

SECTION 00195 - PAYMENT

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

Comply with Section 00195 of the Standard Specifications modified as follows:

(Use the following subsection .10 on projects that have at least 150 tons of liquid asphalt.)

[Begin subsection .10]

00195.10 Payment For Changes in Materials Costs - Replace this subsection with the following subsection:

00195.10 Asphalt Cement Material Price Escalation/De-escalation - An asphalt cement escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision shall not limit those rights.

(a) Monthly Asphalt Cement Material Price (MACMP) - The Monthly Asphalt Cement Material Price (MACMP) is established by the Agency each month. For the actual MACMP, go to the Agency website at:

<https://www.oregon.gov/ODOT/Business/Pages/Asphalt-Fuel-Price.aspx>

The MACMP is based on selling prices of asphalt cement published by Poten & Partners, Inc. for primarily PG 64-22 paving grades in the Portland, Oregon area and typical non-modified paving grades in the Boise, Idaho area. The MACMP for a given month is the average of the weekly published prices for each area reported each Friday in that month. If any portion of the Project Site is located within the boundaries of ODOT Maintenance District 13 or 14, the MACMP will be based on the prices for the Boise, Idaho area. If no portion of the Project Site is within the boundaries of ODOT Maintenance District 13 or 14, the Contractor may elect to have the MACMP based on the prices of either the Portland, Oregon area or the Boise, Idaho area. If electing to use Boise, Idaho area prices for determination of the MACMP, the Contractor shall notify the Engineer in writing of the Contractor's election before or within 7 Calendar Days after the date of the preconstruction conference. This election, once acknowledged by the Engineer, will be binding for the entire duration of the Contract. If no such written notification is made, the Portland, Oregon area prices will be used as the basis of the MACMP. The area selected as the basis of the

MACMP, once chosen, will become the sole area to be used as the basis for all asphalt cement used on the Project.

If the weekly prices cease to be available from Poten & Partners, Inc. for any reason, the Agency, in its discretion will select and begin using a substitute price source or index to establish the MACMP each month. The Agency does not guarantee that asphalt cement will be available at the MACMP.

(b) Base Asphalt Cement Material Price (Base) - The base asphalt cement material price for this Project is the MACMP published on the Agency website for the month immediately preceding the Bid Opening date.

(c) Monthly Asphalt Cement Adjustment Factor - The monthly asphalt cement adjustment factor will be determined each month as follows:

- If the MACMP is within $\pm 5\%$ of the Base, there will be no adjustment.
- If the MACMP is more than 105% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (1.05 \times \text{Base})$$

- If the MACMP is less than 95% of the Base, then:

$$\text{Adjustment Factor} = (\text{MACMP}) - (0.95 \times \text{Base})$$

(d) Asphalt Cement Price Adjustment - A price adjustment will be made for the items containing asphalt cement listed below. The price adjustment as calculated in (c) above will use the MACMP for the month the asphalt is incorporated into the Project. The price adjustment will be determined by multiplying the asphalt incorporated during the month for subject Pay Items by the Adjustment Factor.

The Pay Items for which price adjustments will be made are:

Pay Item(s)

(List all Pay Items in which price adjustments apply. Use complete and accurate Pay Item names. Add or delete Pay Items as appropriate.)

_____ Asphalt in _____ ACP
Emulsified Asphalt in Fog Coat
Emulsified Asphalt for Tack Coat
Asphalt in Emulsified Asphalt Chip Seal
Asphalt in Multiple Application Emulsified Asphalt Surface Treatment
Emulsified Asphalt in Mixture
Recycling Agent

[End subsection .10]

(Use the following lead-in paragraph and subsection .11 on projects when the Fuel, Steel, Class of Work, and Scheduling program identifies that the project is eligible for fuel escalation/de-escalation with estimated fuel usage in excess of 25,100

gallons. The estimated fuel usage is for the major Pay Items or for Pay Items under specific Structure Numbers that are listed for coverage under this specification.

[Begin subsection .11]

Add the following subsection:

00195.11 Fuel Cost Price Escalation/De-escalation - A fuel escalation/de-escalation clause will be in effect during the life of the Contract.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under 00180.70 and its rights for termination of the Contract under 00180.90, and this escalation/de-escalation provision will not limit those rights.

(a) Monthly Fuel Price (MFP) - A Monthly Fuel Price (MFP) is established by the Agency each month. For the actual MFP, go to the Agency website at:

<https://www.oregon.gov/ODOT/Business/Pages/Asphalt-Fuel-Price.aspx>

The MFP for a given month is the average rack price obtained from the Oil Price Information Service (OPIS) listing dated the first Monday of that month for ultra low sulfur distillate No. 2 diesel fuel for Portland, Oregon. If the average rack price is not posted by OPIS or is otherwise not available to the Agency for the first Monday of any month for any reason, the Agency may use the average rack price posted by OPIS immediately before or after the first Monday of that month. If the average rack prices cease to be available from OPIS for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MFP each month. The Agency does not guarantee that fuel will be available at the MFP.

(b) Base Fuel Price (Base) - The base fuel price for this Project is the MFP published on the Agency website for the month immediately preceding the Bid Opening date.

(c) Monthly Fuel Adjustment Factor - A monthly fuel adjustment factor is determined each month as follows:

- If the MFP is within $\pm 25\%$ of the Base, there will be no adjustment.
- If the MFP is more than 125% of the Base, then:

$$\text{Adjustment Factor} = (\text{MFP}) - (1.25 \times \text{Base})$$

- If the MFP is less than 75% of the Base, then:

$$\text{Adjustment Factor} = (\text{MFP}) - (0.75 \times \text{Base})$$

(d) Fuel Price Adjustment - A fuel price adjustment for fluctuations in the cost of fuel will apply only to the major fuel usage Pay Items shown in the following list and at the respective fuel factors listed:

(Use the following two tables to list Pay Items or for Pay Items under Structures that are ~~not temporary and are subject to fuel escalation/de-escalation~~. Use the

Fuel, Steel, Class of Work, and Scheduling program ~~Escalation Worksheet~~ to determine the Pay Items or for Pay Items under Structures to which fuel factors apply. Copy and paste lines as needed and delete lines in the tables that do not apply. Check with the ODOT Sr. Cost Engineer.

Use the following table to list all individual Pay Items that are ~~not temporary, that are~~ subject to fuel escalation/de-escalation, EXCEPT items that will be included in the Schedule of Items under a Bridge or Structure number listed in the second table. Use complete and accurate Pay Item names. From the fuel escalation worksheet, determine all the appropriate individual Pay Items and list them by Pay Item name under the "Item" heading. Under the "Fuel Factor" heading, fill in the first blank with the fuel factor from the worksheet and the second blank with the unit of measurement for the specific Pay Item.)

Item

Fuel Factor

_____ Gal/_____
_____ Gal/_____

(Use the following paragraph and table for Bridges and Structures that are subject to fuel escalation/de-escalation. List each Bridge or Structure separately as "Bridge No." or "Structure No." and list all the Pay Items associated with that Bridge or Structure separately under the Bridge or Structure.

Fill in the first blank with the Bridge or Structure number. Use either option "10" or "19" as the fuel factor for all the Pay Items ~~under~~ associated with the entire Bridge or Structure and delete the factor that does not apply.

[Option 10 for each Bridge or Structure]

Use a fuel factor of "10" as the fuel factor for all the Pay Items associated with ~~under~~ the entire Bridge or Structure when a structure contains any precast concrete element work under this Project like precast concrete walls of any type, precast concrete beams, precast concrete girders, and similar precast concrete items that have been cast offsite. However, do not consider precast concrete elements like bridge rail that are above the bearing pads.

[Option 19 for each Bridge or Structure]

Use a fuel factor of "19" as the fuel factor for all the Pay Items associated with ~~under~~ the entire Bridge or Structure for all other Bridges and Structures not selected under Option 10. This includes all sign structures, all signal structures, and any type of wall that is not precast concrete including cast-in-place or masonry walls, and any miscellaneous Work on an existing Structure.

List all Pay Items that ~~are not temporary that~~ fuel escalation would apply to under each Bridge or Structure No.

Example:

Bridge No. 12345

(10)(19) Gal/\$1000

Item

Bridge Removal Work
Bridge Deck Cold Plane Pavement Removal, 0-2 Inches
Furnish Premixed Polymer Concrete
Construct PPC Overlay
Structure Excavation
Granular Wall Backfill
Reinforced Concrete End Panel

Check with the ODOT Sr. Cost Engineer if you have questions.)

The following Pay Items associated with the following Bridges and Structures:

Bridge No. _____ (10)(19) Gal/\$1000

Item

Bridge No. _____ (10)(19) Gal/\$1000

Item

Structure No. _____ (10)(19) Gal/\$1000

Item

Structure No. _____ (10)(19) Gal/\$1000

Item

The Contractor is cautioned to consider that its operations may require more or less fuel.

A price adjustment ($\pm$) to the Contractor for fuel cost changes will be made monthly if the Monthly Fuel Price differs 25% or more from the Base Fuel Price. This adjustment will be the product of the Monthly Fuel Adjustment Factor and the estimated Monthly Fuel Used. The Monthly Fuel Used will be determined by multiplying the quantities of Work accomplished during the month for subject Pay Items, by the appropriate Fuel Factors.

Fuel cost adjustments will continue to be made as specified and will not be revised for any reason, including the Contractor's election to use an alternative fuel (natural gas, wood pellets, propane, or other).

[End subsection .11]

(Use the following subsection .12(d) when the Fuel, Steel, Class of Work, and Scheduling program identifies there are qualifying Pay Items to list under this subsection. ~~The Cost Estimator/Designer will determine which items are eligible from the Steel Escalation/De-Escalation Worksheet.~~

Fill in the table, in .12(d), with only those Pay Items which the Fuel, Steel, Class of Work, and Scheduling program identifies that the project is eligible for steel escalation/de-escalation~~Cost Estimator/Designer has determined are eligible from the Steel Escalation/De-Escalation Worksheet.~~ Use complete and accurate Pay Item names.)

00195.12(d) Steel Materials Pay Item Selection - Add the following paragraphs to the end of this subsection:

If the Contractor elects not to participate in the steel escalation/de-escalation program for this Project, no response from the Contractor is required.

The Contractor may elect to participate in the steel escalation/de-escalation program for this Project under 00195.12 through 00195.12(d) by marking each check box for each Pay Item in the list below the Contractor is selecting for participation in the program. The completed list must be submitted in writing, signed and dated by the Contractor, to the Project Manager before or within 7 Calendar Days after the date of the preconstruction conference.

PARTICIPATE	PAY ITEM DESCRIPTION	COST BASIS (CB)
☐	Pay Item Name (from the Worksheet)	CB (from the Worksheet)
☐	Pay Item Name (from the Worksheet)	CB (from the Worksheet)
☐	Pay Item Name (from the Worksheet)	CB (from the Worksheet)
☐	Pay Item Name (from the Worksheet)	CB (from the Worksheet)

(Copy and paste the above list to add additional items. Use complete and accurate Pay Item names.)

Regardless of the number of Pay Items listed by the Agency or selected by the Contractor, or if no Pay Items qualify for the steel escalation/de-escalation program for this Project or the Contractor elects not to participate in the steel escalation/de-escalation program for this Project, the steel price escalation/de-escalation clause (and program) contained in 00195.12 through 00195.12(d) are included in this Contract and are the only steel price escalation/de-escalation clause (and program) that apply to this Contract.

Contractor's Signature

Date

(Use the following subsection .12(d) on Projects which do not have any qualifying Pay Items. Do not use this subsection when using the subsection 00195.12(d) above.)

00195.12(d) Steel Materials Pay Item Selection - Add the following paragraph to the end of this subsection:

No Pay Items under this Contract qualify for the steel escalation/de-escalation program for this Project.

00195.50(a) Progress Payments - Replace the paragraph that begins "The estimates upon which progress payments are ..." with the following paragraph:

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 and Suppliers, the Contractor assumes all risk and bears any losses that result.