button shall have a collar/small round indicator on the button with LED call registered light.
- 6. Where no special design is shown on the drawings, the faceplates shall be as follows:
 - a. Passenger Elevators
 - 1) Stainless- **steel** faceplate with No. 4 finish.
 - 2) Typical Floors: 1/8" thick [**stainless steel/bronze**] faceplate with No. ____ finish.
- 7. Mount passenger elevator fixtures with **tamperproof** fasteners. The screw/fastener and key switch cylinder finishes shall match faceplate finish.
- 8. Where key-operated switch and or key operated cylinder locks are furnished in conjunction with any component of the installation, six (6) keys for each individual switch or lock shall be furnished, stamped or permanently tagged to indicate function.
- 9. All caution signs, pictographs, code mandated instructions and directives shall be engraved and filled with epoxy in code required colors.
- B. Main Car Operating Panel
 - 1. Provide a main car operating push button panel on the inside front return panel of the car.
 - 2. Car operating panel shall be flush mounted with swing type, one-piece faceplate with heavy-duty concealed hinges.
 - a. Mount all key switches that are required to operate and maintain the elevators exposed on the car station except those specified within a locked service cabinet.
 - 3. The push buttons shall become individually illuminated as they are pressed and shall extinguish as the calls are answered.
 - 4. The operating panel shall include:
 - a. A call button for each floor served, located not more than 48" above the cab floor.
 - b. "Door open" / "Door close" buttons.
 - c. "Alarm" button, interfaced with emergency alarm. The alarm button shall illuminate when pressed. Locate 35" above the cab floor.
 - d. "Emergency Stop" switch per local law located at 35" above the cab floor.
 - e. Self-dialing, hands-free emergency communication system actuation button with call acknowledging feature and ASME A17.1/ADA/IBC (CBC) design provisions.
 - f. Three (3) position firefighter key operated switch, call cancel button and illuminated visual/audible signal system with mandated signage engraved per ASME A 17.1 Standards as modified by the AHJ.
 - 5. Locked Firemen's' Service cabinet, keyed in accordance with local Code, containing required devices and signals in accordance with ASME A17.1 Standards. Door shall be self-locking.
 - a. Automatic opening of the locked cabinet door may be provided with signals initiated by the fire detection and alarm system where approved by the Authority Having Jurisdiction.

6. Provide a locked service cabinet with flush mounted door and containing the suitably identified key switches required to operate and maintain the elevator, including, but not limited to:
 - a. Independent service switch
 - b. Light switch
 - c. Fan switch
 - d. G. F. I. duplex receptacle
 - e. Emergency light test button and indicator
 - f. Inspection Service Operation key switch
7. Car operating panel shall incorporate:
 - a. An integral (no separate faceplate) digital L.E.D. floor position indicator.
 - b. Emergency light fixture.
 - c. Black-filled engraved unit I.D. number or other nomenclature, as approved by Owner.
 - d. Provide engraving as follows:
 - 1) A "No Smoking" advisory.
 - 2) The rated passenger load capacity in pounds.
8. Where posting of an advisory is permitted by the Governing Authority in lieu of the inspection certificate, engrave the following advisory on the hinged cover of the service cabinet, or where otherwise directed by the Owner.
 - a. "Elevator Certificate is On File in Building Management Office"

C. Car Position Indicator

1. The position of the car in the hoistway shall be indicated by the illumination of the position indicator numeral corresponding to the floor at which the car has stopped or is passing.
 - a. Provide 2" high, 10-segment LED type position indicator with direction arrows, integral with the car operating panel.

D. Car Direction Lantern

1. Provide a car riding lantern with visual and audible signal in the edge of the strike and return post.
2. Car lantern shall indicate the direction of travel when doors are 3/4 open.
3. The unit shall sound once for the "up" direction and twice for the "down" direction.
 - a. Provide an electronic chime with adjustable sound volume.

E. Corridor Push Button Station / Surface Mount / Existing Back-Boxes

1. A riser of surface-mounted push button signal fixtures shall be provided on each landing.
2. Each new signal fixture shall consist of:
 - a. An extended faceplate.

- b. A wiring duct, internal to the faceplate, to facilitate wire run from the existing back-box to the new lower push buttons.
 - c. Up and down illuminating push buttons measuring 3/4" at their smallest dimension as selected by the Owner.
 - d. Provisions to fasten to the existing back-box and extend buttons to a height of 42" above the floor.
 - e. Installed both plumb and flush to the finished wall.
3. Intermediate landings shall be provided with fixtures containing two (2) push buttons while terminal landings shall be provided with fixtures containing a single push button.
 4. Include firefighter key switch in the main lobby level station or other designated recall landing.

F. Floor Position Indicator

1. Remove existing floor position indicator at Lobby level and provide new digital LED type unit.
2. New plate shall completely cover the present cutout and provide 2" numerals located on center.
3. Provide integral direction arrows that will indicate the direction in which the elevator is traveling.

G. Hoistway Access Switch

1. Install a cylindrical type keyed switch at top terminal in order to permit the car to be moved at slow speed with the doors open to allow authorized persons to obtain access to the top of the car.
2. Where there is no separate pit access door, a similar switch shall be installed at the lowest landing in order to permit the car to be moved away from the landing with the doors open in order to gain access to the pit.
3. Locate the switch in the hall call push button station at the top and bottom terminal landings where required if allowed by the Authority Having Jurisdiction.
4. This switch is to be of the continuous pressure spring-return type and shall be operated by a cylinder type lock having not less than a five (5) pin or five (5) disc combination with the key removable only in the "OFF" position.
 - a. The lock shall not be operable by any key which operates locks or devices used for other purposes in the building and shall be available to and used only by inspectors, maintenance men and repairmen in accordance with A17.1 applicable Security Group.

2.11 CAR ENCLOSURES

A. Elevator Cab Enclosure Fan

1. Provide an exhaust type two (2)-speed fan unit with cover grill, mounting accessories and necessary cab enclosure modifications.
 - a. Fan unit shall include self-lubricating motor with housing rubber mounted for sound vibration isolation.
2. Provide a key switch in the elevator cab enclosure for control of fan unit.

3. Provide necessary wiring and approved conduit to properly connect fan unit with power source and control key switch.

2.12 EMERGENCY LIGHTING / COMMUNICATIONS / SIGNALING

A. Battery Back Up Emergency Lighting Fixture and Alarm

1. Provide a self-powered emergency light unit.
 - a. The light fixture shall contain a minimum of two (2) LED lamps. Flush mount the light fixture in the main car station. The fixture shall have a milk white lens.
2. Provide a car-mounted battery unit including solid-state charger and testing means enclosed in common metal container.
 - a. The battery shall be rechargeable nickel cadmium with a ten (10) year minimum life expectancy. Mount the power pack on the top of the car.
 - b. Provide a 6" diameter alarm bell mounted directly to the battery/charger unit and connected to sound when any alarm push button or stop switch in the car enclosure is operated.
 - c. The bell shall be configured to operate from power supplied by the building emergency power generator. The bell shall produce a sound output of between 80-90 dBa (measured from a distance of 10') mounted on top of the elevator car.
 - 1) Activation of this bell shall be controlled by the stop switch and alarm button in the car operating station.
 - 2) The alarm button shall illuminate when pressed.
3. Where required by Code for the specific application, the unit shall provide mechanical ventilation for at least one (1) hour.
4. The operation shall be completely automatic upon failure of normal power supply.
5. Unit shall be connected to normal power supply for car lights and arranged to be energized at all times so it automatically recharges battery after use.

B. Emergency Voice Communication / Telephone

1. A hands-free emergency voice communication system shall be furnished in each car mounted as an integral part of the car operating panel.
 - a. Necessary wires shall be included in the car traveling cable and shall consist of a minimum of one shielded pair of 20AWG conductors.
 - b. 120V power shall be provided to power the hands-free device.
2. The telephone shall be equipped with an auto-dialer and illuminating indicator which shall illuminate when a call has been placed and begin to flash when the call has been answered.
 - a. Engraving shall be provided next to the indicator which says, "When lit help is on the way".

3. In addition to the standard “Alarm” button, a separate activation button shall be provided on the car operating panel to initiate the emergency telephone and place a call.
 - a. The telephone must not shut off if the activating button is pushed more than once.
 - b. The telephone shall transmit a pre-recorded location message only when requested by the operator and be provided with an adjustable call time which can be extended on demand by the operator.
 - c. Once two-way communication has been established, voice prompts shall be provided which instruct the operator on how to activate these functions as well as alerting the operator when a call is being attempted from another elevator in the building.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Inspection

1. Study the Contract Documents with regard to the work as specified and required so as to ensure its completeness.
2. Examine surface and conditions to which this work is to be attached or applied and notify the Owner in writing if conditions or surfaces are detrimental to the proper and expeditious installation of the work. Starting the work shall imply acceptance of the surfaces and conditions to perform the work as specified.
3. Verify, by measurements at the job site, dimensions affecting the work. Bring field dimensions which are at variance with those on the accepted shop drawings to the attention of the Owner. Obtain the decision regarding corrective measures before the start of fabrication of items affected.
4. Cooperate in the coordination and scheduling of the work of this section with the work of other sections so as not to delay job progress.

3.2 INSTALLATION / PROJECT PHASING

A. Installation

1. Modernize the elevators, using skilled personnel in strict accordance with the final accepted shop drawings and other submittals.
2. Comply with the code, manufacturer’s instructions and recommendations.
3. Coordinate work with the work of other building functions for proper time and sequence to avoid delays and to ensure right-of-way of system. Use lines and levels to ensure dimensional coordination of the work.
4. Accurately and rigidly secure supporting elements within the shaftways to the encountered construction within the tolerance established.
5. Provide and install motor, switch, control, safety and maintenance and operating devices in strict accordance with the submitted wiring diagrams and applicable codes and regulations having jurisdiction.
6. Ensure sill-to-sill running clearances do not exceed 1 ¼” at all landings served.

7. Arrange door tracks and sheaves so that no metal-to-metal contact exists.
8. Reinforce hoistway fascias to allow not more than 1/2" of deflection.
9. Prehang traveling cables for at least twenty-four (24) hours with ends suitably weighted to eliminate twisting after installation.
10. Pack openings around oil line with fire resistant, sound isolating glass or mineral wool.
11. After installation, touch up in the field, surfaces of shop primed elements which have become scratched or damaged.
12. Lubricate operating parts of system as recommended by the manufacturer.

B. Inspection and Testing

1. Upon completion of each work phase or individual elevator specified herein, the Contractor shall, at its own expense, arrange and assist with inspection and testing as may be required by the A.H.J. in order to secure a permit to operate.

C. Substantial Completion

1. The work shall be deemed "Substantially Complete" for an individual unit or group of units when, in the opinion of the Consultant, the unit is complete, such that there are no material and substantial variations from the Contract Documents, and the unit is fit for its intended purpose.
2. Governing authority testing shall be completed and approved in conjunction with inspection for operation of the unit; a certificate of operation or other required documentation issued; and remaining items mandated for final acceptance completion are limited to minor punch list work not incorporating any life safety deficiencies.
3. The issuance of a substantial completion notification shall not relieve the Contractor from its obligations hereunder to complete the work.
4. Final completion cannot be achieved until all deliverables, including but not limited to training, spare parts, manuals, and other documentation requirements, have been completed.

D. Contractor's Superintendent

1. The Contractor shall assign a competent project superintendent during the work progress and any necessary assistant, all satisfactory to the Owner. The superintendent shall represent the Contractor and all instructions given to him shall be as binding as if given to the Contractor.

E. The Contractor shall coordinate all work with the City Project Manager.

3.3 PROTECTION / CLEANING

A. Protection and Cleaning

1. Adequately protect surfaces against accumulation of paint, mortar, mastic and disfiguration or discoloration and damage during shipment and installation.
2. Upon completion, remove protection from finished surfaces and thoroughly clean and polish surfaces with due regard to the type of material. Work shall be free from discoloration, scratches, dents and other surface defects.
3. The finished installation shall be free of defects.

4. Before final completion and acceptance, repair and/or replace defective work, to the satisfaction of the Owner, at no additional cost.
5. Remove tools, equipment and surplus materials from the site.

B. Barricades and Hoistway Screening

1. The Contractor shall provide barricades where necessary in order to maintain adequate protection of areas in which work specified by the Contract Documents is being performed, including open hoistway entrances. Fabrication and erection as all barricades shall be in compliance with applicable OSHA regulations.

3.4 DEMONSTRATION

A. Performance and Operating Requirements

1. Passenger elevators shall be adjusted to meet the following performance requirements:
 - a. Speed within 5% of rated speed in the up direction under any loading condition.
 - b. Leveling: within $\pm 1/4"$ as measured between the car entrance threshold and the landing sill on any given floor under any loading condition.
 - c. Door dwell time for hall calls: 5.0 seconds.
 - d. Door dwell time for car calls: 3.0 seconds.

B. Acceptance Testing

1. The Contractor shall provide at least five (5) days prior written notice to the Owner and Consultant regarding the exact date on which work specified in the Contract Documents will reach completion on any single unit of vertical transportation equipment.
2. In addition to conducting whatever testing procedures may be required by local inspecting authorities in order to gain approval of the completed work, and before seeking approval of said work by the Owner, the Contractor shall perform certain other tests in the presence of the Consultant.
3. The Contractor shall provide test instruments, test weights, and qualified field labor as required to safely operate the unit under load conditions that vary from empty to full rated load and, in so doing, to successfully demonstrate compliance with applicable performance standards set forth in the project specifications with regard to:
 - a. Operation of safety devices.
 - b. Floor leveling accuracy.
 - c. Door opening/closing and dwell times.
 - d. Ride quality inside the elevator car.
 - e. Communication system.
4. Upon completion of work specified in the Contract Documents on the last car in any group of elevators, and in conjunction with the aforementioned testing procedures, the Contractor shall carry out additional testing of group dispatch/supervisory control features in the presence of the Consultant.

5. After hour tests of systems such as emergency generators, fire service, and security systems shall be conducted at no extra cost to the Owner.

END OF SPECIFICATION

CITY OF McMINNVILLE, OREGON

COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5

APPENDIX

CITY OF McMinnville, Oregon

COMMUNITY CENTER ELEVATOR MODERNIZATION-Project 2025-5

CONTRACTOR'S SUBMITTAL FORM

From: _____ Submittal No.: _____

_____ Date: _____

We are sending you:

- ☐ Attached
- ☐ Under separate cover via : _____
- ☐ Submittals for review and comment
- ☐ Product data for information only

Remarks: _____

Item No.	Copies	Spec. Section No.	Description

I hereby certify that (mark one):

- ☐ We have verified that the material or equipment contained in this submittal meets all the requirements, including coordination with related work, specified (no exceptions).
- ☐ We have verified that the material or equipment contained in this submittal meets all of the requirements specified except for the below noted deviations:

Item No.	Deviation

Certified by:

(Contractor's Signature)

(Date)

CITY OF McMINNVILLE, OREGON
COMMUNITY CENTER ELEVATOR MODERNIZATION PROJECT

PREVAILING WAGES

This Public Works Project is subject to the applicable prevailing wage rates. If a contractor fails to pay for labor and services, the City can withhold these amounts from payments due the contractor.

Prevailing Wages applicable to this project are set forth in the following publications:

Prevailing Wage Rates for Public Works Contracts in Oregon - 2025

Prevailing Wage Rate effective July 5, 2025

<https://www.oregon.gov/boli/workers/Prevailing%20Wage%20Rate%20Books/BOLI%20July%205,%202025%20Prevailing%20Wage%20Rate%20Book.pdf>

Prevailing Wage Rates State Apprenticeship Rates - 2025

Prevailing Wage Rate Apprenticeship effective July 5, 2025

<https://www.oregon.gov/boli/workers/Prevailing%20Wage%20Rate%20Books/PWR%20Apprentice%20Rates%20Effective%20July%205,%202025.pdf>

These publications can found electronically at:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

Certificate of Compliance

***COMMUNITY CENTER ELEVATOR MODERNIZATION
Project 2025-5***

I, _____, _____ do
hereby certify: (name of signatory party) (title)

1. That all work has been performed and materials supplied in accordance with the Contract Documents for the project work, and that;
2. Not less than prevailing wages have been paid to laborers, workers, and mechanics employed on this work;
3. There have been no unauthorized substitutions of subcontractors; nor have any subcontracts been entered into without the names of the subcontractors having been submitted to the City prior to the start of such subcontract work;
4. That no subcontract was assigned or transferred or performed by any subcontractor other than the original subcontractor, without prior notice having been submitted to the City together with the names of all subcontractors;
5. That all claims for material and labor and other service performed in connection with these specifications have been paid;
6. That all monies due to the Industrial Accident Fund, the State Unemployment Compensation Fund, the Department of Revenue, Oregon Bureau of Labor and Industries, hospitals, and other health care providers, have been paid;
7. That the signing party has read such statement knows and understands the contents hereof and verifies the truthfulness of each statement and the whole thereof.

Contractor (authorized signature)

Date

(print name)



City of McMinnville
City Attorney's Office
230 NE Second Street
McMinnville, OR 97128
(503) 434-7303

www.mcminnvilleoregon.gov

STAFF REPORT

DATE: August 26, 2025
TO: Mayor and City Council
FROM: David Ligtenberg, City Attorney
SUBJECT: Resolution No. 2025-50, A Resolution Authorizing the City Manager to Execute a Personal Services Contract with Erskine Law Practice, LLC, to Provide City Prosecutorial Services

Report in Brief:

Resolution No. 2025-50 will authorize the execution of a new contract for City Prosecutor services with Erskine Law Practice LLC.

Background and Discussion:

The City of McMinnville is responsible for prosecution of matters within its own Municipal Court. Such prosecution occurs under the supervision of the City Attorney's office, but has been a contracted service since 2019.

Under McMinnville Municipal Code section 2.21.100(C), personal services (including legal services such as these) "shall be solicited, negotiated and/or awarded in accordance with the procedures described for the selection of Consultants set forth in Division 48 of the Model Rules." That means, for contacts of this amount (greater than \$100,000 and less than \$250,000), the City is required to undertake an informal solicitation of proposals.

In this case, with the estimated fee of the contract being under \$150,000, the City is required to provide the RFP to three prospective proposers, or all available prospective proposers while maintaining a written record of the City's efforts to locate available prospective proposers for the RFP. The City circulated an RFP on July 14, 2025. The RFP was published on the COG website, circulated on the Court Clerks' listserv, and circulated to court staff and the Municipal Judge to forward to any contacts they might have.

The City received one proposal from Erskine Law Practice LLC. Not only was the proposal scored well by the review panel, but Shannon Erskine is the incumbent to the position and is well-liked by staff and appreciated for her work in this role previously. Accordingly, staff recommends that Council, as the local contract review board, adopt the attached Resolution and approve a contract with Erskine Law Practice LLC for City Prosecutor services going forward.

Attachments:

Resolution No. 2025-50

Fiscal Impact:

This prosecutorial services contract is already accounted for in the proposed FY 25-26 budget.

RESOLUTION NO. 2025 – 50

A Resolution of the City of McMinnville Authorizing the City Manager to Execute a Personal Services Contract with Erskine Law Practice, LLC, to Provide City Prosecutorial Services.

RECITALS:

WHEREAS, the City is responsible for prosecution of matters within its own Municipal Court and has contracted for such prosecutorial services since 2019; and

WHEREAS, the City issued an RFP on July 14, 2025, publishing on the COG's website, circulating through the Court Clerks' listserv, and circulating to court staff and the Municipal Judge to forward to their contacts; and

WHEREAS, staff recommends entering into a contract for prosecutorial services with proposer Erskine Law Practice LLC.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON as follows:

1. The City Manager is authorized to execute a Personal Services Contract with Erskine Law Practice, LLC, to provide City prosecutorial services through June 30, 2027, with options for up to three (3) one-year extensions.
2. This Resolution takes effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 26th day of August, 2025, by the following votes:

Ayes: _____

Nays: _____

Approved this 26th day of August 2025.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

STAFF REPORT

DATE: August 26, 2025
TO: Mayor and City Council
FROM: Jody Christensen, Special Projects Manager
SUBJECT: Resolution No. 2025-34 for the Americans with Disabilities Act Transition Plan - Personal Services Contract

STRATEGIC PRIORITY & GOAL



ENGAGEMENT & INCLUSION

Create a culture of acceptance and mutual respect that acknowledges differences and strives for equity

OBJECTIVE/S: Improve access by identifying and removing barriers to participation

Report in Brief:

This is consideration of Resolution No. 2025-34.

Resolution No. 2025-34 authorizes the Acting City Manager to execute a Personal Services Agreement with Sally Swanson Architects for the Americans with Disabilities Act (ADA) Transition Plan Project for a not to exceed amount of \$300,000.

The implementation of an ADA Transition Plan is an adopted strategic action in the City's MAC Town 2032 Strategic Plan under Engagement and Inclusion.

The requirement to develop a formal ADA transition plan applies to state and local government bodies, or public entities, covered under Title II of the federal Americans with Disabilities Act (ADA). The mandate for a written plan is triggered when a public entity employs 50 or more people. This includes government operations like municipal offices, courts, state-run universities, and public transportation systems.

An ADA transition plan is the City's formal roadmap for evaluating and removing structural barriers to facilities, programs, and services. An Americans with Disabilities Act (ADA) transition plan is a formal document that outlines how a public organization will make its facilities accessible. It serves as a roadmap for identifying and removing physical barriers that prevent people with disabilities

from using public programs and services. The plan includes a schedule for implementing architectural changes, establishing a clear strategy to achieve full accessibility.

Background:

Per the Federal ADA laws, the City of McMinnville should have an ADA Transition Plan that identifies all barriers for access to public facilities (buildings, parks, programs, and public right-of-way) and an implementation plan on how those barriers will be removed. The ADA Transition Plan addresses equity issues and barriers to participation that many in our community face. Currently approximately 19.3% of McMinnville residents identify as disabled (2023 ACS, US Census).

The Federal ADA Act is a comprehensive civil rights law for persons with disabilities in both employment and the provision of goods and services. The ADA states that its purpose is to provide a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Congress emphasized that the ADA seeks to dispel stereotypes and assumptions about disabilities and to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for people with disabilities.

The Rehabilitation Act of 1973, requires that all organizations receiving federal funds make their programs available without discrimination toward people with disabilities. The Act, which has become known as the "civil rights act" of persons with disabilities, states that:

No otherwise qualified handicapped individual in the United States shall, solely by reason of handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. (Section 504)

Subsequent to the enactment of the Rehabilitation Act, Congress passed the Americans with Disabilities Act on July 26, 1990. The Americans with Disabilities Act (ADA) requires cities to establish an ADA program to provide equal access for all residents to the cities' programs and amenities.

This program need to be comprised of several different components.

1. Start Implementation
2. Appoint an ADA Coordinator
3. Provide Public Notice
4. Adopt a Grievance Procedure
5. Conduct a Self-Evaluation
6. Develop a Transition Plan
7. Create an Action Plan

On March 13, 2018, The City Council approved Ordinance No. 5048, adopting a City of McMinnville Notice of Nondiscrimination, Grievance Procedure and appointed an ADA Coordinator accomplishing Steps 1 – 4 above. Ordinance No. 5048 appointed the Planning Director or his/her

designee as the ADA Coordinator. Heather Richards, who was the Planning Director at the time and is now the Community Development Director, served as the ADA Coordinator in two other communities, and appointed Robert Reygers, Building Inspector II, as the designee serving as the ADA coordinator for the City of McMinnville. Robert Reygers is a certified ADA Coordinator, having successfully studied and tested as an ADA Coordinator prior to his employment with the City of McMinnville.

However, the City did not have the resources in 2018 to prepare an ADA Transition Plan, which would encompass steps 5 – 7 above. (See [ADA Accessibility | McMinnville Oregon](#) for the Notice of Nondiscrimination and Grievance Procedure. In 2021, the McMinnville City Council voted to set aside American Rescue Plan Act (ARPA) funds to complete the ADA Transition Plan. (Resolution No. 2021-54, reaffirmed by Resolution Nos. 2023-19 and 2025-08.)

Discussion:

What is an ADA Transition Plan?

An ADA Transition Plan is a comprehensive review of how the City will ensure its programs, services, and facilities are accessible to people with disabilities. It includes a self-evaluation of current conditions, identification of barriers, a plan to remove those barriers, a schedule for implementation, and designation of responsible parties.

A compliant ADA transition plan must contain several components as mandated by federal regulation 28 C.F.R. § 35.150. These include:

- A comprehensive list of physical barriers within the entity's facilities. These are architectural features that impede access to programs or activities for individuals with disabilities, identified through a detailed survey of elements like entrances and restrooms.
- A detailed description of the methods that will be used to remove the identified barriers and make the facilities accessible. This section outlines specific modifications, such as installing a compliant ramp or widening a doorway.
- A schedule for completing the necessary steps. This timeline must be concrete, and if the process takes more than one year, the plan must detail the interim steps to be accomplished each year to ensure steady progress.
- The designation of the official responsible for its implementation, often called the ADA Coordinator. This individual oversees the plan's execution, answers public inquiries, and ensures the scheduled work is completed.

The ADA Transition Plan ensures compliance with the Americans with Disabilities Act (ADA), State Title 24 building Codes, U.S. Architectural and Transportation Barriers Compliance Board Proposed Guidelines for Pedestrian Facilities in the Public Right of Way Accessibility Guidelines (PROWAG), and the Federal ADA Accessibility Guidelines and Standards (ADAAG & ADAS).

The McMinnville Transition Plan

The City of McMinnville ADA Transition Plan project will cover four areas: public rights of way (ROW), parks, buildings and programs.

1. Self-Evaluation of Facilities and Programs – Identification of Barriers:

Assessment of Programs, Services, and Activities: This involves reviewing aspects of the public entity's operations to identify any policies, practices, or procedures that might discriminate against individuals with disabilities.

Inventory of Facilities: This includes a comprehensive review of all buildings, parks, public right of way owned or operated by the City to identify physical barriers to access. The City currently has 19 public buildings (three of which are historic landmarks), 28 public parks with 230 acres, and 119.5 center line street miles.

Public Right of Way: The City has 119.5 center line street miles. In approximate number, the City may have 4147 curb ramps and 16 signalized intersections.

Buildings and Parks: The following are lists of the City's facility lists from 2019 and the Parks, Recreation, and Open Space (PROS) Plan from 2024.

City of McMinnville Buildings:

Facility List (year built)	Address	Square Footage
Airport Hangers	4000 NE Cirrus Ave, 97128	32,075
Aquatic Center (1983)	138 NW Park Dr., 97128	28,052
Nelson House (former Chamber building)	417 NW Adams, 97128	1730
Chegwyn Farms Restroom and Shelter (2011)	3200 NE Hembree St., 97128	1176
City Park Restrooms & Shelter (1968)	140 NW Park Dr., 97128	1516
Civic and City Hall/Garage	200 & 230 NE 2nd Street, 97128	60,252
Community Center (1924)	600 NE Evans Street, 97128	54,592
Community Development Center	231 NE Fifth Street, 97128	9022
Discovery Restrooms & Shelter (2005)	1300 SW Cypress Ln., 97128	3644
FAA/Oregon State Police (OSP) Building	3975 SE Cirrus Ave., 97128	12,250
Library & Carnegie Building	225 NW Adams St., 97128	19,781
Parking Structure (1981)	500 NE Davis St., 97128	43,833
Public Safety (2008) – Police Department	121 SW Adams St., 97128	35,462
Public Works/Riverside Drive (1971)*	1900 NE Riverside Dr., 97128	29,651
Senior Center	2250 NE McDaniel Ln., 97128	10,242
Thompson Park Restroom (2002)	1525 SE Morgan Lane, 97128	952
Tice Park Restrooms (2004)	2761 NE Baker St., 97128	560
Wastewater & Police Evidence	3500 NE Clearwater Dr., 97128	33,254
Wastewater Riverside Drive *	1900/1920 NE Riverside Dr., 97128	8,300
Wortman Park Restrooms & Shelters (2005)	2051 NE Lafayette Ave., 97128	4,143

City of McMinnville Parks (Parks, Recreation and Open Space Plan, June 2024):

Parks	Acres
Neighborhood Parks	
Chegwyn Farms	3.9
Jay Pearson Park	2.9
Thompson Park	2.3
West Hills Park	7.8
Subtotal	16.9
Parklettes	
Bend-o-River	0.3
Greenbriar	0.2
Kingwood	0.6
North Evans	0.3
Taylor	0.3
Village Mill	0.5
Subtotal	2.3
Community Parks	
City Park	16.2
Joe Dancer Park	104.7
Discovery Meadows	21.4
Wortman Park	21.5
Subtotal	163.7
Special Use Parks	
Riverside Drive Dog Park	3.6
Subtotal	3.6
Linear/Trail Parks	
West McMinnville Linear Path	
Ash Meadows	1.3
Goucher St. Pathway	1.7
James Addition	1.3
Jandina	2.6
Jandina III	2.1
West McMinnville Linear Park	0.2
Westvale	4.5
BPA Path (paved)	
BPA Pathway I (2nd Street to Wallace)	2.8
BPA Pathway II (Wallace to 23rd)	4.1
Roma Sitton (23rd to Baker Creek Road)	1.7
BPA North (Baker Creek Road to chip path)	1.3
North McMinnville Trail	
Baker Creek North - Parcel D	14.9
Oak Ridge Meadows	5.4
Subtotal	43.8
Total Developed	230.3

Evaluation of Communication Methods: This involves assessing how the entity communicates with the public and ensuring that communication methods are accessible to people with disabilities (e.g., providing materials in accessible formats, offering auxiliary aids like sign language interpreters).

2. Methods for Barrier Removal:

Methods for Barrier Removal: This section details the specific actions that will be taken to remove each barrier, including architectural modifications, policy changes, or procedural adjustments.

Schedule for Implementation: The transition plan outlines a timeline for when each barrier removal action will be completed.

Responsible Parties: This section identifies the individuals or departments responsible for carrying out the barrier removal actions.

Cost Estimates: The plan will include an estimated cost of the barrier removal.

Prioritization: The transition plan will include a process for prioritizing barrier removal based on factors like the severity of the barrier and the number of people affected.

3. Other Requirements:

Public Input: The ADA requires public entities to involve people with disabilities in the development and implementation of the self-evaluation and transition plan.

Grievance Procedure: A grievance procedure must be established to handle complaints about accessibility issues, which the City has already been completed.

Regular Updates: The transition plan should be updated regularly to reflect changes in the entity's programs, services, facilities, and to document progress in barrier removal.

The work will be delivered by certified professionals including an American Institute of Architects (AIA) certified Architect, Geographic Information System (GIS) and Database Specialist; Certified Facilitates Specialist who is certified as a Building, Electrical, Mechanical, & Plumbing Inspector, and Plans Examiner; Quality Assurance and Quality Control Specialist; and ADA Policy Specialist. Following ADA requirements, a project team will work with the City to define standards, conduct an evaluation identifying deficiencies limiting accessibility, and prioritize projects with a schedule and rough cost estimate to achieve compliance.

Consultant Procurement:

Due to the amount of regulations and specialty knowledge required for barrier identification and methods of removal, the City released a Request for Qualifications (RFQ) for the ADA Transition Plan Project on May 2, 2025, to seek a consultant for the project. The RFQ was noticed in the Daily Journal of Commerce on the same day. The RFQ closed on June 5, 2025, with four (4) proposals

received by the deadline of 5 PM. One proposal was submitted after the deadline. The staff performed a completeness review to ensure all the proposal requirements were met. All met the criteria.

A committee with representatives from the Planning Department, Engineering, and the Building Department reviewed the proposals. The committee met on June 11, 2025. The results of the proposal evaluation had Sally Swanson Architects as the top ranked firm. The committee decided it was not necessary to hold interviews.

The staff began the contract negotiations and reference checks. The Notice to Intent to Award was released on June 23, 2025, and no protests were received.

Sally Swanson Architects has been found to meet all the requirements of the project, and the City has successfully negotiated terms.

Attachments:

1. Resolution No. 2025-34
2. Exhibit 1 to Resolution No. 2025-34, Professional Services Agreement with Sally Swanson Architects
3. Sally Swanson Architects Proposal

Fiscal Impact:

This project is grant-funded utilizing City of McMinnville American Rescue Plan Act (ARPA) funds, \$300,000 will be used for the consultant contract and \$50,000 will be utilized for local project management. The ARPA funding for this project was approved by the McMinnville City Council in 2021, (Resolution No. 2021-54), reaffirmed in 2023 (Resolution No. 2023-19), and reaffirmed again in 2025 (Resolution No. 2025-08).

These funds for the project are in the adopted FY 26 City of McMinnville budget.

Recommendation:

Staff recommends that the City Council adopt Resolution No. 2025-34 authorizing the Interim City Manager to execute the Personal Services Agreement with Sally Swanson Architects for the ADA Transition Plan Project in a not to exceed amount of \$300,000.

RESOLUTION NO. 2025-34

A Resolution authorizing the City Manager to sign a contract with Sally Swanson Architects in the not to exceed amount of \$300,000 for the Americans with Disabilities Act (ADA) Transition Plan project.

RECITALS:

Whereas, the implementation of an American with Disabilities Act (ADA) Transition Plan is an adopted strategic action in the City's MAC Town 2032 Strategic Plan under Engagement and Inclusion; and

Whereas, the City of McMinnville decided to support the development of an ADA Transition Plan; and

Whereas, a Request for Qualifications was released on May 2, 2025, and was closed on June 5, 2024; and

Whereas, all of the responses were reviewed and scored, and the top proposer was determined with the highest scoring proposal; and

Whereas, the proposal from Sally Swanson Architects, met all of the proposal requirements and should be considered the responsible and responsive proposal; and

Whereas, the funding for this project is allocated in the FY 26 City of McMinnville adopted budget.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That the City of McMinnville will enter into a contract with Sally Swanson Architects in an amount not to exceed \$300,000.
2. The Interim City Manager is hereby authorized and directed to sign the contract per Exhibit A.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 26th day of August 2025, by the following votes:

Ayes: _____

Nays: _____

Approved this 26th day of August 2025.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBIT:

- A. Professional Services Contract with Sally Swanson Architects, Inc. for the ADA Transition Plan project.

CITY OF McMinnville **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the Americans with Disabilities Act (ADA) Transition Plan Project (“Project”) is made and entered into on this _____ day of _____ 2025 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and Sally Swanson Architects, Inc. a(n) _____ [state] _____ [corporation/limited liability company, etc.] (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Consultant shall diligently perform the ADA Transition Plan services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than December 31, 2026, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 3. Consultant’s Services

3.1. All written documents prepared by Consultant in conjunction with the Services shall bear the signature, name, or logo of, or otherwise be identified as coming from, Consultant’s authorized Project Manager.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant’s reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under

Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant a not-to-exceed amount of three hundred thousand DOLLARS (\$300,000) for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 16**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

Section 6. City's Project Manager

The City's Project Manager is Jody Christensen. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 7. Consultant's Project Manager

Consultant's Project Manager is Sally Swanson. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 8. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 9. Subcontractors and Assignments

9.1. Unless expressly authorized in **Exhibit A** or **Section 10** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

9.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

9.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 10. Consultant Is Independent Contractor

10.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

10.2. Consultant may request that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

Section 11. Consultant Responsibilities

11.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

11.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital

status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

Section 12. Indemnity

12.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers-

12.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

12.3 Indemnification for Claims for Professional Liability. Notwithstanding any contrary provision herein, with regard to claims for professional liability (as opposed to general liability or automobile liability), it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the indemnitees shall only apply if and when and to the extent that a court or other forum of competent jurisdiction has determined the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

Section 13. Insurance

13.1. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must

require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

13.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

13.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

13.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

13.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

13.1.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the

City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

13.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

13.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

13.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 14. Early Termination; Default

14.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

14.1.1. By mutual written consent of the parties;

14.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

14.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

14.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

14.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

14.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Consultant has received payment or the City has made payment.

Section 15. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 16. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this

Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 17. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 18. Property of the City

18.1. All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and inspection reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

18.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 19. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
 Attn: Jody Christensen
 231 5th Street
 McMinnville, OR 97128

To Consultant: _____
 Attn: _____

Section 20. Miscellaneous Provisions

20.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

20.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

20.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

20.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

20.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

20.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

20.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

20.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

20.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

20.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

20.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

20.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

20.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

20.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

20.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

20.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

20.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in

taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

20.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

20.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

20.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

By:_____

Print Name:_____

As Its:_____

Employer I.D. No._____

CITY:

CITY OF McMinnville

By:_____

Print Name:_____

As Its:_____

APPROVED AS TO FORM:

David Ligtenberg, City Attorney
City of McMinnville, Oregon

Sally Swanson Architects
City of McMinnville ADA TRANSITION PLAN
Scope of Work

Task #	Task Description
1	<p>Project Start-Up and Public Engagement</p> <ul style="list-style-type: none"> a. Thorough Review of the Existing ADA Reports and Documentation b. Develop a proposal and implementation timeline to engage the community in the ADA Transition Plan process. c. Specify and manage the proposed number of meetings, committees, workshops, etc. necessary to achieve a suitable engagement Plan. d. Incorporate opportunities for public comment into phases of the planning process. e. Develop public engagement materials including, but not limited to, surveys, informational materials, and presentations.
2	<p>Data Collection</p> <ul style="list-style-type: none"> a. Public buildings and facilities* b. Public Parks ** c. Public Rights-of-Way ***
3	<p>Draft and Refine Transition Plan Sections</p> <ul style="list-style-type: none"> a. A prioritized list of physical and programmatic modifications needed to achieve compliance. b. A timeline for implementation of the modifications. c. Identification of the official(s) responsible for the implementation of the Plan. d. Cost estimates or remediation measures to remove each identified barrier. e. A methodology for ongoing evaluation and updates to the Plan. f. Develop draft and final report incorporating comments from the City and Stakeholders.
4	<p>Project Database and Mapping Setup</p> <ul style="list-style-type: none"> a. Develop a database of the Transition Plan in Excel or other City approved software. b. Develop a GIS map for PROW barriers. c. Develop plans/diagrams of ADA barriers in surveyed facilities.
5	<p>Adoption of Final Transition Plan</p> <ul style="list-style-type: none"> a. Submit a final report that includes the ADA Transition Plan, and documentation of the community engagement process. b. Provide the final report and all related documents in both print and electronic formats that are accessible to individuals with disabilities. c. Present the final ADA Transition Plan to the City Council with City Staff. d. Review and incorporate public comment and feedback into the final Transition Plan.
6	<p>ADA Self-Evaluation</p> <ul style="list-style-type: none"> a. Identify Programs & Services and Associated Policies, Practices & Procedures b. Evaluate Policies, Procedures, and Practices for Compliance with ADA Title II, including but not limited to, communication methods, employment practices and policies, and emergency preparedness. c. Selecting Key Personnel Including Orientation Meeting d. Staff Surveys Including Questionnaires e. Draft Self-Evaluation Report f. Final Self-Evaluation Report

Sally Swanson Architects
City of McMinnville ADA TRANSITION PLAN
Scope of Work

*Public Buildings and Facilities: The chart below is from the City of McMinnville's Facility Condition Assessment Report dated 12.02.19. The information will need to be evaluated as part of the ADA Transition Plan project.

City of McMinnville

Facility Condition Assessment Report 12.02.19 **shared tax lot*

Facility List (year built)	Address	Square Footage
Airport Hangers	4000 NE Cirrus Ave, 97128	32,075
Aquatic Center (1983)	138 NW Park Dr., 97128	28,052
Nelson House (former Chamber building)	417 NW Adams, 97128	1730
Chegwyn Farms Restroom and Shelter (2011)	3200 NE Hembree St., 97128	1176
City Park Restrooms & Shelter (1968)	140 NW Park Dr., 97128	1516
Civic and City Hall/Garage	200 & 230 NE 2nd Street, 97128	60,252
Community Center (1924)	600 NE Evans Street, 97128	54,592
Community Development Center	231 NE Fifth Street, 97128	9022
Discovery Restrooms & Shelter (2005)	1300 SW Cypress Ln., 97128	3644
FAA/Oregon State Police (OSP) Building	3975 SE Cirrus Ave., 97128	12,250
Library & Carnegie Building	225 NW Adams St., 97128	19,781
Parking Structure (1981)	500 NE Davis St., 97128	43,833
Public Safety (2008) – Police Department	121 SW Adams St., 97128	35,462
Public Works/Riverside Drive (1971)*	1900 NE Riverside Dr., 97128	29,651
Senior Center	2250 NE McDaniel Ln., 97128	10,242
Thompson Park Restroom (2002)	1525 SE Morgan Lane, 97128	952
Tice Park Restrooms (2004)	2761 NE Baker St., 97128	560
Wastewater & Police Evidence	3500 NE Clearwater Dr., 97128	33,254
Wastewater Riverside Drive *	1900/1920 NE Riverside Dr., 97128	8,300
Wortman Park Restrooms & Shelters (2005)	2051 NE Lafayette Ave., 97128	4,143

Sally Swanson Architects
City of McMinnville ADA TRANSITION PLAN
Scope of Work

**Public Parks: The chart below shows the list of developed public parks from the Parks, Recreation, and Open Space Final Plan adopted by Resolution on June 25, 2024.

Parks	Acres
Neighborhood Parks	
Chegwyn Farms	3.9
Jay Pearson Park	2.9
Thompson Park	2.3
West Hills Park	7.8
Subtotal	16.9
Parklettes	
Bend-o-River	0.3
Greenbriar	0.2
Kingwood	0.6
North Evans	0.3
Taylor	0.3
Village Mill	0.5
Subtotal	2.3
Community Parks	
City Park	16.2
Joe Dancer Park	104.7
Discovery Meadows	21.4
Wortman Park	21.5
Subtotal	163.7
Special Use Parks	
Riverside Drive Dog Park	3.6
Subtotal	3.6
Linear/Trail Parks	
West McMinnville Linear Path	
Ash Meadows	1.3
Goucher St. Pathway	1.7
James Addition	1.3
Jandina	2.6
Jandina III	2.1
West McMinnville Linear Park	0.2
Westvale	4.5
BPA Path (paved)	
BPA Pathway I (2nd Street to Wallace)	2.8
BPA Pathway II (Wallace to 23rd)	4.1
Roma Sitton (23rd to Baker Creek Road)	1.7
BPA North (Baker Creek Road to chip path)	1.3
North McMinnville Trail	
Baker Creek North - Parcel D	14.9
Oak Ridge Meadows	5.4
Subtotal	43.8
Total Developed	230.3

*** Public Right of Way: The City has 119.5 center line street miles. In approximate numbers, the City may have 4147 curb ramps and 16 signalized intersections.

SSA ADA Transition Plan Fee Schedule

Task #	Task Description	Total Labor Costs
1	Project Start-Up and Public Engagement	
	a. Thorough Review of the Existing ADA Reports and Documentation	\$3,400.00
	b. Develop a proposal and implementation timeline to engage the community in the ADA Transition Plan process.	\$3,400.00
	c. Specify and manage the proposed number of meetings, committees, workshops, etc. necessary to achieve a suitable engagement Plan.	\$6,600.00
	d. Incorporate opportunities for public comment into phases of the planning process.	\$5,000.00
	e. Develop public engagement materials including, but not limited to, surveys, informational materials, and presentations.	\$5,000.00
	Subtotal:	\$23,400.00
2	Data Collection	
	a. Public buildings and facilities (19 facilities per the RFP).	\$28,900.00
	b. Public Parks (28 parks with 230 acres per the RFP)	\$37,400.00
	c. Public Rights-of-Way (119.5 centerline street miles, 4147 curb ramps, and an estimated 64 of pedestrian signals per the RFP and Q&A Response #1)	\$101,000.00
	Subtotal:	\$167,300.00
3	Draft and Refine Transition Plan Sections	
	a. A prioritized list of physical and programmatic modifications needed to achieve compliance.	\$4,600.00
	b. A timeline for implementation of the modifications.	\$1,600.00
	c. Identification of the official(s) responsible for the implementation of the Plan.	\$2,500.00
	d. Cost estimates or remediation measures to remove each identified barrier.	\$1,600.00
	e. A methodology for ongoing evaluation and updates to the Plan.	\$2,200.00
	f. Develop draft and final report incorporating comments from the City and Stakeholders.	\$5,000.00
	Subtotal:	\$17,500.00
4	Project Database and Mapping Setup	
	a. Develop a database of the Transition Plan in Excel or other City approved software.	\$11,600.00
	b. Develop a GIS map for PROW barriers.	\$19,000.00
	c. Develop plans/diagrams of ADA barriers in surveyed facilities.	\$5,200.00
	Subtotal:	\$35,800.00
5	Adoption of Final Transition Plan	
	a. Submit a final report that includes the ADA Transition Plan, and documentation of the community engagement process.	\$4,000.00
	b. Provide the final report and all related documents in both print and electronic formats that are accessible to individuals with disabilities.	\$4,000.00
	c. Present the final ADA Transition Plan to the City Council with City Staff.	\$6,800.00
	d. Review and incorporate public comment and feedback into the final Transition Plan.	\$5,200.00
	Subtotal:	\$20,000.00
6	ADA Self-Evaluation	
	a. Identify Programs & Services and Associated Policies, Practices & Procedures	\$3,000.00
	b. Evaluate Policies, Procedures, and Practices for Compliance with ADA Title II, including but not limited to, communication methods, employment practices and policies, and emergency preparedness.	\$12,000.00
	c. Selecting Key Personnel Including Orientation Meeting	\$6,000.00
	d. Staff Surveys Including Questionnaires	\$3,000.00
	e. Draft Self-Evaluation Report	\$7,000.00
	f. Final Self-Evaluation Report	\$4,000.00
	Subtotal:	\$35,000.00
	Grand Total Services	\$299,000.00
Notes: 1. If there is a significant increase to the scope of work outlined above, SSA reserves the right to renegotiate the services fee with the City. 2. Sally Swanson Architects, Inc. (SSA) guarantees that no additional fees will be charged prior written consent by the City. 3. All expenses are included, including reimbursable, if applicable. 4. All reports will be submitted in PDF format.		



City of McMinnville



**RFP: American with Disabilities
Act (ADA) Transition Plan
City of McMinnville, Oregon
June 5, 2025**

**Sally Swanson Architects, Inc.(SSA)
100 Bush Street, Suite 1625
San Francisco, California
www.swanarch.com
(415)-445-3045**



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June 2, 2025
Jody Christensen, Special Projects Manager
City of McMinnville
231 5th Street
McMinnville, OR 97128
Submitted via email: jody.christensen@mcminnvilleoregon.gov

Re: City of McMinnville, Oregon, Request for Proposals, Qualification-Based Selection (QBS) Process Professional Services, Americans with Disabilities Act (ADA) Transition Plan

Dear Jody Christensen and Colleagues,

Sally Swanson Architects, Inc. (SSA) a licensed and certified WBE, SBE and DBE firm, is pleased to present its Qualifications to the City of McMinnville to provide consulting services to prepare an ADA Transition Plan. A concentration of in-house staff resources, hands-on management and ADA access compliance experience and methodology will generate the highest value of services to the City of McMinnville.

Introduction to Sally Swanson Architects, Inc. (SSA)

SSA's dual professional practice of ADA access compliance and Architecture sets it apart from its peers. SSA's proposal documents the firm's 45 years of ADA access expertise during which time the firm has conducted accessibility surveys and created ADA Self-Evaluation and Transition Plans for more than 500 projects, which include dozens of cities, counties and public agencies, providing a full-range of services necessary to ensure client compliance with the myriad federal and state disabled access regulations, including the Americans with Disabilities Act (ADA), State Title 24 Building Code, U.S. Architectural and Transportation Barriers Compliance Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way, Public Rights-of-Way Accessibility Guidelines (PROWAG) and the Federal ADA Accessibility Guidelines and Standards (ADAAG & ADAS). SSA works collaboratively with the client and all stakeholders to deliver professional services. In addition, SSA uses an innovative method of data collection proven to be more efficient and accurate than manual surveying techniques.

Recent similar ADA accessibility assessments and transition plans include those for the Cities of Bend, Oregon; Mesa, Arizona; Rio Rancho and Santa Fe, New Mexico; Burlington, Vermont, and the Cities of Winters, Porterville, Los Banos, Richmond, El Cerrito, Emeryville, Sunnyvale, San Carlos, Mountain View, Monterey, San Marcos, Clovis and Bellflower in California.

Sally Swanson Architects, Inc. (SSA) Commitment to the City of McMinnville

"Everyone deserves a chance to participate..." this is the guiding principle that defines Sally Swanson Architects, Inc. (SSA) and illustrates the passion with which the firm conducts every project since its founding by Sally Swanson in 1980. SSA, and its dedicated staff, is ready, available, and committed to the City of McMinnville from the beginning of its contract to beyond its formal tenure. When the contract concludes SSA makes itself available to answer questions or concerns regarding further understanding of the services provided. Upon contract award, SSA will obtain a business license and open a local office in order to conduct the City of McMinnville scope of work.

Contact Information – Office Providing Service / Project Manager

Name of Firm - Sally Swanson Architects, Inc.
Address of Office - 100 Bush Street, Suite 1625, San Francisco, CA 94104
Office Phone - 800.533.8771
Project Manager – Sally Swanson, AIA, CEO, Principal-in-Charge
Phone – 415.308.6555 (mobile) ; **Email** - sswanson@swanarch.com

Project Manager / Leadership

The project Principal-in-Charge/Project Manager is Sally Swanson, AIA, who will provide a hands-on approach to every aspect of the project, complemented by her expertise, understanding and capabilities garnered from her 45-year-portfolio of ADA Self-Evaluation and Transition Plan projects. Ms. Swanson is the officer authorized to represent SSA in any correspondence, negotiations, and signing of any contract that may result with the City of McMinnville.

SSA Federal and State Tax ID Numbers

Federal: 01-0600856

State of CA: 308-5195 0

State of Incorporation: California

Signature of Proposer (SSA)

Sally Swanson, AIA, CEO is the individual authorized to bind SSA in contractual matters.

Required Statements

*"Proposer [SSA] has received and examined the Request for Proposals, ADA Transition Plan. * Proposer [SSA] accepts all terms and conditions contained in the Request for Proposal, all its addenda, and the Professional Services Agreement, except as otherwise specifically noted as an Exception in the Proposal." [note: no exceptions are taken or noted].*

"The submitted Proposal is valid for a period of no less than ninety (90) days from the time and date Proposals are due." [proposals due Thursday, June 5 at 2 p.m.]

"All materials and documents acquired or produced by the consultant in conjunction with the resulting contract shall be delivered to and become property of the City of McMinnville, without restriction or limitation of future use.

"Proposer has also received and examined the Addendum titled "ADA Transition Plan RFP Questions and Answers Response No. 1" as part of the Request for Proposals."

Why choose SSA?

A dedicated, knowledgeable and enthusiastic long-term, in-house team with unparalleled depth of experience.

Thank you very much for your consideration. We look forward to the next steps in the selection process.

Sincerely,



Sally Swanson, AIA, Principal-in-Charge / Project Manager
Sally Swanson Architects, Inc.

Project Understanding and Services Requested

Sally Swanson Architects, Inc. (SSA) understands that the City of McMinnville, Oregon has requested Proposals to select a qualified consultant to provide professional services to conduct an Americans with Disabilities (ADA) Transition Plan. Currently, the City has a budget of \$300,000 for this project.

The City of McMinnville is required per the Federal ADA laws to have an ADA Transition Plan. The Plan “identifies all barriers for access to public facilities (buildings, parks, programs, and public right-of-way) and an implementation plan on how those barriers will be removed”. In addition, an ADA Transition Plan will address equity issues and barriers to participation that many in the McMinnville community encounter. Approximately 19.3 percent of McMinnville residents currently identify as disabled per the 2023 ACS, US Census. Implementation of an ADA Transition Plan “is an adopted strategic action in the City’s MAC Town 2032 Strategic Plan under Engagement and Inclusion”.

It is further understood that SSA [if selected as the consultant] will assist the City in preparing the ADA Transition Plan with regard to Title II compliance and applicable Federal and State regulations for City facilities. The Plan will cover three (3) areas: public rights of way (ROW), parks, and buildings. Currently, the City has 19 public buildings (three of which are historic landmarks), 28 public parks with 230 acres, and 119.5 center line street miles. SSA [if selected as the consultant] will work with the City [proposed project team staffing of Principal-in-Charge/Project Manager, Sally Swanson, AIA, Don Salts, CASp as ADA Facilities Specialist, Dr. Deniz Turan, PhD as GIS/Database Specialist, Dr. Amber McNair, PhD as ADA Policy Specialist and Scott Saddlemire, CASp as QA/QC Specialist] to define standards, conduct and/or assist in an evaluation identifying deficiencies limiting accessibility and prioritize projects with a schedule and rough cost estimate to achieve compliance. Services to be provided that align with the City’s proposed budget.

The Project Scope of Work per the RFP will include, but is not limited to the following:

- **Introduction**
- **Executive summary**
- **Self-evaluation:** A list of physical barriers that limit accessibility to programs, activities, or services
- **Procedure evaluation:** Review of required processes such as the ADA public notice and Grievance procedure (Ordinance No. 5048, adopted in 2018).
- **Methods to remove barriers:** A detailed description of how to make facilities including, but not limited to, sidewalks, crosswalks, and public walkway, accessible
- **Schedule:** A timeline for completing the necessary steps including the periodical review to ensure ongoing compliance
- **Budget:** A proposed implementation budget.
- **Responsible official:** The name of the official responsible for implementing the plan
- **Public involvement:** A record of how the disability community and other interested parties were involved in the plan's development

The Plan will be delivered as a Project Final Document in “an e-reader-friendly format...”

Date of final completion is anticipated to be “twelve to eighteen months from issuance of Notice to Proceed”.

Proposals will be evaluated with the qualifications-based selection procedures of OAR 137-048-0220. The project does not receive Federal funds.

Firm Profile

Firm Name: Sally Swanson Architects, Inc.

Years in Business: 45 years

Address: 100 Bush Street, Suite 1625

San Francisco, CA 94104

T 415-445-3045

M 415-308-6555 (Sally Swanson's Cell)

Firm Website: www.swanarch.com

Main Contact: Sally Swanson, AIA, as CEO and Founding Principal

Type of Organization: Private Company, California Corporation Incorporated Nov. 19, 2001

Name of Owner: Founder/Principal-in Charge Sally Swanson, AIA

Number of Employees: 12

CA Architect License: #C12746

San Francisco Business Registration Certificate: #379994

Firm Certifications:

- CA Department of General Services: Small Business Enterprise - SB(Micro)
- San Francisco Municipal Transportation Agency (SFMTA): Disadvantaged Business Enterprise (DBE)

Federal Tax I.D.: 01-0600856

CA Secretary of State Entity Number: #2275182

Scope of Services: Founded in 1980, Sally Swanson Architects, Inc. has two practice specialties:

1. ADA Access Compliance
2. Educational and Civic Architectural Design

Firm History and Organization:

Forty-five years ago Sally Swanson Architects started, and has continued, as a pioneering firm with a passion for creating accessible environments. Our belief is that the best access compliance begins with a deep knowledge of ADA compliance and combines it with a strong design understanding. Bridging the strict requirements of California ADA codes as well as the requirements of place-making design, we collaborate with our clients to create environments that mitigate barriers. We cover the broadest spectrum of projects. Sally Swanson Architects, Inc, has never failed or refused to complete any contracts.

The firm's expertise includes the preparation of Guidance Documents for the Division of the State Architect (DSA) now being used by plan reviewers, building departments, and cities and counties across California. SSA utilizes surface profiling technology that speeds up field data collection on sidewalks six times faster than the traditional approach. SSA provided Universal Design guidelines for the 2014 Sochi, Russia Winter Olympics and Paralympics, and the 2018 PyeongChang, South Korea Winter Olympics and Paralympics. SSA also provided the Accessibility Guidelines for the 2020 Tokyo Summer Olympics and Paralympics.



sswanson@swanarch.com

BACKGROUND

License:

Architect, CA, 1982,
#C12746

Education:

Columbia University
M.A. in Urban Design & Planning

University of Illinois
B.A. in Architecture

University of Washington
Environmental Studies

ARCHITECTURAL EXPERIENCE

Cities: Mariposa, Madera, Oakley, Woodland, Richmond, Alameda, Los Angeles, San Francisco, Chowchilla, Bellflower, Danville, Emeryville, Lincoln, Lemoore, Monterey, Orinda, Rancho Cordova, Sanger, San Carlos, Santa Ana, San Marcos, Santa Clara, Solana Beach, Sunnyvale, Tulare, Turlock, and Vernon CA; Rio Rancho and Santa Fe, NM; Bend, OR; Mesa, AZ; Burlington

Counties: Mendocino, CA, Humboldt, Sacramento, Kings, Kern, Marin, Mendocino, Placer, San Mateo, Santa Barbara, Sonoma, Stanislaus, San Bernardino and San Luis Obispo, CA; Brown County, WI, and St. Louis County, MO

SALLY SWANSON, AIA

Principal-In-Charge & Project Manager

PROFILE

Ms. Swanson, Principal of Sally Swanson Architects, Inc. has 46 years of experience in architecture, planning and accessible design and has managed her own award-winning firm since 1980. Ms. Swanson and her team have provided Transition Plans, Self-Evaluations, cost estimates, preliminary plans, and design and construction documents to help various public clients achieve compliance with Federal and California standards.

WORK EXPERIENCE

Universal Design (UD) as practiced by Sally Swanson Architects, Inc. informs Global wayfinding solutions and creates public environments that are enjoyable, easy to use, and work for everyone at any age with or without a disability. Over the years, Ms. Swanson has introduced special tools and a process that is time-tested, successful and contains scoping and technical requirements for accessibility to site, facilities, and buildings, with emphasis on providing full and equal access to all. These Global principles and guidelines promote better "access" to transit and public spaces for all users by improving practicality, comfort and feelings of inclusiveness. Ms. Swanson embraces assistive technologies that create solutions for transit environments and other public places.

As a Paralympics Reporter accredited by the United States Olympic Committee, she has participated in developing accessibility standards from the Sochi 2014 Winter Paralympic Games, the Rio 2016 Summer Paralympic Games, the PyeongChang 2018 Winter Paralympic Games, the 2020 Tokyo Summer Olympics and Paralympics Games, to the Beijing 2022 Paralympic Winter Games. Through her pioneering vision, Ms. Swanson shows it is possible to significantly increase the level of accessibility for everyone including the elderly population and persons with disabilities.



dturan@swanarch.com

BACKGROUND

License:

Geographic Information Systems Specialization Coursera 2019

Education:

Ph.D., Hydrology from Rutgers University
M.Sc., Hydrogeology from Middle East Technical University
B.S., Geological Engineering from Middle East Technical University

ADA EXPERIENCE

Counties:

Sacramento County Department of Airports ADA Self-Assessment and Transition Plan, County of Merced ADA Transition Plan, County of Sonoma ADA Transition Plan, County of Mariposa ADA Transition Plan

Cities:

City of Porterville, City of Winters, City of Los Banos City of Montebello ADA Transition Plan, City of Madera ADA Transition Plan, City of Rialto Transition Plan

DR. DENIZ TURAN, Ph.D.

GIS & Database Specialist

PROFILE

Dr. Turan has been utilizing GIS services since her undergraduate years. On every project Ms. Turan was assigned on her path to achieving a Ph.D. in Hydrology as well as her work beyond university, Ms. Turan found it increasingly helpful to present her findings on a GIS-based map with an embedded interactive database including every detailed element of information belonging to that project.

WORK EXPERIENCE

Dr. Turan plays a key leadership role at SSA, where she manages a team of surveyors to ensure the timely and accurate delivery of technical reports. She assigns and oversees reporting tasks among team members, maintaining a high standard of quality and consistency. Her expertise spans analyzing, sorting, and ranking survey data for Quality Assurance/Quality Control (QA/QC) and prioritization scoring. She leverages GIS technology to create powerful visualizations and tracking tools that enhance client understanding and decision-making. In addition to producing ADA compliance reports and compiling comprehensive Transition Plans, Dr. Turan supervises and coordinates staff responsible for field surveys and data collection, ensuring operational efficiency. She also develops presentations, agendas, timelines, and cost estimates for business interviews, and provides technical GIS and database support during client interactions to ensure successful project outcomes.



dsalts@swanarch.com

BACKGROUND

License:

Certified Access Specialist (CAsp) – Issued by DSA #669
Building Inspector – ICC
Electrical Inspector – ICC
Plans Examiner – ICC
Mechanical Inspector – ICC
Plumbing Inspector – ICC
Combination Inspector – ICC

Education:

Butte College, Oroville, CA
Building Inspection
Technology

Diablo Valley College
Associate's Degree, Building
Inspection Technology

State of California, Berkeley
Resident Engineers Academy

ADA EXPERIENCE

Counties: Sacramento, Contra
Costa, Marin, California

Cities: Winters, Martinez, Los
Banos, Los Angeles, California

Types of Facilities Surveyed:
Pools, Parks, Playgrounds,
Nature Trails, Golf Courses,
Theaters, Schools,
Evacuation Shelters,
Retail, Office Buildings,
Historic Buildings, Stadiums,
Restaurants.

DON SALTS, CAsp

ADA Facilities Specialist

PROFILE

Mr. Salts joined SSA in 2023 bringing an extensive background in Code Enforcement, Interpretation, and Construction Inspection. As a CAsp Inspector he has performed Accessibility Assessments for dozens of clients throughout California in accordance with ADA, California Building Code and CRASCA Standards. Mr. Salts has a broad array of project management skills, is detail-oriented and a fast learner who understands the importance of keeping schedule and budget on track.

WORK EXPERIENCE

With a 36-year history as a Building Official and Deputy Director of Public Works he offers a valuable perspective from the client's point of view.

In addition, Mr. Salts has been a Professor of Construction Technology, having taught several different disciplines of construction including Building Code, Mechanical Code, Plumbing Code, Construction Process both residential and commercial, and Plan Review including Accessibility Requirements under the California Building Codes.

Cert #	Exp Date	Do Inspections
CASp-669	4/4/2025	Yes



Ssaddlemire@swanarch.com

BACKGROUND

License:

Certified Access
Specialist (CASP #677)
Division State Architect
Project Inspector Cert
#5893

Education:

Four-year apprenticeship
through IBEW/NECA

ADA EXPERIENCE

Cities: Santa Barbara,
Madera, Yorba Linda,
Montebello and Rialto,
CA

Counties: Sonoma, CA,
San Bernardino, CA

Higher Education: Solano
Community College
District

SCOTT SADDLEMIRE, CASp

Quality Assurance and Quality Control Specialist

PROFILE

Mr. SaddleMire is a Certified Access Specialist (CASP) with Sally Swanson Architects, Inc. (SSA). Mr. SaddleMire's responsibilities include comprehensive Quality Assurance and Quality Control management of Americans with Disabilities Act (ADA) projects where his role includes developing and producing detailed reports. He serves as a very hands-on Quality Assurance and Quality Control Specialist.

WORK EXPERIENCE

Mr. SaddleMire has managed and worked extensively on all types of accessibility compliance projects ensuring that clients are meeting the Americans with Disabilities Act (ADA) Title II, U.S. Architectural and Transportation Barriers Compliance Board Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way, Federal ADA Accessibility Guidelines and Standards (ADAAG & ADAS), CCR Titles 19 and 24, Code of Federal Regulations (CFR) 28, Part 35 of the ADA, CFR 49, Part 27 of the 1973 Rehabilitation Act and other relevant access obligations.

Cert #
CASP-677

Exp Date
4/1/2028

Do Inspections
Yes



Dr. Amber McNair, Ph.D.

ADA Policy Specialist

ambermcnair@avmcnair.com

BACKGROUND

Professional Memberships:
ACRP Ambassador
(2024 – current)

Education:

University of Pennsylvania
Ph.D. City & Regional
Planning

University of
Tennessee, Knoxville
M.S. Civil Engineering

University of California,
Berkeley
B.S. Civil & Environmental
Engineering

ADA EXPERIENCE

Sacramento County
Department of
Airports (SCDA)
Self-Assessment and
Transition Plan

PROFILE

After a decade of research and teaching in university settings, Dr. Amber McNair chose to pursue independent research consulting to sharpen her alignment with the research needs of the transportation industry and transportation-impacted communities. At SSA, Dr. McNair's mission is to improve the social benefits of mobility infrastructure through the enhancement of planning practice, such that passengers, neighbors, and workers are meaningfully heard, understood, and served.

WORK EXPERIENCE

As an ADA Policy Specialist, Dr. McNair provides services in instructional design, infrastructure inspection, and policy and practice evaluation. While teaching multiple courses focused on transportation planning and engineering at The Ohio State University (OSU), Dr. McNair developed educational modules on Universal Design and ADA policy for undergraduate and graduate students. Recently, she presented at the Transportation Research Board Annual Meeting workshop titled "Innovation, Equity, and Accessibility in Air Travel: Oh, the Places We Will Go." While working as a researcher at OSU, Dr. McNair engaged in a variety of policy and practice evaluation studies. She has extensive experience developing rigorous survey/interview protocols, researching city ordinances, writing technical reports, and synthesizing recommendations, which can be adapted to the ADA policy context.

Dr. McNair was also trained in infrastructure inspection while working as a Civil Engineer for the Federal Highway Administration. Later in her transportation graduate studies, she was awarded First Place in the annual student paper competition hosted by the Tennessee Section of the Institute of Transportation Engineers for her work titled "Assessment of Public Transit System Service Impacts with Consideration for Pedestrian Service Corridors and ADA-Compliant Pedestrian Infrastructure." The paper used geospatial analysis and in-person field inspection to generate estimates of the ADA-accessible service area of a case-study transit agency in Tennessee.

City of Winters

ADA Self-Evaluation and Transition Plan

Location: Winters, California

Date of Project: December 2023 – May 2024

Project Value: \$87,445

Services:

Certified Access Specialist (CAsp); Assessment of programs, services and activities; surveys of physical barriers in City buildings, parks, and public rights-of-way (PROW) ; Public Outreach, GIS and Staff Trainings

Type of Project: ADA Accessibility Compliance

Key SSA Staff:

Sally Swanson, Principal-in-Charge and Project Manager
Don Salts, CAsp, ADA Facilities Specialist
Dr. Deniz Turan, PhD., GIS and Database Specialist

Client Contact:

Eric Lucero, Director of Operations & Maintenance
City of Winters Public Works Department
318 First Street, Winters, CA 95694
Phone: (530) 795-4910 #115
Email:eric.lucero@cityofwinters.org



Project Description:

The City of Winters selected Sally Swanson Architects, Inc. (SSA) to update the City's 2018 Transition Plan Update. A new and comprehensive Transition Plan update was prompted as the City had acquired new property, built and opened new facilities and needed to ensure that City facilities are accessible to the public.

SSA is evaluating the City's current ADA Transition Plan, conducting inspections of City buildings, parks, public street rights-of-way (curb cuts), identifying improvements required throughout the City in order to comply with ADA standards and will complete a comprehensive update to the existing Transition Plan. A public meeting will be scheduled to assess the public's concerns and community outreach will be conducted to resources and organizations serving persons with disabilities. SSA Certified Access Specialists are included as part of the dedicated and specialized in-house project team. The ADA Transition Plan Update is scheduled to be completed by May 2024.

SSA completed this project on time and was on budget.

City of Santa Barbara Accessibility Reviews

Location: Santa Barbara, CA

Date of Project: July 2023 - December 2023

Project Value: \$110,000

Type of Project:

- ADA Accessibility Reviews
- Evaluation of Paths of Travel exterior/ interior of select city properties

Key SSA Staff:

Sally Swanson, AIA, Principal-in-Charge/Project Manager
Scott Saddlemire, CASp, ADA Facilities Specialist

Client Contact:

Brian D'Amour, PE, City Engineer
City of Santa Barbara, Public Works
630 Garden St, Santa Barbara, CA 93101
Phone: (805)-897-2661 Email: bdamour@santabarbaraca.gov

Project Description:

Sally Swanson Architects, Inc. (SSA) was contracted by the City of Santa Barbara to provide accessibility reviews at eight existing City facilities. For each facility the accessibility review included an evaluation of the paths of travel throughout the exterior and interior portions of the property and adjacent public right-of-way, including but not limited to parking spaces, ramps, stairs, public spaces, restrooms, signage, employee workspaces. The accessibility reviews checked for compliance against the Architectural Barriers Act, Americans with Disabilities Act (ADA), and the California Building Code Standards. The eight priority locations included:

- City Hall (including City Hall Annex)
- Central Library
- Eastside Library
- Westside Community Center
- Mackenzie Park (including Lawn Bowls)
- Alice Keck Park Memorial Gardens

While the City's Self-Evaluation and ADA Transition Plan was completed in 1992, and an ADA Transition Plan Update Report conducted in 2007 that included the Police Station, the Police Station was not part of this current scope of work to revisit eight (8) facilities.

SSA completed this project on time and was on budget.



City of Porterville

ADA Self-Evaluation and Transition Plan

Location: Porterville, CA

Date of Project: November 2023 - Present

Project Value: \$196,500

Key SSA Staff:

Sally Swanson, Principal-in-Charge/Project Manager,
Scott Saddlemire, CASp, ADA Facilities Specialist,
Deniz Turan, Ph.D. Database Specialist,



Client Contact:

Javier Sanchez Engineering and Program Management
Director, City of Porterville
291 N. Main Street, Porterville, CA 93257
Phone: (559) 782-7462, Email: jsanchez@ci.porterville.ca.us

Services:

ADA Surveys: Facilities, Parks, Parking Lots, Streets, Intersections and Sidewalks; Self-Evaluation: Policies, Programs and Services; Public Outreach, Database, Staff Training, Transition Plan



Type of Project:

ADA Self-Evaluation and Transition Plan

Project Description:

Sally Swanson Architects, Inc. (SSA) was engaged by the City of Porterville to compile and implement a comprehensive Americans with Disabilities Act (ADA) Self-Evaluation and Transition Plan for City programs, policies, facilities, parks, parking lots, streets, intersections and sidewalks. The scope of work also includes Public Outreach, Database, and Staff Training.



Project Approach and Management

The best projects are collaborations.

The City of McMinnville proposed Scope of Work as outlined in the Request for Proposals (RFP) is quite clear and SSA will meet or exceed all requirements of the contract. The project approach is flexible and will be tailored precisely to fit the City's needs and resources.

Critical Elements

Following are the elements and benefits of the City of McMinnville's manageable and living ADA Transition Plan document. The Access Compliance Assessment Survey will provide the City with:

- **A list of existing accessibility barriers describing each barrier and recommendation of a removal solution**
- **A preliminary cost estimate for removal of each barrier**
- **A priority assigned to each barrier**
- **A schedule for barrier removal**
- **Designation of a person responsible for barrier removal**
- **The ability to "check-off" mitigated barriers**
- **The ability to easily demonstrate steps taken toward removal of all barriers to access**

The City of McMinnville project approach includes the following tasks:

Task 1 Project Start-Up and Public Engagement

Project Management

Upon award of the contract, Sally Swanson Architects, Inc. (SSA) will begin planning, coordinating and scheduling a Project kick-off. Many project components discussed here regarding contacts, project schedule and communications will be agreed upon prior to an official project kick-off via email and phone conversations. SSA will manage its team including other administrative functions and overall Project activities consistent with the direction from the City of McMinnville in order to meet the Project schedule and budget during the course of services. Project term is anticipated to be "twelve to eighteen months from issuance of Notice to Proceed".

SSA will thoroughly review the City's existing ADA Reports, municipal codes, master plans, programs, city contract language, and activities for compliance with ADA and Federal/State accessibility requirements. SSA plans to attend at least four meetings with City staff, including an initial kick-off meeting; interim progress meetings will be at approximately 50%, 75%, and 90% completion. At the City's direction, SSA will also attend and present the ADA Transition Plan to the City of McMinnville City Council at a separate public meeting. SSA will attend a kick-off meeting with the City to confirm the scope of work before advancing Tasks. SSA will coordinate and meet with the City, other government agencies and other affected parties as required throughout the duration of the Project. The SSA Project Team will arrange to meet via virtual conference technology, at the City's discretion, with the City staff and other appropriate stakeholders to review, refine, and finalize the scope of work, programmatic evaluations, and completion schedules, as well as project communications, final deliverables and overall project strategies and goals.

Project Schedule

SSA will use Microsoft Project to develop schedules including critical tasks. SSA will prepare, monitor, and update progress schedule beginning at the kickoff meeting and ending at the City's acceptance of the final report for the Project. Schedule will indicate significant milestones, targeted completion dates and the critical path for the Project. SSA will notify the City if there are delays in any phase or Task of the Project. In such cases, SSA will make up the schedule in subsequent Tasks of the Project. The schedule

will be maintained and kept updated at all times and will be updated each time progress and milestones are changed. In addition, the progress schedule will be updated no less frequently than after each task is complete.

Invoicing

SSA will submit monthly invoice payments with a progress report summarizing partially or completed scope of work for processing. Any administrative time spent on invoicing shall be consumed by SSA's overhead and not billed separately.

Quality Assurance, Quality Control, Challenges

QA/QC routines begin before the mission. It is the first management activity to ensure that a process, item, or service is of the quality expected by the user, as well as to create management controls that address planning, implementation and review of data collection activities. Subsequent QA/QC activities provide routines and consistency checks to ensure project integrity, correctness, and completeness. Major challenges are generally not an issue in the conducting and coordinating of ADA Self-Evaluation and Transition Plan projects. Rather, it is up to the consultant to communicate effectively with all stakeholders and assure that City of McMinnville staff is kept apprised of project status at timely intervals. SSA's time-tested approach, honed over 45 years, ensures that stakeholders are fully informed. SSA will assist the City of McMinnville in hosting public outreach events, and soliciting input from stakeholders, per ADA §35.150(d)(1) during the development of the Transition Plan. In order to help the City to meet its legal obligations for public vetting of this Transition Plan, SSA proposes a Virtual Town Hall Contingency Plan that can be implemented at the City's discretion. The City may prefer in-person gatherings and SSA will comply with the City's directive. SSA will include online surveys that can be noticed to the public through the City's marketing channels (e.g., websites, newsletters, email blasts).

Task 2 Data Collection

Public Buildings and Facilities

SSA will conduct surveys of all Public Buildings and Facilities and their path-of-travel on the inventory list to identify and locate all physical barriers to access. SSA will be responsible for determining and identifying the applicable accessibility standards and codes under which features will be measured and confirm the standards and codes with the City prior to performing the surveys. SSA will determine specific features to be surveyed as required and as applicable under the accessibility standards and codes. Field surveys of public buildings and facilities (including interiors, accessible parking, passenger drop-off and loading zones, pedestrian pathways, restrooms, etc.) shall include the collection and precise documentation of field data for accessibility elements at each site identified in the scope of work. Field survey assessments will be done in the most unobtrusive manner possible to afford the least disruption to the City's business. SSA field survey staff will use the applicable current code standards; the updated 2010 regulations of Title II of the ADA and the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Public Parks

SSA will conduct surveys of all Public parks on the inventory list to identify and locate all physical barriers to access. SSA will be responsible for determining and identifying the applicable accessibility standards and codes under which features will be measured and confirm the standards and codes with the City prior to performing the surveys. SSA will determine specific features to be surveyed as required and as applicable under the accessibility standards and codes. Field surveys of parks will include the collection and precise documentation of field data for accessibility elements at each site identified in the scope of work. For City parks SSA will conduct surveys to include paths, parking lots, restrooms,

amenities, sport and play areas to identify and locate all physical barriers to access. SSA field survey staff will use the applicable current code standards; the updated 2010 regulations of Title II of the ADA and the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Public Rights-of-Way

Prior to performing the physical survey of Public Rights-of-Way, SSA will prepare a rating system for the non-compliant items to facilitate identifying and cataloging the type and severity of distress to be used in data collection, which will be approved by the City prior to beginning the survey. SSA's Accessibility Surveyors will collect the required information for the Public Rights-of-Way throughout the City. A data collection checklist, based on ADA and DOT requirements as well as PROWAG recommendations, will be pre-programmed into handheld data collectors. Using traditional measuring and smart-level equipment, Accessibility Surveyors will enter data directly into the data collectors. SSA will use handheld computers to input measurements in the field and identify the precise geographic location of the pedestrian features. Data collection, data validation, and linking to location and digital photo files will happen automatically as the Accessibility Surveyors enter data and move from point to point. The Accessibility Surveyors will access the data entry and validation forms and aerial photography along with right-of-way, utility, topographic, or other feature data sets pre-loaded on the data collectors for easy reference in the field. This is very important as the logistics for the day's work will be identified on the map to keep the project on schedule and to minimize the possibility of missing an important feature in the field.

Task 3 Draft and Refine Transition Plan Sections

ADA Transition Plan Development

- SSA will develop a comprehensive ADA Transition Plan based upon the results of the barrier assessments, policy reviews and City staff guidance. SSA will prepare the comprehensive ADA Self-Evaluation and Transition Plan for the City's review.
- SSA will prepare a timeline for the implementation of the modifications for the City's review.
- SSA will work with the City to identify the official(s) responsible for implementation of the ADA Transition Plan.
- SSA will provide cost estimates or remediation measures to remove each identified barrier.
- SSA will provide a methodology for the ongoing evaluation and update to the Transition Plan.
- SSA will develop the draft and final report incorporating comments from the City and Stake holders.

Task 4 Project Database and Mapping Setup

Project Database

At the City's discretion, once review of the field data is complete, SSA's technical staff will handle the important task of data entry:

1. Draft Monitoring Survey Database in Excel or City Approved Software
2. Final Monitoring Survey Database in Excel or City Approved Software

SSA has developed excellent computer-based tools, which provide a variety of accessibility functions. SSA's BlueDAG (Facilities) FileMaker (PROW) databases are relational database programs that assemble,

organize and maintain field survey data; maintain records of as-built conditions (actual measurements), code requirements (required measurements), conceptual cost estimates, and recommendations for solutions for the removal of non-compliant access barriers. The programs will also generate the access compliance survey report. The BlueDAG (Facilities) FileMaker (PROW) databases will list the identified barriers in a report format that cites all deviations from applicable accessibility requirements contained in the 1991 (revised in 1994) Americans with Disabilities Act Accessibility Guidelines and 2010 Americans with Disabilities Act Accessibility Standards and the International Building Code. The format will allow sorting of recorded information by location, type, severity, category, cost of identified barriers, etc.

Mapping

GIS will play a pivotal role in this project from data acquisition (organizing the data points generated during the survey) to creating a mapping interface for asset management, compliance monitoring and prioritizing improvements.

- 1. Draft City-Wide PROW GIS Reference Map**
- 2. Final City-Wide PROW GIS Reference Map**

The GIS process will result in a mapping interface that documents non-standard data points (code compliance deviations) related to City-wide Public Rights-of-Way: sidewalks and curb ramps, as well as locations of pedestrian signals, and exterior pedestrian elements serving the facilities, public buildings and parks. The resulting post-processed data will be posted to the project GIS geodatabase and made available for data analysis and prioritization. SSA will customize the data elements and analysis reports to facilitate the integration of the data into the City's ArcGIS. The inventory database and GIS mapping will be submitted as a draft for City review and comment, and comments will be incorporated into the final version. The GIS maps will be completed in Excel in 11" x 17" format compiled in a binder.

Task 5 Adoption of Final Transition Plan

- **SSA will finalize the completed ADA Transition Plan and documentation of the community engagement process, and present to the City staff.**
- **SSA will provide the City the final report and all related documents in both print and electronic formats ensuring that the report and documents are accessible to individuals with disabilities.**
- **At the request of the City, SSA will attend a City Council Meeting (in-person or via virtual conference technology at the City's discretion).**
- **SSA will review and incorporate public comment and feedback into the Final Transition Plan.**

ADA Self-Evaluation (OPTIONAL TASK)

If the City of McMinnville chooses to pursue this option, then SSA will identify and obtain all necessary documents and materials to conduct the audit process and survey. SSA will review existing City documentation, departmental and facility rules and regulations, planning documents and any other written policy documentation provided by the City and identified as relevant by SSA. SSA will assist the City in identifying the documents and materials needed for review that the City is to furnish and request such documents and materials from the City. The evaluation factors in current level of program accessibility, eligibility requirements, participation requirements, facilities used eligibility, staffing, transportation, communication, emergency procedures and grievance procedures for accessibility.

Selecting Key Personnel Including Orientation Meeting

SSA will coordinate with designated key City staff to orient staff with the Self-Evaluation process, including type of information that will be requested in staff surveys and how the information will be used for the Self-Evaluation. SSA will assist the City in identifying what staff/departments shall be considered as key staff to coordinate with. SSA meets with designated key City staff via virtual conference technology (at the City's discretion) to orient staff on the Self-Evaluation process, including types of information that will be requested in staff surveys and how the information will be used for the Self-Evaluation. SSA understands that some survey respondents may not have in-depth knowledge of the ADA and accessibility concepts, and that some cities may have heightened sensitivity to this process. SSA ensures that, throughout the entire survey process, SSA is available to answer any questions, and work closely with the City to ensure maximum comfort and security with the process and results.

Example of Information Elicited and Reviewed

For example, SSA's program access specialist reviews existing policies, procedures and practices pertaining to the City's programs – both on-site and online – to ensure effective communication with members of the public, particularly individuals with disabilities. These recommendations and best practices will cover the appropriate types of auxiliary aids or services necessary to ensure effective communication with individuals with disabilities and will identify the most effective methods of:

- making aurally-delivered information available to individuals who are deaf or hard-of-hearing
- making visually-delivered materials available to individuals who are blind or have low vision

Final note on SSA's Proposed Approach

The strength of any prospective approach is in the structure it provides. SSA's time-tested process has been proven to be immensely successful, but "one size may not fit all." By this we mean we will tailor the specifics to serve the needs and resources of the City of McMinnville and its stakeholders, whether that means adapting the schedule to allow for unforeseen local circumstances or fine-tuning ways to communicate the process with all concerned.



SSA - Work Order Allocation

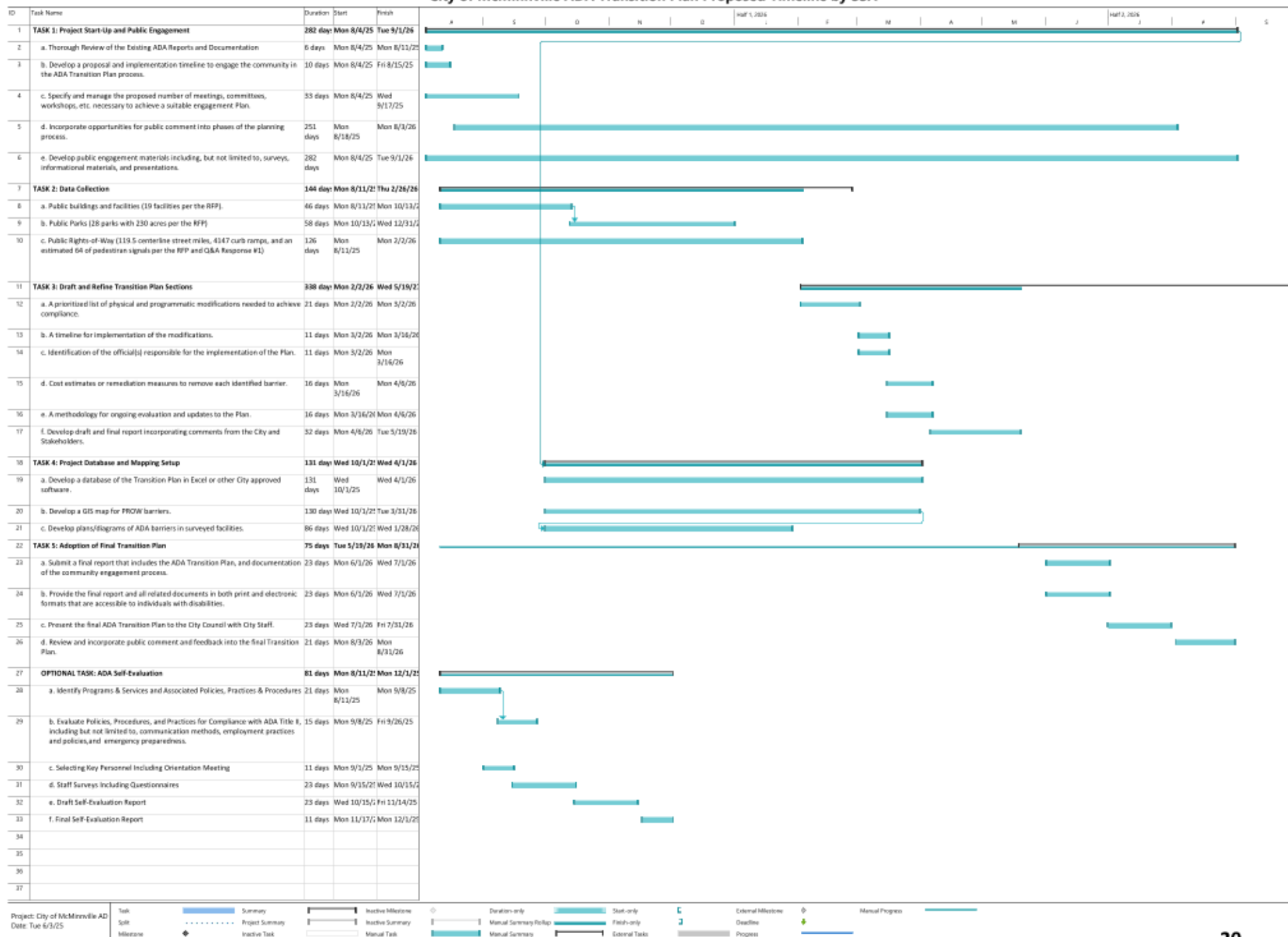
Task #	Tasks	Sally Swanson Architects, Inc.							Total Hours
		PIC / Project Manager	CASp QA/QC	Policy Specialist	Facility Specialist	GIS/ Database Specialist	Technical Staff	Operations	
		Sally Swanson	Scott Saddlemire, CASp	Amber McNair, Ph.D.	Don Salts, CASp	Deniz Turan, Ph.D.	Various	Various	
1	Project Start-Up and Public Engagement								
	a. Thorough Review of the Existing ADA Reports and Documentation	4	4	4	4	4	2		22
	b. Develop a proposal and implementation timeline to engage the community in the ADA Transition Plan process.	4	4	4	4	4	2		22
	c. Specify and manage the proposed number of meetings, committees, workshops, etc. necessary to achieve a suitable engagement Plan.	6	6	6	6	6	2		
	d. Incorporate opportunities for public comment into phases of the planning process.	4	4	4	4	4	2		22
	e. Develop public engagement materials including, but not limited to, surveys, informational materials, and presentations.	4	4	8	4	4	2		26
	Subtotal:	22	22	26	22	22	10	0	92
2	Data Collection								
	a. Public buildings and facilities (19 facilities per the RFP).		8		160	20			188
	b. Public Parks (28 parks with 230 acres per the RFP)		8		200	20	20		248
	c. Public Rights-of-Way (119.5 centerline street miles, 4147 curb ramps, and an estimated 64 of pedestrian signals per the RFP and Q&A Response #1)					80	40	800	920
	Subtotal:	0	16	0	360	120	60	800	1356
3	Draft and Refine Transition Plan Sections								
	a. A prioritized list of physical and programmatic modifications needed to achieve compliance.	2	2	2	2	8	8		24
	b. A timeline for implementation of the modifications.	2	2	2	2	2			
	c. Identification of the official(s) responsible for the implementation of the Plan.	4		4	4	4			
	d. Cost estimates or remediation measures to remove each identified barrier.	2	2	2	2	2			10
	e. A methodology for ongoing evaluation and updates to the Plan.	2	2	2	2	2			
	f. Develop draft and final report incorporating comments from the City and Stakeholders.	2	2	8	2	8	4		
	Subtotal:	14	10	20	14	26	12	0	34
4	Project Database and Mapping Setup								
	a. Develop a database of the Transition Plan in Excel or other City approved software.		4		16	40	8		68
	b. Develop a GIS map for PROW barriers.					80	20		100
	c. Develop plans/diagrams of ADA barriers in surveyed facilities.		4		20		8		32
	Subtotal:	0	8	0	36	120	36	0	200
5	Adoption of Final Transition Plan								
	a. Submit a final report that includes the ADA Transition Plan, and documentation of the community engagement process.	2	2	8	2	16	4		34
	b. Provide the final report and all related documents in both print and electronic formats that are accessible to individuals with disabilities.	4	4	4	4	8	8		32
	c. Present the final ADA Transition Plan to the City Council with City Staff.	4	4	4	4	4	2		22
	d. Review and incorporate public comment and feedback into the final Transition Plan.	2	2	4	2	8	2		
	Subtotal:	12	12	20	12	36	16	0	88
	Grand Total Optional Services	48	68	238	444	324	134	800	1902
Notes: 1. If there is a significant increase to the scope of work outlined above, SSA reserves the right to renegotiate the services fee with the City. 2. Sally Swanson Architects, Inc. (SSA) guarantees that no additional fees will be charged prior written consent by the City. 3. All expenses are included, including reimbursable, if applicable. 4. All reports will be submitted in PDF format.									

ADA Self-Evaluation (OPTIONAL TASK)									
a. Identify Programs & Services and Associated Policies, Practices & Procedures				16					16
b. Evaluate Policies, Procedures, and Practices for Compliance with ADA Title II, including but not limited to, communication methods, employment practices and policies, and emergency preparedness.				40					
c. Selecting Key Personnel Including Orientation Meeting				40					40
d. Staff Surveys Including Questionnaires				16					16
e. Draft Self-Evaluation Report				40					40
f. Final Self-Evaluation Report				20					20
Subtotal:	0	0	172	0	0	0	0	0	132

SSA - Availability Chart

Name			Sally Swanson, AIA	Scott Saddlemire, CASp	Don Salts, CASp	Deniz Turan, Ph. D.	Amber Mcnair, Ph. D.
Title			Principal-in-Charge + Project Manager	QA/QC	ADA Facilities Specialist	GIS / Database Specialist	ADA Policy Specialist
Role & Responsibility on Team			Principal-in-Charge + Project Manager	QA/QC	ADA Facilities Specialist	GIS/Database Specialist	ADA Policy Specialist
Special Training, Licenses and Certifications			Architect, CA, 1982, #C12746	Division State Architect Project Inspector, Certified Access Specialist (CASp), Lead Certified Access Specialist for Superior Construction Services	Certified Access Specialist (CASp),	Geographic Information Systems Specialization Coursera 2019	ACRP Ambassador
Percentage of City of McMinnville ADA TP Workload			50%	50%	50%	50%	50%
Project	Start Date	End Date					
City of San Pablo ADA TP	May, 2025	December, 2025	30%	30%	30%	30%	30%
City of Los Banos ADA SETP	June, 2024	August, 2025	15%	15%	15%	15%	15%
Sacramento County Department of Airports ADA SETP	May, 2023	May, 2028	5%	5%	5%	5%	5%

City of McMinnville ADA Transition Plan Proposed Timeline by SSA



ADA Accessibility Consulting Services and Experience

Self-Evaluations

SSA provides a comprehensive review of an organization's policies and procedures, with recommendations for improving program access for those with disabilities. SSA can also train staff to evaluate on their own. Barriers to ADA compliance are pinpointed so that they can be addressed to achieve compliance. These include not only physical access at facilities, programs, and events, but also employment policy, training, emergency management and grievance policy management.

Transition Plans

The Transition Plan contains ADA surveys of all public facilities, identifying any structural modifications necessary for the removal of barriers to program accessibility. SSA has more than thirty-six years of experience developing ADA Transition Plans for over 100 public and private entities; we also work with Cities, such as St. Louis, MO, where we trained staff to conduct rights-of-way surveys.

Physical Access Compliance Survey / Paths of Travel

SSA's Paths of Travel surveys provide a comprehensive, detailed physical survey, including full documentation, evaluation reports, and proposed alternative cost-saving solutions.

ADA Workshops and Training

Our experienced CASp professionals have provided training of staff on ADA surveying, design, disability awareness, and ADA sensitivity. SSA delivers programs and activities that minimize exposure to complaints and grievances. We can provide workshops about the new ADA Accessibility Guidelines and how the new 2010 requirements differ from the California Accessibility Standards.

Guidelines, Standards and Specifications

SSA has prepared a variety of guidance documents that cover all accessibility issues and requirements that must be considered for project designs. Standards and checklists set a framework of code compliance expectations that can be quickly determined.



"Sally Swanson Architects was solely responsible for the development of a Transition Plan for the County of Mendocino ... SSA demonstrated a high degree of professionalism ... Unambiguous advice and effectual guidance is typical for this firm. They provided the County of Mendocino with a product that assists the division of Building and Grounds in the identification and removal of architectural barriers within given budgetary and time constraints. We would readily work with SSA again and recommend their services."

– Tim Garrison, Manager, Buildings and Grounds
County of Mendocino, General Services Department

Innovative Solution for Data Collection

Digital Profiling of Sidewalk Inventory & GIS Integration

SSA utilizes a walking sidewalk profiler developed by Surface, Systems and Instruments, Inc. (SSI), specifically to measure compliance with ADA criteria. The profiler offers a superior alternative to the traditional method of manual survey collection with a cost-effective proprietary technology in gathering field data within the public rights-of-way.

Comparing manual sidewalk collection (dots) vs profiler sidewalk collection (lines)

At SSA, we ensure the survey data are accurate and precise. The profiler survey data in the below diagram (lines) collected by four different surveyors confirms the consistency of data and the repeated performance of identifying cross slopes greater than 2.0%. However, the manual data collection (dots) lacks the same consistency and fails to capture some areas where the cross slope is greater than 2.0%. For these reasons, SSA uses the profiler for all sidewalk data collection to ensure our clients are given the most accurate and meaningful data.



Profilers and GIS Tools

Sidewalk profiling devices enable the capture of highly accurate location-specific data about barriers and hazards that can make a sidewalk difficult to navigate. Innovative software mounted on the profilers allow for the data to be exported to a city's asset management database or integrated into a geodatabase.

Unlike survey data collected at a curb ramp, which is located at one point in an intersection, data along a mid-block section of a sidewalk could be spread over anywhere between a ¼ mile to several miles. Using GIS technology to pinpoint these multiple locations along the length of a section of sidewalk is the most feasible way for a contractor to go out and repair sections of sidewalk.



Using Surface Profilers with a Geographical Information System (GIS) is a cost-effective solution to record and map ADA barriers within pedestrian infrastructures.

Prioritize Barriers

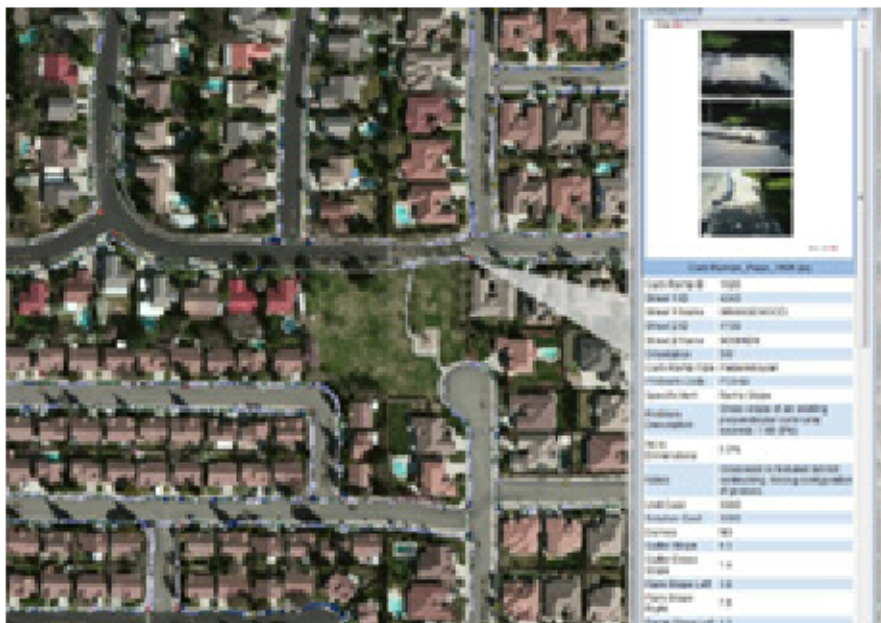
Barriers are prioritized based on their proximity to several criteria, such as popular attractors, schools, hospitals, transit stops, population, and main traffic routes. Layers of information are compiled and integrated into GIS. Barriers with heavy pedestrian activity are assigned a higher activity score, which determines their priority for upgrades and help the clients prepare ahead of time. Knowing the prioritization scores allows fitting the scope of work to existing budgets.

Generate Reports

The sidewalk inventory data is stored in a database which then is translated into a detailed report in an organized format that can be adjusted according to the client's needs.

Benefits

A detailed inventory of pedestrian infrastructure meets the basic requirement of the law and serve as a tracking tool for future planning and construction needs.





City of McMinnville



**RFP: American with Disabilities
Act (ADA) Transition Plan
City of McMinnville, Oregon
June 5, 2025**

**Sally Swanson Architects, Inc.(SSA)
100 Bush Street, Suite 1625
San Francisco, California
www.swanarch.com
(415)-445-3045**

STAFF REPORT

DATE: August 26, 2025
TO: Vicki Hedges, City Manager
CC: Geoff Hunsaker, Public Works Director
FROM: Willy Williamson, Airport Administrator
SUBJECT: Municipal Code Title 11 Update

Report in Brief:

This report requests consideration of an ordinance to adopt the updated McMinnville City Code Title 11.

Background:

The most recent update to City Code Title 11 occurred in 2010. Since that time, several changes have taken place, including:

- Updates to federal regulations.
- Hiring of a new Airport Manager.
- Changes in definitions and terminology used in the aeronautical industry.

These and other developments make it necessary to update Title 11 to ensure accuracy, clarity, and consistency with current practices.

Discussion:

The current Title 11 is significantly outdated. A comprehensive review was conducted, and substantial revisions were made to:

- Ensure accuracy and clarity.
- Reduce redundancies.
- Improve document durability.
- Incorporate provisions for:
 - City-employed Airport Manager responsibilities.
 - Unmanned Aircraft Systems (UAS/drone) operations.
 - Removal of unnecessary and arbitrary permitting requirements.

The revision process included a public review involving airport tenants, the Airport Commission, and City staff.

Both the Airport Commission and City staff recommend adoption of the updated Title 11 by ordinance.

Fiscal Impact:

No fiscal impact is expected for the City or Airport users and tenants.

Recommendation:

Staff recommend that the City Council adopt, by ordinance, the attached updated City Code Title 11 (Airport and Aviation) as recommended by the Airport Commission.

Attachments:

1. Ordinance 5163, including Exhibit A (Updated City Code Title 11)

ORDINANCE NO. 5163

AN ORDINANCE ADOPTING AN UPDATE TO THE MCMINNVILLE MUNICIPAL CODE, TITLE 11 AIRPORT AND AVIATION.

RECITALS:

WHEREAS, the City of McMinnville Municipal Code, Title 11 (Airport and Aviation) references outdated regulations; and

WHEREAS, the Code language uses outdated terminology; and

WHEREAS, the City of McMinnville has hired a professional Airport Manager who will assume the administrative, management, oversight and planning at the Airport, necessitating changes to Code language; and

WHEREAS, the contracted Airport Management company no longer meets the needs of the City; and

WHEREAS, advances in aircraft design, flight characteristics and airport use require additional guidance; and

WHEREAS, these Code changes will clarify Airport management, responsibilities and rules, etc.

NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

1. The McMinnville Municipal Code Title 11 is updated and attached hereto as **Exhibit A**.
2. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 26th day of August, 2025 by the following votes:

Ayes: _____

Nays: _____

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBITS:

- A. Updated City Code Title 11

Exhibit A

Title 11 AIRPORT AND AIRCRAFT

Chapters:

- [11.01](#) Definitions
- [11.04](#) Regulations
- [11.08](#) Administration
- [11.10](#) Property Regulations
- [11.12](#) Ground Rules
- [11.16](#) Takeoff, Landing and Taxiing
- [11.28](#) Miscellaneous Regulations, Enforcement, and Penalties

Chapter 11.01 DEFINITIONS

Sections:

- [11.01.010 Definitions.](#)

11.01.010 Definitions.

Nothing in this Chapter shall be construed to mean that the City intends to permit any violation of any federal or state law. All words and phrases used in this Chapter shall use the meanings as contained in the FAA's Pilot's Handbook of Aeronautical Knowledge and/or ORS Chapter 836.005, unless additional information is required. Definitions specific to the City of McMinnville are listed below. The following terms shall amend or supplement definitions contained in the FAA's Pilot's Handbook of Aeronautical Knowledge for this code and all referenced documents published by the City of McMinnville.

Aeronautical: any operations, activity, maintenance, service, location or area, etc. that may be used by aircraft or in support of aircraft, including UAS or other airborne contrivances.

Aircraft Movement Area (AMA) - The AMA at McMinnville Municipal Airport are defined as the numbered runways, lettered taxiways and other areas of the airport utilized for taxiing, takeoff and landing of aircraft. The Aircraft Movement Area does, however, exclude the aircraft parking areas, the loading ramp, and the taxilanes serving the general aviation hangar storage area.

Aircraft Operating Area (AOA) - The AOA at McMinnville Municipal Airport is defined as all areas available for aircraft use and/or accessible by aircraft, including the AMA. This area is also referred to as "Air Side" and is generally all of the airport property within the Airport's perimeter fence.

Airport - means the land and facilities owned or controlled by the City of McMinnville known as McMinnville Municipal Airport.

Airport Commission - means that body which recommends to the City Council, and Airport Manager on matters pertaining to McMinnville Municipal Airport as set forth in Ordinance 2145 and Chapter 2.28 of this Code, or as may be amended.

Airport Manager - means the individual employed by the City of McMinnville with that title and having responsibility and authority for the administration and management of McMinnville Municipal Airport.

Airport Use Agreement - means the written agreement between the City and a Person/Entity specifying the terms and conditions under which the Person/Entity may conduct aviation activities, special events, and/or demonstrations at the Airport. The Airport Manager shall have the authority to issue Airport Use Agreements.

Autonomous Aircraft - means all aircraft including UAS that do not have a person actively controlling (including remote controls) of the aircraft.

Autonomous Flight - means any aircraft or aeronautical contrivance that does not have active control or communication of location or activity.

Through-The-Fence - means private or commercial aeronautical access onto airport property from an adjacent privately owned property.

Unmanned Aircraft Systems (UAS) – UAS means all unmanned aircraft including drones as defined by the Federal Aviation Administration in 14 CFR.

Chapter 11.04 REGULATIONS

Sections:

- 11.04.010 General Regulations.
- 11.04.030 Use of airport subject to regulation.
- 11.04.040 Unmanned Aircraft Systems (UAS, UAV, RPV, Drone, Etc.).

11.04.010 General Regulations.

A. All federal, state, and local laws, regulations, codes, and policies apply, except for Chapters in this code which exceed the local code and policies related to the Airport and aviation. All sections within this Chapter 11 apply to the Airport and aviation related concerns. Any code revision, policies, rules and standards shall comply with federal, state, and local laws.

B. All users and stakeholders of the airport shall, at all times, comply with current Federal Aviation Regulations (FAR), information contained in the Aeronautical Information Manual (FAR/AIM), Grant Assurances, Oregon Revised Statute, and McMinnville Municipal Code, policies and ordinances and all other applicable laws, regulations and ordinances.

11.04.030 Use of airport subject to regulation.

No person or entity shall use the airport or any portion thereof, or any of its improvements or facilities identified in the Airport Layout Plan, for non-aeronautical activities, and/or for commercial business or commercial aeronautical activities unless and until they have first complied with all requirements of the Municipal Code, any applicable local ordinances or regulations, and the adopted Minimum Standards for Commercial Aeronautical Activities.

11.04.040 Unmanned Aircraft Systems (UAS, UAV, RPV, Drone, etc.)

A. Operations of UAS within the boundaries of the City of McMinnville shall abide by all Federal and State laws and regulations, etc.

B. UAS shall not be launched and/or recovered within rectangular areas of each runway measuring 1.5 nautical miles (9,000 feet) from each end of the runway and 0.5 nautical miles (3,000 feet) to each side of the runway, as depicted in Figure 11.04-1, without specific authorization by the FAA and written authorization by the Airport Manager.

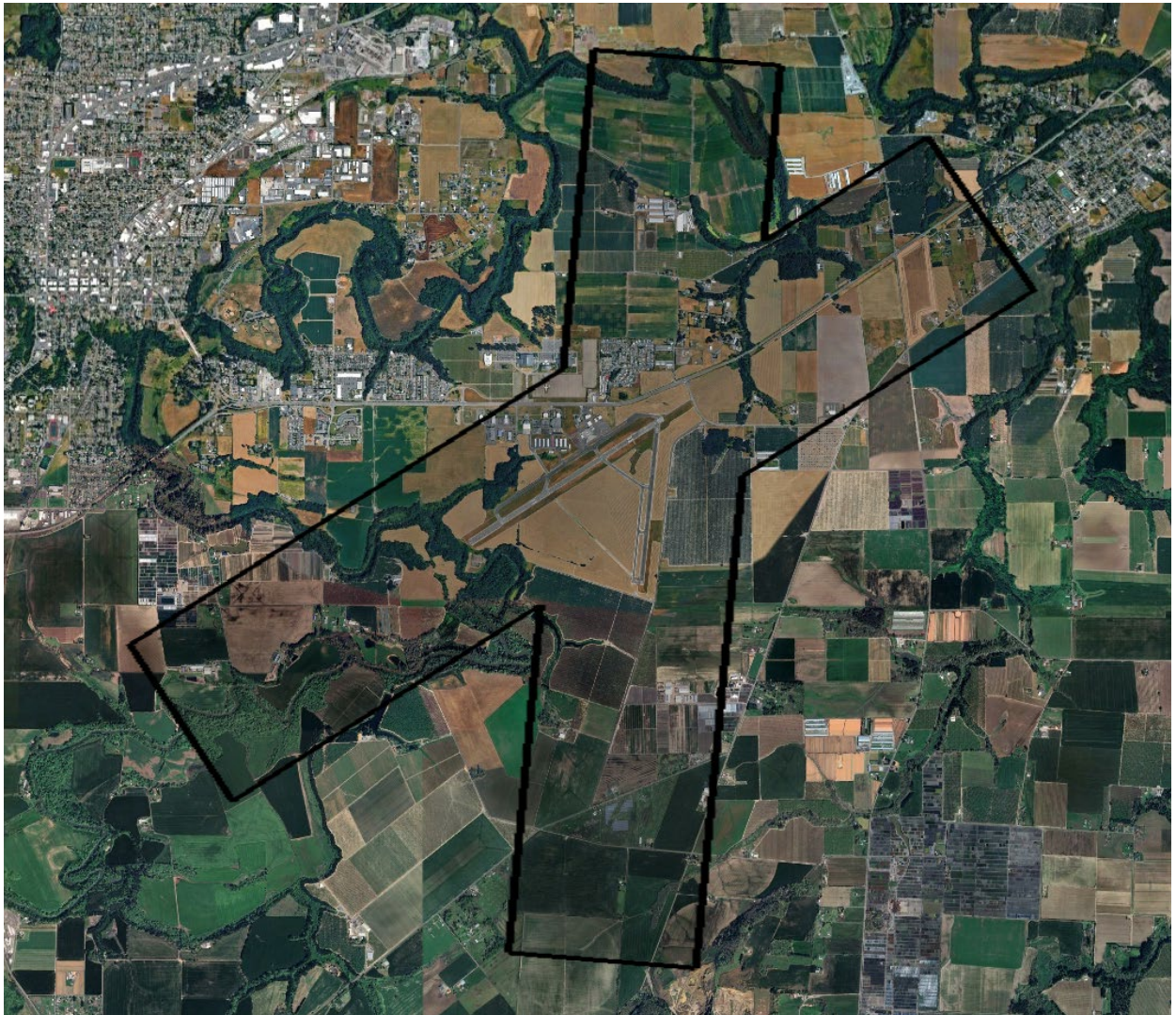


Figure 11.04 - 1

Chapter 11.08 ADMINISTRATION

Sections:

- 11.08.010 Airport Administrator.
- 11.08.020 Airport Manager's Powers and Duties.
- 11.08.030 Removal of Abandoned or Disabled Aircraft, Vehicles or Parts.
- 11.08.040 Commercial Activity Authorization.
- 11.08.050 Airport Use – City Held Harmless.

11.08.010 Airport Administrator.

The City Manager shall act as an Airport Administrator for all activities related to the McMinnville Municipal Airport. As the Airport Administrator, the City Manager may delegate all responsibilities to the Airport Manager, who will report directly to the Public Works Director.

11.08.020 Airport Manager's Powers and Duties.

The Airport Manager is empowered to oversee the operations of the McMinnville Municipal Airport and to apply and enforce the provisions of this Chapter. The rules contained in this Chapter are supplemental to the Federal and State Aviation Regulations, and the McMinnville Municipal Code, and apply specifically to McMinnville Municipal Airport. The Airport Manager has the authority to verify and enforce all aeronautical and non-aeronautical uses at the Airport.

The Airport Manager:

- A. Shall represent the City, at all times, regarding the McMinnville Municipal Airport. The Airport Manager is empowered to oversee the operations of the McMinnville Municipal Airport and to apply and enforce the provisions of this Chapter. The rules contained in this Chapter are supplemental to the Federal and State Aviation Regulations, and the McMinnville Municipal Code, and apply specifically to McMinnville Municipal Airport.
- B. May publish general information relative to McMinnville Municipal Airport as provided in this Chapter and is authorized to publish rules and additional explanatory material. Additional explanatory information is published solely for the convenience of, and assistance to pilots, is advisory only, and shall not modify any rule or regulation of the Federal Aviation Administration or of the City. The Airport Manager may post signs at the airport which state or apply the rules, regulations, orders, or instructions. Each person on the airport shall comply with all rules, regulations, and signs posted by the Airport Manager pursuant to this Chapter.
- C. May issue Airport Use Agreements for operational and maintenance activities, and for special events and/or demonstrations, provided FAA requirements are met, and no such event or demonstrations shall be conducted by anyone without prior written permission.

- D. Is authorized to make decisions as necessary for any contingency or emergency not specifically covered by the Municipal Code.
- E. Shall always have authority to take such action as may be necessary to safeguard the public in attendance at the airport. Every person on or using the airport shall cooperate in the enforcement of these rules and ensure that all persons on the premises use care and caution to prevent injury to persons or damage to property.
- F. May suspend or restrict any or all operations whenever such action is deemed necessary.
- G. May suspend, as a means of safeguarding this airport and the public, the privileges of the airport and its facilities to any person refusing to comply with these rules. Persons suspended under this provision shall have the right to appeal the suspension to the Airport Administrator.
- H. Shall have authority to restrict operations to such portion or portions of the airport at their sole discretion. Any part of the airport temporarily closed or restricted from operations or otherwise not available for any reason will be clearly marked in accordance and comply with Federal Aviation Regulations (FAR) and Airman's Information Manual (AIM).

11.08.030 Removal of Abandoned or Disabled Aircraft, Vehicles or Parts

Upon demand made by the Airport Manager to the owner or operator of any abandoned or disabled items, including but not limited to aircraft, vehicles or parts wrongfully or improperly left on airport property, it shall be the duty of the owner or operator to remove the items at their own expense.

- A. If, after demand, the owner or operator fails or refuses to remove the items within a reasonable time, as determined by the Airport Manager, based on the circumstances and conditions of hazard or nuisance created, but not to exceed 30 days, the Airport Manager shall impound and store the items. The cost of removal and storage shall be a charge against the owner or operator of the items. The items will be released to the owner or operator upon payment in full of the charges.
- B. If the Airport Manager cannot locate or is unable to communicate with the owner or operator of the items, the Airport Manager shall, at their sole discretion, determine whether the aircraft or parts pose a sufficient hazard to aircraft activity to require prompt and orderly removal. The cost of removal and storage of an aircraft or parts shall be a charge against the owner or operator.
- C. The Airport Manager shall mail or email written notice to the registered (legal) owner or operator at the address on file, advising them of the removal and storage of items, including aircraft, vehicles, parts, or other items. If more than 60 days pass after giving written notice, the Airport Manager may, at their discretion, engage in the process, outlined in ORS 131A, to seize, forfeit and sell the items for the cost of removal and storage, including administrative and other expenses.
- D. The City shall not be liable for the cost of removal, storage, or any damage which may be incurred due to the provisions of this Chapter.

11.08.040 Commercial Activity Authorization.

All commercial activity at the airport shall conform to the adopted Minimum Standards for Commercial Aeronautical Activities. When the Airport Manager determines that a person is engaged in or proposes to engage in commercial activity at the airport, the Airport Manager may grant that person permission to do so; may issue that person an airport use agreement with restrictions or conditions; may require the person to enter into a land lease or agreement; or may, deny permission. The Airport Manager will consider the following conditions in determining if any commercial (aeronautical or non-aeronautical) activity will be authorized to conduct business:

- A. The impact of the new commercial activity on public safety and convenience. The Airport Manager will impose conditions and restrictions necessary to ensure safety in the air and on the ground, and to preserve unobstructed air and surface traffic patterns and runway approaches.
- B. The amount of space at the airport, the customary uses of the airport, and the compatibility of the new commercial activity with present and planned development at the airport.
- C. Whether the new commercial activity complies with federal, state, and local laws and regulations, including land use regulations.
- D. Whether the new commercial activity is conducted to promote aviation.

11.08.050 Airport Use – City Held Harmless.

The privilege of using the airport and its facilities, in any capacity, shall be conditioned on the assumption by the user of full responsibility and risk for the use, and the user releases and agrees to hold the City and its officers, employees, and agents, harmless, and to indemnify them from any liability or loss resulting from the use.

Chapter 11.10 PROPERTY REGULATIONS

Sections:

- 11.10.010 City not liable.
- 11.10.020 Airport land and building uses
- 11.10.020 Damage, injurious activities and abandonment prohibited.
- 11.10.030 Damage to airport property – Compensation.

11.10.010 City not liable.

The City assumes no responsibility or liability for loss, theft, vandalism, injury, or damage to persons or property on the airport or for using airport facilities, including but not limited to fire, wind, flood, earthquake, collision damage or force majeure.

11.10.020 Airport land and building uses.

- A. All properties within the border of the Airport shall conform to uses described in this Chapter.
- B. The Airport provides an environment for public and private aviation to access the City of McMinnville and Yamhill County. The Airport also provides a location for Emergency Management activities during any such emergency or disaster affecting the general public. The airport's runways shall, at the discretion of the Airport Manager, remain open during emergency and disaster events. Such events should not preclude the ability of the flying public to operate at the Airport.
- C. All properties within the confines of the Aircraft Movement Area (AMA) and Aircraft Operating Area (AOA), defined herein, shall be for Aeronautical use only.
- D. All hangars, aircraft parking areas and other improvements within the AMA and AOA shall be Aeronautical use, e.g. hangars shall be used to store and maintain aircraft, etc. and shall conform to FAA regulations. Failure to abide by the aeronautical use requirements may result in cancellation of leases and rent agreements, and eviction from the airport.
- E. Areas within the AMA and AOA may deviate from development and zoning standards contained in City Code to ensure operational safety, at the discretion of the Airport Manager. However, all improvements shall meet the applicable building and fire codes.
- F. Airport property that is not designated as AMA or AOA may be approved for non-aeronautical use. Non-aeronautical use shall conform to use designations contained in the Airport Master Plan and Airport Layout Plan. Non-aeronautical areas should meet all City zoning, codes and other regulative requirements.
- G. The City may charge lease, rent, event and other fees for any activity on the Airport. Fees may be published in separate documents.

11.10.030 Damage and injurious activities prohibited.

- A. No person shall destroy, injure, deface, or disturb in any way, any building, sign, equipment, marker, structure, or other airport premises.
- B. No person shall conduct activities that are injurious, detrimental, or damaging to the airport property, business of the airport, aircraft, or persons.

11.10.040 Damage to airport property – Compensation.

Any person causing or liable for any damage to airport property shall be required to pay the City upon demand, the full cost of repairs to the damaged property.

Chapter 11.12 GROUND RULES

Sections:

- 11.12.010 Fire regulations.
- 11.12.020 Aircraft parking – Designated Areas.
- 11.12.060 Persons entering parking areas or aprons.
- 11.12.065 Through-the-fence access.
- 11.12.070 Chocking and/or tying down.
- 11.12.080 Vehicles prohibited on runways, taxiways and apron.
- 11.12.090 Accident procedures.

11.12 Ground rules.

All aircraft ground operations shall be conducted in accordance with Federal Aviation Regulations and the Airman's Information Manual. Aircraft shall have the undisputed right of way in the Aircraft Movement Area (AMA) and Aircraft Operating Area (AOA).

11.12.010 Fire regulations.

All persons using the airport area or the facilities of the airport for any purpose whatsoever shall comply with the state fire code, which is enforced by the McMinnville Fire District.

11.12.020 Aircraft parking – Designated Areas.

Aircraft shall park in designated areas only, unless otherwise approved by the Airport Manager.

11.12.060 Persons entering parking areas or aprons.

All persons shall remain outside of the AOA, AMA, Aprons, and all other areas within the confines of the airport perimeter fence, unless access is approved by the Airport Manager. Pilots, aircrew, aircraft maintenance personnel are authorized to access the AOA. Pilots, aircrew and maintenance personnel may escort passengers and other persons having valid reasons, such as baggage delivery, medical assistance, etc. Any person permitted by this section to have access is limited to necessary use of the space in connection with flights or routine duties or specific reason for the access.

11.12.065 Through-The-Fence access.

Through-The-Fence access may be authorized on a case-by-case basis. Access shall be for aeronautical purposes. Initial requests for access shall be forwarded to the Airport Manager to determine feasibility. The Airport Manager must receive concurrence from the FAA and ODA prior to forwarding the request to the City Council for final approval.

11.12.070 Chocking and/or Tying Down.

The Pilot, Aircrew, or Maintenance personnel shall properly secure the aircraft, including chocking and/or tying down the aircraft.

11.12.080 Vehicles prohibited on runways, taxiways and aprons.

Motor vehicles shall not be driven onto aprons, taxiways or runways without the express permission of the Airport Manager.

- A. All authorized vehicles and equipment operating in the AMA shall be equipped with a flashing yellow or orange light(s) visible to taxiing or operating aircraft. Additionally, while in the AMA, all vehicle and equipment operators shall have a two-way VHF radio tuned to the airport's Common Traffic Advisory Frequency (CTAF).
- B. Automobile parking shall be in designated areas, except as authorized by subsection (C).
- C. Aircraft have the undisputed right-of-way in the general aviation T-hangar area. Vehicles, including but not limited to automobiles, golf carts, scooters, motorcycles, etc., shall not be left standing or parked on these taxiways. Pilots and aircraft owners driving on taxiways for access to a T-hangar shall park at the entrance way to the T-hangar, maintaining a minimum clearance of 25 feet from the centerline of the taxiway. Vehicles should be parked in designated parking areas or inside the T-hangars while the aircraft is being flown.

11.12.090 Accident procedures.

- A. Aircraft and/or parts thereof that are involved in flight or ground accidents shall not be moved without prior authorization of the Airport Manager.
- B. Persons involved in aircraft accidents occurring at the airport shall make a full report to the Airport Manager as soon as possible after the accident. For the purposes of this section, an aircraft accident shall include any event involving an aircraft that results in property damage or personal injury, no matter what the value, damage, or injuries may be.
- C. Any person damaging airport property shall be fully responsible to the City for the cost of repairs.
- D. Every pilot and aircraft owner shall be responsible for the prompt removal of any disabled aircraft or parts thereof, subject to accident investigation procedures and concurrence of the Airport Manager.

Chapter 11.16 TAKEOFF, LANDING and TAXIING

Sections:

- 11.16.010 Runway use, Takeoff, Landing and Taxiing.

11.16.010 Runway use, Takeoff, Landing and Taxiing.

All aircraft preparing for takeoff shall use the appropriate taxiway for the purpose of taxiing to the ends of runways for takeoff. All takeoffs and landings shall be on designated runways. All landing aircraft returning to the flight line shall leave the runway at the first available taxiway that is practical to keep the runways clear for approaching aircraft.

Chapter 11.20 OFF AIRPORT OPERATIONS

Sections:

- 11.20.010 Landing / takeoff permit – Required.
- 11.20.020 Permit – Exemptions.

11.20.010 Landing / takeoff permit – Required

The landing and/or takeoff of aircraft weighing more than 55 pounds (25 kilograms) within the corporate limits of the City, except for at the McMinnville Municipal Airport, is expressly forbidden unless a permit has first been obtained from the City.

11.20.020 Permit – Exemptions.

Emergency, Disaster or Police aircraft operations, which may include Medivac, Police or other rescue helicopter or UAS operations are exempt from permit requirements. The aircraft operations shall be in assistance to a reportable or active public agency operation.

Chapter 11.28 MISCELLANEOUS REGULATIONS, ENFORCEMENT, AND PENALTIES

Sections:

- 11.28.010 Incorporation of Airport Rules, Standards, Policy, Schedules
- 11.28.020 Public intoxication prohibited.
- 11.28.030 Interpretation and Enforcement of provisions.
- 11.28.040 Violation – Penalty.

11.28.010 Incorporation of Airport Rules, Standards, Policy, Schedules

All airport rules, standards, policies and schedules, etc. that are adopted or approved by a resolution of the City Council are enforceable under this code.

11.28.020 Public intoxication prohibited.

It is unlawful for any person to be in an intoxicated condition or under the influence of any illegal substance on airport property.

11.28.030 Interpretation and Enforcement of Provisions.

The Airport Manager has the authority to interpret and enforce all aviation and airport-related regulations, codes and provisions herein.

Any duly elected or appointed peace officer or police officer of the City, County or State shall have the authority and power to enforce any provisions of this Chapter on airport property, and to make arrests for violations of this Chapter.

11.28.040 Violation– Penalty.

Any person operating or handling aircraft on or in the vicinity of the airport, or traveling on airport property by foot, automobile, bicycle, motorcycle, or other conveyance, or occupying any building or otherwise using the airport for any purpose whatsoever, shall comply with the rules as set forth in this Chapter. Any person violating any portion of this Chapter shall, upon conviction in the municipal court, be punished by a fine in an amount that is set by resolution of the City Council and may be subject to other lawful penalties.

STAFF REPORT

DATE: August 26, 2025
TO: Vicki Hedges, City Manager
CC: Geoff Hunsaker, Public Works Director
FROM: Willy Williamson, Airport Administrator
SUBJECT: Municipal Code Chapter 2.28 Update

Report in Brief:

This report requests consideration of an ordinance amending McMinnville Municipal Code Chapter 2.28 to clarify the powers, duties, and operating procedures of the Airport Commission, and to formalize its relationship with the Airport Manager and airport tenants.

Background:

McMinnville Municipal Code Chapter 2.28, which governs the Airport Commission, was originally adopted in 1945 and most recently amended through Ordinance 4933. Since that time:

- The City has hired a professional Airport Manager to handle the majority of administrative, management, oversight, and planning responsibilities for the Airport.
- The Airport Commission's powers and duties have remained largely the same but require adjustment and clarification to reflect the Airport Manager role.
- Clarifications are needed to address potential conflicts of interest, advocacy/lobbying restrictions, and Commission operating procedures.

These changes will improve efficiency, clarify roles, and ensure that the Airport Commission continues to provide effective policy guidance to the City Council.

Discussion:

The 2025 amendments to Chapter 2.28, add provisions regarding:

- Conflict of interest disclosure and recusal requirements.
- Prohibition on lobbying on behalf of any airport tenant or entity.
- The Airport Manager serving as Clerk of the Commission.
- Conditions and process for removal of Commissioners for cause.

Clarify the Commission's advisory role in:

- Reviewing proposed airport charges, fees, and tolls to ensure fairness and financial sustainability.
- Reviewing long-term airport lease agreements.
- Providing recommendations on the Airport's annual budget in time for Council consideration.

Remove outdated provisions related to promulgating and enforcing airport police regulations.

The proposed changes were reviewed by City staff and align with current operational practices.

Fiscal Impact:

No fiscal impact to the City, Airport Commission, or airport tenants is anticipated beyond staff time.

Recommendation:

Staff and Airport Commission unanimously recommends that the City Council adopt, by ordinance, the attached amended McMinnville Municipal Code Chapter 2.28 (Airport Commission), as set forth in Ordinance No. 5164 and Exhibit A.

Attachments:

1. Ordinance No. 5164, including Exhibit A (Amended City Code Chapter 2.28)

ORDINANCE NO. 5164

AN ORDINANCE AMENDING CHAPTER 2.28 OF THE MCMINNVILLE MUNICIPAL CODE TO CLARIFY THE AIRPORT COMMISSION POWERS AND DUTIES, AND ASSOCIATION WITH AIRPORT TENANTS.

RECITALS:

WHEREAS, the City of McMinnville adopted through Ord 4933, the Municipal Code, Title 2, Chapter 2.28 (Airport Commission); and

WHEREAS, the City of McMinnville has hired a professional Airport Manager who will assume the majority of administrative, management, oversight and planning at the Airport; and

WHEREAS, the Airport Commission Powers and Duties have not changed significantly, but require adjustment and clarification; and

WHEREAS, these changes to the McMinnville Municipal Code, Chapter 2.28 (Airport Commission) will clarify roles and responsibilities between the Airport Commission and Airport Manager, resulting in improved decision making and greater efficiency.

NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

1. The 2025 update to City Code Title 2, Chapter 2.28 is attached as **Exhibit A**. The changes included in this update are detailed below.
2. The following sections of McMinnville Municipal Code section 2.28.010 (Creation – Membership – Terms of office) are amended as follows [*underlined language is new, strikethrough language is to be repealed, and ellipses (. . .) indicate existing code which remains unchanged but is omitted from this ordinance for the sake of brevity*]:

....

D. The Airport Commission or any member thereof shall not act as a lobbyist for any tenant or entity that may be located on or off the airport.

~~DE. The airport manager shall be the clerk of the commission. The staff of the Community Development Public Works department shall assist and coordinate services for the commission, including all budget and document preparation.~~

EF. Any commissioner may be removed for cause by the mayor. The mayor shall present written findings showing cause to the commissioner to be removed. The commissioner being removed may appeal his or her removal to the city council.

3. The following sections of McMinnville Municipal Code section 2.28.030 (Powers and Duties Generally) are amended as follows [*underlined language is new, strikethrough language is to be repealed, and ellipses (. . .) indicate existing code*]

which remains unchanged but is omitted from this ordinance for the sake of brevity]:

2.28.030 Powers and Duties Generally

A. The City Council has delegated to the Airport Commission the power and authority to make recommendations to the City Council on:

~~1. All necessary rules and regulations for the conduct, management and operation of the Airport~~

~~21. All~~ Verifying that all proposed charges, fees, and tolls for the use of the airport are fair and impartial and ensure the Airport will remain financially sustainable with a positive cashflow.

~~32. The review of long-term airport lease contracts or any part thereof to ensure they are fair and impartial and will ensure the airport will remain financially sustainable with a positive cashflow. Leasing the airport or any part thereof and on entering into contracts for the operation and management thereof upon such terms and conditions and for such a length of time as the airport commission shall deem best for the benefit of the inhabitants of the city and the public generally.~~

~~43. The annual budget of the airport~~ Review of the annual airport budget submission. Consideration and a recommendation on the budget shall take place in a manner that results in the City Council having the recommendation in time to incorporate the Airport budget into the City budget.

~~B. The City Council has delegated to the Airport Commission the power and authority to promulgate and enforce police regulations at the Airport and provide civil penalties for the violation of these regulations.~~

5. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 26th day of August, 2025 by the following votes:

Ayes: _____

Nays: _____

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBITS:

A. Updated McMinnville Municipal Code Chapter 2.28

Exhibit A

Chapter 2.28

AIRPORT COMMISSION

Sections:

- 2.28.010 Creation, Membership, Terms of Office
- 2.28.020 Organization and Meetings
- 2.28.030 Powers and Duties Generally

2.28.010 Creation, Membership, Terms of Office

A. The Airport Commission was created by Ordinance 2145 in 1945, under the authority of ORS 492.330 (renumbered 836.210 in 1989) and has continued in existence since that time.

B. The Commission consists of seven Commissioners: six public members and one liaison member. A minimum of four public member Commissioners shall be citizens, residents, and taxpayers of the City. A maximum of two public member Commissioners may be non-residents of the City but must be residents of Yamhill County. The Mayor of the City, or, at the Mayor's direction, a City Councilor, shall be the liaison member Commissioner, and shall have full voting rights.

C. The public member Commissioners shall be appointed by the Mayor with confirmation by the City Council. The public member Commissioners' terms shall be four years and shall be staggered so that two Commissioners' terms end on December 31 each even numbered year and one Commissioner's term ends on December 31 each odd numbered year. The liaison member Commissioner's term shall be determined by the Mayor. Upon the expiration of the term of any Commissioner, the Mayor shall either re-appoint that Commissioner or shall appoint a successor. No Commissioner may serve more than three full terms. Each Commissioner shall hold office until his or her successor is appointed and qualified. Vacancies on the Commission shall be filled by appointment to be made by the Mayor for the unexpired term, which appointment shall also be confirmed by the City Council. The Commissioners shall serve without compensation.

D. The Airport Commission or any member thereof shall not act as a lobbyist for any tenant or entity that may be located on or off the airport.

E. The Airport Manager shall be the clerk of the Commission. The staff of the Public Works Department shall assist and coordinate services for the Commission.

F. Any Commissioner may be removed for cause by the Mayor. The Mayor shall present written findings showing cause to the Commissioner to be removed. The Commissioner being removed may appeal his or her removal to the City Council.

2.28.020 Organization and Meetings

- A. Airport Commission meetings are public meetings and shall conform to the requirements of the Oregon Public Meetings Law. The Commission shall meet every two months and may hold special meetings as deemed necessary, advisable, or convenient at the discretion of the Commission and Airport Administrator. Special meetings may be called at the request of the Airport Administrator, Commission chairperson or any member of the Commission.
- B. Four Commissioners shall constitute a quorum for the transaction of business.
- C. Each Commissioner, including the chairperson, shall have one vote on matters before the Airport Commission.
- D. At its first meeting each year, the Commission shall elect from among its members a chairperson and a vice chairperson. The chairperson shall preside over all meetings and shall approve the minutes. The chairperson may not delegate the duties of the position but may assign administrative tasks to others. The vice chairperson shall have all the authority of the chairperson in the absence of the chairperson.

2.28.030 Powers and Duties Generally

- A. The City Council has delegated to the Airport Commission the power and authority to make recommendations to the City Council on:
 - 1. Verifying that all proposed charges, fees, and tolls for the use of the Airport are fair and impartial and ensure the Airport will remain financially sustainable with a positive cashflow.
 - 2. The review of long-term Airport Lease contracts or any part thereof to ensure they are fair and impartial and will ensure the Airport will remain financially sustainable with a positive cashflow.
 - 3. Review of the annual Airport budget submission. Consideration and a recommendation on the budget shall take place in a manner that results in the City Council having the recommendation in time to incorporate the Airport budget into the City budget.