

City of Madras  
NW Berg Drive Extension and Cherry Lane Upgrade  
Project

**INVITATION TO BID**

**BIDS DUE:**  
**Tuesday, October 29, 2013**  
**2:00 pm**  
**at**  
**MADRAS CITY HALL**  
125 SW "E" Street, Madras, OR 97741

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## INVITATION TO BID

Sealed bids will be accepted by Jeffrey Hurd, Public Works Director, at the Madras City Hall, 125 SW "E" Street, Madras, OR 97741, until **2:00 pm, Tuesday, October 29, 2013**, at which time and place bidding will be closed, and the bids opened and read. All times shall be as shown on the City Recorder's Clock, located in the City Hall front office; no bids will be received after closing. In this Invitation to Bid ("ITB"), the City of Madras may sometimes be referred to as "City." Each bidder is required to submit a First-Tier Subcontractor Disclosure Form, as required by ORS 279C.370, in a separate envelope within two (2) hours of the bid closing time. The City will reject a bid if the bidder fails to submit the required disclosure form by this deadline.

The work includes, but is not limited to, excavation, installation of sewer main, manholes, storm system, concrete curb and gutter, concrete driveway aprons, sidewalk, aggregate base rock, HMAC paving, landscaping and irrigation. Work shall be substantially completed by June 1<sup>st</sup>, 2014. No work shall begin until written Notice to Proceed is received by the City of Madras.

The bid proposal ("Bid") shall be submitted in a sealed envelope and marked: **NW Berg Drive Extension and Cherry Lane Upgrade Project.**

Plans, specifications, addenda and notifications of bid results for this project may be viewed or bid set acquired for fee at the Central Oregon Builder's Exchange, 1902 NE 4<sup>th</sup> Street, Bend, OR 97701 (phone 541-389-0123). Plans, specifications and addenda may also be viewed, printed or ordered online at <http://www.plansonfile.com>, then click on "Posted Projects." Bidders are responsible for checking with the Madras Public Works Department (541-475-2622) for the issuance of any addenda prior to submitting a bid. The Contractor is responsible for all addenda/changes to the documents and will be considered non-responsive if the Contractor's bid does not reflect those addenda/changes.

Technical questions regarding the project, or requests for clarification or change, should be directed to Jeffrey Hurd, City of Madras Public Works Dept., 125 SW "E" Street, Madras, OR 97741; phone (541) 475-2344; fax (541) 475-1038 and must be received by **4:00 p.m., Thursday, October 24, 2013.**

There will be a mandatory pre-bid conference on **Wednesday, October 16, 2013 at 2:00 pm** at Madras City Hall located at 125 SW "E" Street, Madras. Statements made by the City's representatives at the conference are not binding upon the City unless confirmed by written addendum.

Each bid must contain a certification declaring the bidder's residency status, as defined in ORS 279A.120. In determining the lowest responsive Bid, the City shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident bidder equal to the percentage, if any, of the preference given to the bidder in the state in which the bidder resides.

The successful bidder must comply with the Oregon Public Contracting Code (ORS ch. 279A, 279B and 279C) and the City's public contracting rules, as all are amended from time to time, in the performance of the work.

The project is a public works project subject to the state prevailing wage rates under ORS 279C.800 to 279C.870, the federal prevailing wage rates under the Davis Bacon Act (40 U.S.C. 3141 et seq.), or both. No bid will be received or considered unless the bid contains a statement that the bidder will comply with ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148, as applicable. The wage rates will also be included in the Contract Specifications.

The City may reject any bid not in compliance with all prescribed public bidding procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all bids upon a finding of the City that it is in the public interest to do so.

No bid shall be received or considered unless the bidder is licensed by the Construction Contractors Board, or licensed by the State Landscape Contractors Board, as applicable, as required by ORS 671.530.

## **INFORMATION FOR BIDDERS**

### **1. GENERAL DESCRIPTION OF PROJECT.**

A general description of the work to be performed is contained in the Invitation to Bid (“ITB”). The scope is indicated in the applicable parts of the contract documents and project specifications.

### **2. BID DOCUMENTS.**

The bid proposal documents (“Bid Documents”) include the Notice of Invitation to Bid, Invitation to Bid, Information for Bidders, Contract, General Conditions, Special Provisions, Plans and Specifications, Bid, First-tier Subcontractor Disclosure Form, the Bid Bond, the Performance Bond, the Payment Bond, and any addenda issued prior to receipt of bids. All requirements and obligations of the Bid Documents are hereby incorporated by reference into the Contract and are binding on the successful bidder upon award of the Contract. Bidder assumes full responsibility for errors, omissions or misinterpretations resulting from the use of incomplete sets of Bid Documents. Bid Documents are provided to bidder only for the purpose of obtaining bids on the work and do not confer a license or grant for any other use.

### **3. FORM OF BIDS; SUBMISSION.**

The following minimum requirements as to the form and manner of submitting bids must be strictly observed; variance from these requirements will result in rejection of the bid as unresponsive.

- a) Each bid must be submitted on forms furnished by the City.
- b) Each bidder must sign its bid.
- c) Bid security, in the required form and amount, must accompany each bid.
- d) Each blank in the Bid must be filled in unless an alternative is provided. Each separate bid item must be bid on, unless the Bid form clearly indicates otherwise.
- e) Each bid must be submitted in a separate sealed envelope, marked as specified in this ITB so as to indicate its contents and allow identification of the bidder without opening, and in the hands of the Public Works Director at the time and place specified for bid opening.
- f) A Bid shall contain no modifications, deletions, exceptions, reservations or conditions, which in any way conflict with or purport to alter any provision contained in the Bid Documents.

#### 4. PREPARATION OF BIDS.

The bid form must be used without alteration. All blank spaces in the Bid form must be filled in, in ink, or typed, in both words and figures where required. No changes shall be made in phraseology of the forms. Amounts stated in words shall govern in cases of discrepancy between the amount stated in words and the amount stated in figures.

Any bid which contains omissions, alterations, or additions of any kind, or prices uncalled for, or is contingent upon the acceptance of conditions that differ from the Bid Documents, or which, in any manner shall fail to conform to the conditions of the Bid Documents shall be deemed non-responsive.

The bidder shall sign his/her bid in the blank space provided. Bids made by corporations, partnerships or limited liability companies shall contain names and addresses of the principal officers, partners or members, as applicable. If a corporation makes the Bid, it must be signed by one of the corporation's principal officers. If made by a partnership or limited liability company, it must be signed by one of the partners or members, clearly indicating that he/she is signing as a partner or member of the firm. In the case of a Bid made by a joint venture, each of the joint venturers must sign the Bid in his/her personal capacity.

#### 5. SUBMISSION OF BIDS.

All Bids must be submitted at the time and place and in the manner prescribed in the ITB. If the Bid is submitted by mail, the sealed envelope containing the bid must be enclosed in a separate envelope plainly addressed for mailing in conformance with instructions in the ITB.

#### 6. MODIFICATIONS OR WITHDRAWAL OF BID.

A bidder may withdraw its submitted Bid by written notice provided the notice complies with OAR 137-049-0320 and is received prior to the time set for Bid opening. The bidder or its authorized representative may also withdraw its Bid in person prior to the closing, upon presentation of appropriate identification and satisfactory evidence of authority. After that time, no Bid may be withdrawn for a period of sixty (60) calendar days and at no time after the award of the Bid. Bids may be modified only as allowed by OAR 137-049-0320.

#### 7. BID SECURITY.

Each bid must be accompanied by a bid security of ten percent (10%) of the amount bid. (For the purpose of this provision, the amount of the bid shall be the base bid, only.) The bid security must be payable to the City in lawful money of the United States, in the form of a cashier's check, certified check, or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008. In the alternative, the bid security may be in the form of a bid bond executed by a surety company authorized to do business in the State of Oregon and acceptable to the City. The City may retain the bid security of any bidder

for the entire duration of the period in which the bid is irrevocable and open for acceptance.

Should the City award the Contract to the bidder, and should the bidder refuse or be unable to execute the Contract and promptly return it with any required performance bond, payment bond and any required proof of insurance, the City shall be entitled to the total amount of the bid security as liquidated damages and not as a penalty.

#### 8. CONDITIONS OF WORK.

Each bidder must inform him/herself of the conditions relating to the execution of the work, and make him/herself thoroughly familiar with all the Contract documents. Failure to do so will not relieve the successful bidder of his/her obligations to enter into a Contract and complete the contemplated work in strict accordance with the Contract documents.

Before submitting a Bid, each bidder personally shall inspect the site of the proposed work to arrive at a clear understanding of the conditions under which the work is to be done. By submitting a Bid, the bidder represents and warrants that the bidder has compared the site with the Bid Documents and has satisfied him/herself as to the actual conditions of the site, existing construction, subsurface conditions, the actual elevations, and any other conditions affecting the carrying out of his/her work.

Each bidder must inform him/herself on all statutes and regulations, both Federal and State, relevant to the execution of the work, the employment of labor, protection of public health, access to the work and similar requirements.

#### 9. AWARD OF CONTRACT.

The City will award the contract to the lowest responsive and responsible bidder, whose bid will best serve the interests of the City and is in compliance with applicable law. The City reserves the right to accept or reject any or all Bids, and to waive minor informalities and errors in such Bids, each in accordance with Oregon law. The City further reserves the right to postpone the acceptance of the Bid and the award of the contract for a period not to exceed sixty (60) calendar days from the date of the Bid opening and to reject for good cause any or all Bids upon a finding of the City that it is in the public interest to do so. A responsive bidder shall mean a bidder who has submitted a bid which conforms, in all material respects to the solicitation documents. A responsible bidder shall mean a bidder who has the capability, in all respects, to perform fully the Contract requirements, and the integrity and reliability which will ensure good-faith performance. Responsibility will be determined in accordance with the standards set forth in ORS 279C.375 and OAR 137-049-0390. The City will document its determination of the successful bidder's responsibility of the Responsibility Determination Form substantially as set forth in ORS 279C.375(3)(c).

10. PERFORMANCE BOND AND PAYMENT BONDS; INSURANCE.

The successful bidder shall file with the City, at the time of execution of the Contract, a Performance Bond and a Payment Bond, each of not less than the Contract price, on the forms furnished by the City. The Surety Company furnishing this bond shall have a sound financial standing and a record of service satisfactory to the City, and shall be authorized to do business in the State of Oregon. Alternatively, the Contractor may file a certified or cashier's check made payable to City in lieu of all or a portion of the Performance Bond. In addition, the successful bidder shall submit certificates evidencing insurance coverage required by the Contract.

11. PUBLIC WORKS BOND

The successful contractor and all subcontractors must have a public works bond filed with CCB before starting work on the project, unless exempt.

12. REQUEST FOR CLARIFICATION OR CHANGE; SOLICITATION PROTESTS; PROTEST OF AWARD.

A. Clarification. Prior to the deadline provided in the ITB for submitting a request for change or protest, a bidder may request clarification of any provision of the Bid Documents. Requests for clarification shall be submitted to the person identified in the ITB. Any clarification to a bidder, whether orally or in writing, does not change the Bid Documents, and is not binding on the City, unless the City amends the Bid Documents by written addendum.

B. Request for Change. A bidder may request in writing a change to the Specifications or Contract terms and conditions on or before **October 15, 2013**. All requests for change shall be directed to the person identified in the Invitation to Bid, and must comply with OAR 137-049-0260(2).

C. Solicitation Protest. A bidder may protest the Specifications or Contract terms and conditions by delivering a written protest on those matters to the City on or before **October 15, 2013**. All protests of Specifications or Contract terms and conditions must be in writing, and must comply with OAR 137-049-0260(3).

D. Right to Protest Award. A bidder may submit to the City a written protest of the City's intent to award within seven (7) days after the City's issuance of the notice of intent to award the Contract. A bidder may submit a protest of the award only as allowed by, and only in compliance with, OAR 137-049-0450(4).

13. PERMITS AND LICENSES.

The Contractor will have or obtain any and all permits and licenses required by Jefferson County, the City of Madras, and the State of Oregon, pertaining to the project.

#### 14. ADDENDA.

Changes to the Bid Documents, whether in response to requests for clarification or change or a solicitation protest, or to issue supplemental instructions, may only be made by written addenda. The City will not mail notice of any addenda to the bidders, but will publish notice of any addenda on the Central Oregon Builders Exchange website. Addenda may be downloaded off the Central Oregon Builders Exchange website, and bidder should frequently check said website until closing. All addenda so issued shall become part of the Bid Documents. No other oral or written statements to bidders shall be binding on the City unless reduced to written addendum.

#### 15. PRE-BID INQUIRIES.

Bidders with non-technical, pre-bid inquiries may contact the Public Works Dept., Michele Quinn at 541-475-2344.

## CITY OF MADRAS

### GENERAL CONDITIONS

Contractor's services under this Contract shall be subject to the provisions of these General Conditions, and both parties agree to comply therewith, as they may be modified by special conditions (if any) identified in the Contract as one of the Contract Documents.

<b><u>Article</u></b>	<b><u>Title</u></b>
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12	Safety
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22	Schedule
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25	Temporary Structures and Services
26	Security of Equipment and Operable Machinery
27	Weather Protection and Heating
28	Cleaning
29	Progress Payments and Final Payments
30	Owner's Right to Withhold Payment
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35	Owner's Right to Terminate
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39	Guarantees and Warranties
40	Public Contract

## **ARTICLE 1**

### **Definitions**

- A. For the purposes of this Contract, the following terms shall have the meanings hereinafter set forth:
1. The term “Architect/Engineer” means the person, firm, or corporation that prepared the drawings and specifications, or acts as a consultant to the Owner during the project, whether it be an architect or engineer.
  2. The term “drawings of record” means those annotated drawings submitted by the Contractor during progress of construction to the Owner or the Architect/Engineer, illustrating how various elements of the work were actually installed.
  3. The term “Contract” means the agreement signed by the parties thereto, these General Conditions, and all other documents and exhibits listed as “Contract Documents” in the agreement signed by the parties.
  4. The term “contract change order” means a document prepared by the Owner or the Architect/Engineer, as directed and approved by the Owner as a change to the Contract incorporating approved Contractor’s proposals for changes in the Work. Contract change orders shall be numbered consecutively in chronological order and shall refer to the field change order(s) covered.
  5. The term “Contract Sum” means the amount payable to Contractor under the Contract.
  6. The term “Contractor” means the person, firm, or corporation responsible for the execution of the work contracted for by Owner.
  7. The term “days,” unless expressly stated otherwise, means calendar days.
  8. The term “field change order” means an order issued to the Contractor, by the Architect/Engineer or the Owner’s Construction Representative, to carry out minor revisions in the Work. The Contractor’s field superintendent shall be authorized to supply quotations for the Work directly to the Architect/Engineer or the Owner’s Construction Representative. Such field change orders shall be numbered consecutively, in chronological order.
  9. The Architect/Engineer and the Owner use the term “or approved equal” to indicate that the material or product to be supplied or installed must be equal to that specified and as approved.
  10. The term “Owner” means the City of Madras.
  11. The term “Owner Request for Proposal (Owner RFP)” means a request by the Owner for a proposal on contemplated changes in the Work. Such Owner RFPs shall be numbered consecutively, in chronological order.

12. The term “Owner’s Construction Representative (OCR)” means the Owner’s agent, designated by Owner. The OCR coordinates the activities of the Architect/Engineer, Contractor, Owner’s consultants, and all aspects of the project.
  13. The term “Project” means all construction of which the Work may be a part or the whole. The Project may contain work by Owner or by separate contract.
  14. The term “punch list” means a list, prepared by the Architect/Engineer and/or the Owner, of the Contractor’s uncompleted or uncorrected work.
  15. The term “separate contract” means a contract between Owner and a contractor, other than the Contractor under this Contract, for the construction or furnishing of a portion of the Project.
  16. The term “subcontractor” means, without limitation, any firm, corporation, or person working directly or indirectly for the Contractor that furnishes or performs a portion of the work, labor, or material, according to the drawings and/or specifications.
  17. The term “substantial completion” means the completion of the work to the extent that the Owner may have uninterrupted occupancy and use of the facility or specified portion thereof for the purpose for which intended.
  18. The term “Work,” unless otherwise specified, indicates all items to be furnished, performed and paid for by the Contractor and its subcontractors, and includes all materials, tools, methods, labor, overtime labor, standby labor, equipment services, transportation, power, fuel, water, and other items and facilities of every kind necessary for the complete job and to the entire performance of this Contract.
  19. The term “Work in place” means work, which has been installed in accordance with the drawings and specifications, but does not include equipment or material that has been delivered to the job site and not yet installed.
- B. Capitalized terms not otherwise defined herein shall have the meanings given to the terms in the agreement signed by the parties.

## **ARTICLE 2**

### **General Provisions**

- A. The Contract shall be deemed to have been made in, and shall be construed under, the laws of the State of Oregon.
- B. Contractor shall direct all communications to the designated OCR.
- C. Contractor shall perform services under this Contract in a skillful and competent manner in accordance with good practice standards of the construction industry. Contractor shall be responsible to Owner for errors or omissions in construction and failure to perform this Contract, and shall correct or remove any defective work.

- D. Contractor's Work shall comply with all applicable laws, regulations, ordinances, building codes, and requirements of federal, state and local government authorities and agencies having jurisdiction over the facility to be constructed, including those of the utility companies, and shall give all notices and obtain all licenses and permits required.
- E. Contractor shall comply with construction procedures contained in the Contract Documents.
- F. Written notice shall be deemed to have been duly given (i) if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, (ii) if sent by facsimile, with transmission confirmation received to the fax number provided in the Contract, or (iii) if delivered at, or sent by registered or certified mail to, the person's address set forth in the Contract.
- G. Time limits stated in this Contract are of the essence.
- H. Contractor shall maintain an efficient and accurate accounting system for all work in connection with this Contract. Contractor's accounts and records covering these charges and all invoices, payments, correspondence, memoranda, and other writings, on account of this Contract, shall, at all reasonable times during the term of this Contract, and for two (2) years thereafter, be open to inspection and copying by Owner or its authorized representatives.
- I. Contractor shall pay for additional sets of drawings and specifications requested by Contractor, over and above the bid and contract sets furnished by Architect/Engineer. Payments are to be made directly to the blueprinter or to the party furnishing the drawings and specifications.
- J. Upon acceptance of this Contract, Contractor shall execute and deliver separate Performance and Payment Bonds, each in an amount equal to the total Contract Sum, and fully executed by a Surety Company authorized to do business in the State of Oregon and approved by Owner. In the event of any increases in the total Contract Sum, Contractor shall increase the Performance and Payment Bonds so that each equals the new total Contract Sum. Contractor shall pay the costs of all Bonds.
- K. Contractor agrees to immediately remove any liens, claims, or encumbrances which, because of any act or default of Contractor, or of Contractor's subcontractors or sub-subcontractors, or material suppliers, are made against the Owner or the Project; and to defend, indemnify, and save Owner harmless against and from all resulting loss and expenses, including attorney's fees.
- L. In carrying out any of the provisions hereof or in exercising any authority granted by the Contract, there will be no personal liability imposed upon any public official or employee of Owner.

- M. In the event any provision of this Contract is void, invalid, or unenforceable under the laws of the State of Oregon; the balance of the Contract shall remain in effect and binding on the parties hereto.
- N. Contractor shall perform all work under this Contract as an independent contractor and shall not be considered an agent of Owner, nor shall contractor's subcontractors or employees be sub-agents of Owner.
- O. This Contract is not intended to entitle Contractor to any benefits generally granted to Owner's employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the Contractor are vacation, holiday and sick leave, other leave with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Public Employees Retirement System).
- P. The Contractor is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Worker's Compensation coverage under this Contract. If the Contractor has the assistance of other persons in the performance of this Contract, the Contractor shall qualify and remain qualified for the term of this Contract as required by ORS 656.407 or as a contributing assistance of any other person, Contractor shall execute a Joint Declaration with City's Workers' Compensation carrier absolving Owner of any and all liability from Workers' Compensation provided in ORS 656.029(2).

### **ARTICLE 3**

#### **Intent of the Contract Documents**

- A. The intent of the Contract Documents is to include all of the Work for the Contract Sum and within the Contract Time. The drawings and specifications are to be considered complementary, and all work necessary for the execution of the Work if shown on the drawings and not described in the specifications, and all work described in the specifications and not shown on the drawings, or any work which is obviously necessary to complete the Work within the limits established by the drawings and specifications, shall be considered part of the Contract, and shall be executed by Contractor in the same manner and with the same quality of material as other portions of the Contract without extra compensation.
- B. Unless expressly stipulated otherwise, Contractor shall provide and pay for all services, labor, overtime labor, standby labor, methods, materials, equipment, transportation, power, fuel, water, and all other facilities and services, including operating costs incurred in checking out equipment, and all other items and facilities of every kind necessary to complete the intent of the Contract for the Contract Sum within the Contract Time.

- C. Words describing material or work which have a well-known technical or trade meaning unless otherwise specifically defined in the contract, shall be construed in accordance with such well-known meaning, recognized by architects, engineers and tradesmen.
- D. The Contract and each of the Contract Documents are complementary, and they shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should Contractor observe any conflicts within the Contract Documents, Contractor shall bring them to the Owner's attention for decision and revision as soon as possible after originally observed. In the event of duplications or conflicts within the Contract Documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, provided, however, that Owner shall receive a credit for all costs saved accruing to Owner in the event the least expensive method of work is directed by Owner. A duplication of work is not intended by the Contract Documents and any duplication specified shall not become a basis for extra cost to Owner.
- E. Contractor shall secure written instructions from the OCR before proceeding with Work affected by omissions or discrepancies in the Contract Documents.

**ARTICLE 4**  
**Substitutions**

- A. Throughout the specifications, manufacturer's name and catalog number may specify types of material in order to establish standards of quality and performance and not for the purpose of limiting competition. Unless specifically specified otherwise, Contractor may assume the phrase "or approved equal" except that the burden is upon Contractor to prove such equality. If Contractor elects to prove such equality, Contractor must request the Architect/Engineer and Owner's approval in writing to substantiate equality, with supporting data and samples, if required, to permit a fair evaluation of the proposed substitute with respect to quality, serviceability, warranty, and cost. Such supporting data shall include the basic specifications of the specified item(s), and the specifications, characteristics and other information concerning the proposed substitution demonstrating its equality to the specified items(s), and the effect of the substitution on the schedule and cost, if any.
- B. After award of the Contract, proposed substitutions will be considered only if Owner receives the advantage of lesser cost with no decrease in quality, or earlier completion date, or both. In any event, a request for substitution shall be made sufficiently in advance of Project needs to permit sufficient time for evaluation by Architect/Engineer and Owner without jeopardizing the construction schedule.
- C. In the event that Owner approves a substitution, Contractor shall assume all risk and costs for redesign and adjustment of Work affected by the substitution and its effect on adjoining Work, and any delays occasioned by its use.

**ARTICLE 5**  
**Architect's/Engineer's Status**

- A. Architect/Engineer is the interpreter of the drawings and specifications.
- B. It is not incumbent upon Architect/Engineer or Owner to notify 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 Contractor of any responsibility or of any consequences for neglect or carelessness by Contractor or its subordinates.

**ARTICLE 6**  
**Contractor's Superintendent**

- A. Contractor shall provide the services of a competent on-site representative, as approved in writing by Owner, from the commencement of construction to final completion and acceptance of the Work. Contractor's on-site representative shall represent Contractor at the Work, and all directions, instructions, or notices given to the on-site representative by Owner or the Architect/Engineer shall be as binding as if given to Contractor.
- B. Contractor's on-site representative shall be in charge of the Work at all times and shall have authority to furnish estimates and to approve field change orders. Contractor shall provide on-site representative with such assistants as are necessary to properly execute and coordinate all phases of the Work.
- C. Contractor's project manager, construction superintendent, assistant construction superintendent, if any, and trade foremen, as required, shall not be removed from the Work under this Contract without the prior written approval of Owner.

**ARTICLE 7**  
**Subcontractors**

- A. Contractor, upon notification of selection as apparent successful bidder, and prior to award of Contract, shall submit to Owner, for approval, a list of proposed subcontractors and suppliers for each of the major items of the Work. Owner reserves the right to reasonably reject any subcontractor or supplier that has not been qualified by Owner in writing prior to award of Contract, without additional cost to Owner. Where Owner rejects any subcontractor or supplier that has been prequalified by Owner in writing, the Contract Sum shall be adjusted by contract change order pursuant to provisions of this Contract for pricing additional or deleted work. Contractor shall advise Owner of Contractor's selection of approved subcontractors and suppliers prior to commencement of Work by the subcontractors and suppliers.
- B. To the extent the specifications have been divided into separate headings or sections to cover the principal trades or subtrades represented in the Work, it is done for convenience. This arrangement shall not limit Contractor in the extent of the Work included in each of the various subcontracts, nor shall the use of the term "subcontractor" relieve Contractor of responsibility for seeing that all of the Work of

the Contract is performed properly, whether or not specifically called for in a particular section.

- C. All contracts concerning the Work entered into by Contractor with subcontractors shall include the terms and conditions governing Contractor. No provisions of this Contract or of any contract between the Contractor and subcontractors shall be construed as an agreement between Owner and subcontractors. Contractor shall be as fully responsible to the Owner for the acts and omissions of a subcontractor, of the persons employed by a subcontractor, or of firms and/or subcontractors engaged by a subcontractor, as Contractor is for the acts or omissions of its own employees.

### **ARTICLE 8 Separate Contracts**

- A. Owner reserves the right to let separate contracts in connection with the Work. Contractor shall afford such other firms, contractors, or subcontractors adequate opportunity for the introduction and storage of their material and the execution of their work, and shall properly connect and coordinate its work with such other firms, contractors, or subcontractors.
- B. Contractor shall cooperate with other firms, contractors, or subcontractors on the Work and with Owner so that all portions of the Work may be completed in the least possible time within normal working hours. Contractor shall furnish other firms, contractors, or subcontractors, whose work is fitted into Contractor's, detail and erection drawings giving full information regarding the fabrication and assembly of Contractor's work. When possible, drawings shall show checked field measurements.
- C. Should Contractor cause damage to any separate firm, contractor, or subcontractor on the Work, Contractor agrees to use its best efforts to negotiate a settlement with such firm, contractor or subcontractor. Contractor shall defend, indemnify and save Owner harmless from any and all claims, losses, liability, or actions arising therefrom, even if Contractor was not negligent in causing the damage.

### **ARTICLE 9 Allocation of Risk**

- A. All reports giving the results of soil investigations or borings conducted by Owner may be examined at Owner's offices. Any investigations or borings were carried out and retained for design purposes only, and are not considered adequate for construction. Prior to submitting any bids, Contractor is required to acquaint him/herself with the site and all other conditions relevant to the Work, and make all investigations essential to a full understanding of the difficulties, which may be encountered in performing the Work.
- B. Contractor represents that prior to submitting its proposal for the Work, Contractor carefully examined all of the Plans and Specifications, acquainted him/herself with the site and all other conditions relevant to the Work, and made all investigations

essential to a full understanding of the difficulties which may be encountered in performing the Work.

- C. Owner does not warrant the correctness of any soil investigations or borings, or of any interpretations, deductions or conclusions given in any report relative to subsurface conditions. Soil investigations or borings are not warranties of conditions between soil borings nor are they guaranteed to represent all conditions that may be encountered. Contractor has made and shall make its own deductions and conclusions as to the nature of the materials to be excavated, the difficulties of making and maintaining the required excavation, the difficulties which may arise from subsurface conditions, and of doing any other work affected by the subsurface conditions, and shall accept full responsibility therefore.
- D. During construction, and until acceptance by Owner, Contractor shall be responsible for the premises and for the Work and shall bear the risk of loss for all damage thereto, however caused, and regardless of whether any damage is the fault of Contractor.

#### **ARTICLE 10 Indemnification**

- A. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold Owner, and its agents and employees, harmless from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising from, related to, or caused by the performance of the Work by Contractor, or its subcontractors, agents, and employees. This obligation shall survive acceptance of the Work and completion of the Contract.
- B. In any and all claims against Owner or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors' or workers' compensation acts, disability acts or other employee benefit acts.
- C. Contractor shall carry sufficient insurance to defend, indemnify and hold Owner harmless as provided in this provision.

#### **ARTICLE 11 Contractor's Insurance**

- A. Contractor shall not commence work until Contractor has furnished two (2) copies of certificates of insurance evidencing that Contractor has obtained the following insurance, which shall be secured with companies and in form satisfactory to the Owner. Owner shall be added to each policy as a named additional insured. Such certificates must provide that the insurer will give Owner at least thirty (30) days' prior written notice of material change in or cancellation of such insurance:

	<i>Type</i>	<i>Limits</i>
1.	Employer's Insurance	
	a. Workers' Compensation covering all employees who are engaged in any work under the contract	Statutory limits
	b. Employers' Liability including bodily injury caused by disease	\$500,000 each accident
2.	Commercial General Liability*:	\$1,000,000 per occurrence, per job site \$2,000,000 annual aggregate
3.	Comprehensive Automobile Liability including Owned, Non-owned and Hired Vehicles:	
	a. Bodily injury (including death)	\$1,000,000 each accident
	b. Property damage	\$1,000,000 each accident

\* The Commercial General Liability policy shall include coverage for bodily injury, property damage, independent contractors, blanket contractual, personal injury, products and completed operations, broad form property damage (including but not limited to completed operations) and coverage for explosion, collapse and underground hazards. This insurance shall include contractual liability to cover the liability assumed by the Contractor under the indemnification provisions of the General Conditions.

- B. When the construction is to be accomplished within a public or private right-of-way requiring special insurance coverage, Contractor shall conform to the particular requirements and provide the required insurance. Contractor shall include in its liability policy all endorsements that the applicable government authority may require for the protection of the authority, its officers, agents, and employees. Contractor shall provide insurance coverage for special conditions, when required.
- C. Contractor shall maintain the above insurance at all times until acceptance of the Work.
- D. Maintenance of insurance by Contractor as specified in this Article shall in no way be interpreted as relieving Contractor of any responsibility and Contractor may carry, at its own expense, such additional insurance as Contractor deems necessary.
- E. Contractor shall require all subcontractors (unless otherwise approved by the Owner) to carry insurance at least equal to that required by Paragraphs 1, 2, and 3 of Paragraph A of this Article.

**ARTICLE 12**  
**Safety**

- A. Contractor shall take all necessary precautions for the safety of its employees, Owner's employees, and the public, and protection of the Work and of adjoining property, and shall comply with all applicable provisions of federal, state and local safety laws and building codes and Owner's fire insurance carrier's requirements to prevent accidents, injury to persons, loss of life and damage to property.
- B. Contractor shall not permit any structure to be loaded excessively.
- C. For work at an existing facility operated by Owner, Contractor shall obtain approval, from Owner, as to time and duration of activities prior to blasting, welding, torch cutting, building of fires, or making changes in the process water, city water, or fire protection systems.
- D. Contractor shall properly erect and maintain all necessary safeguards for the protection of workers, Owner, Owner's employees, and the public. Contractor shall post danger signs and markers warning against hazards created by features of the construction.
- E. Safety and accident reports shall be submitted in accordance with federal, state, and local regulations. Contractor shall inform Owner of any accidents within three (3) days of occurrence.
- F. Owner, OCR, and Architect/Engineer are not responsible for safety, safety procedures, safety analysis of any condition on the project, or coordinating any safety efforts or programs of any contractor or subcontractor.

**ARTICLE 13**  
**Royalties and Patents**

Contractor shall pay all royalties and license fees. Contractor shall defend all suits or claims for infringement of any patents and shall save Owner harmless from loss on account thereof except the Owner shall be responsible for all such loss when a particular process or product is specified by it unless Contractor shall have information that a particular process or product infringes a patent, in which event, Contractor shall be responsible for loss on account thereof unless Contractor promptly provides such information to Owner.

**ARTICLE 14**  
**Ownership of Documents**

All drawings, specification computations, sketches, test data, survey results, photographs, renderings, models, electronic data and other material related to the Work prepared by Contractor, or furnished to Contractor by Owner or the Architect/Engineer, are the property of Owner. Contractor shall submit to Owner the original and a reproducible copy of all such materials upon Owner's request, otherwise upon completion of construction. Contractor shall not use any such materials or copies thereof on other work nor shall contractor divulge information from such materials without Owner's prior written approval.

**ARTICLE 15**  
**Methods of Carrying on the Work**

- A. Contractor shall be responsible for construction means, methods, techniques, sequences, procedures, coordination, orderly scheduling, and management of all Work by its employees and subcontractors.
- B. Contractor shall confine its equipment, apparatus, materials, and operations of workers and subcontractors within limits allowed by Owner and shall not unnecessarily encumber the premises. Contractor shall be responsible for all materials and equipment stored by Contractor or its subcontractors.
- C. Contractor shall use the premises only for purposes necessary to the performance of this Contract. Contractor shall not make use of any existing structures on Owner's property or any facilities therein without prior approval from Owner.
- D. Whenever Contractor shall receive materials, equipment, or personal property from any person having a contract with Owner for storage, erection, or installation, Contractor shall give to such person, or Owner, written receipt for the items delivered and shall be responsible for the proper care, storage, or replacement of items received.
- E. All manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by Contractor as directed by the manufacturer unless otherwise specified.
- F. Contractor shall maintain one complete copy of the Contract documents at the job site, with all Owner RFPs, change orders, reviewed shop drawings, observation reports and other documents necessary to the prosecution of the Work. All Contract documents shall be kept up to date with legible markings.

**ARTICLE 16**  
**Surveys, Permits and Regulations**

- A. This Contract does not constitute a land use permit, nor does acceptance of this Contract by Contractor constitute approval of any legislative or quasi-judicial action required as a condition precedent to use of the land for the intended purpose.
- B. Surveying, staking, measurement, and layouts required for the proper execution of the work shall be initially provided by the Owner. Contractor shall be responsible for

protection of the initial layout of stakes. Subsequent surveying, staking, measurements, and layouts (due to destroyed stakes, etc.) shall be at the Contractor's expense.

- C. Contractor shall compare and continually check for changing conditions, all dimensions, elevations, lines, grades and other information appearing on the drawings with the work of other contractors and with the actual dimensions, elevation lines grades and site conditions. Contractor shall report in writing to the Architect/Engineer and Owner any discrepancies in the prevailing conditions before proceeding with the Work. Contractor shall be responsible for any cost or expense, which results from its failure to so compare and report.
- D. Contractor shall obtain and pay for all permits, licenses, certificates, inspections and other approvals required, both temporary and permanent. Any such fees shall be included in the Contract Sum. Prior to Contractor's application for a building permit, Contractor shall secure Owner's approval of the Project value to be used for permit purposes.
- E. When construction crosses highways, railroads, streets, watercourses, or utilities under the jurisdiction of a state, county, city or other public agency, public utility or private entity, Contractor shall conform to the permits, licenses, regulations and conditions of such authorities. Contractor is responsible for the knowledge of all underground utilities present on the site.

#### **ARTICLE 17**

##### **Materials, Employees and Workmanship**

- A. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. All workers and subcontractors shall be skilled in their trades. Contractor shall furnish evidence of the skill of its workers and subcontractors upon the request of Owner.
- B. Contractor shall at all times enforce strict discipline and good order among its employees and all subcontractors, and shall not employ or keep on the job any employee or subcontractors' employees whom Owner deems undesirable or unfit. If Owner requires Contractor not to employ or keep on the job any employee or subcontractors' employees, Contractor shall promptly comply without any additional costs to Owner or any increase in the Contract Sum.

#### **ARTICLE 18**

##### **Connecting the Work**

- A. Contractor shall do all cutting, fitting, and patching that may be required to make the several parts of the Work come together properly and to fit Contractor's Work to receive or be received by the work of other firms as shown upon or reasonably implied by the drawings and specifications. After others have finished their work, Contractor shall promptly complete and finish the Work as Owner may direct.

- B. Contractor shall not endanger, cut, or alter the work of any other firm without the consent of Owner.
- C. Requirements for additional cutting, fitting, and patching resulting from Contractor's defective or untimely Work shall not be a basis for additional cost to Owner.
- D. If any part of the Work depends for proper execution or maximum durability upon the work of any other firm, Contractor or its subcontractor(s) shall inspect said work before commencing its own Work and shall make known, for approval by Owner, any departures from the drawings and specifications. Failure of Contractor to observe these requirements shall bar Contractor from claiming thereafter that defects in its own Work are due to defects in the work of others, unless Contractor submits clear and convincing evidence that a thorough inspection of said other work was made before Contractor's Work went forward and that tests which were reasonable and customary failed to disclose the defects which later appeared.
- E. Where it is necessary to connect to existing facilities, Contractor shall not interrupt Owner's operations to make such connections, but the Work shall be done according to a schedule convenient to, and approved in writing by, Owner. Any overtime, necessary for such connections shall be at Contractor's expense.

**ARTICLE 19**  
**Protection of Work, Property and Persons**

- A. Contractor shall protect the Work, its employees and equipment, Owner's property, adjacent property and the public from personal injury, loss, or property damage from any cause whatsoever.
- B. Contractor shall be responsible for any injury, loss, or damage to any presently existing improvements on the premises caused by Contractor or its employees, agents, or subcontractors and in the event of such injury, loss, or damage, Contractor shall promptly make such repairs or replacements as required by Owner without additional cost to Owner.
- C. Contractor shall provide and erect all planking, bridges, bracing, shoring, sheet piling, lights, and warning signs necessary for the protection of streets, adjacent property and the public. Contractor shall provide scaffolds, tarpaulins, and similar items as required to protect Owner's equipment and employees. Contractor shall, if necessary, seal off its Work from Owner's work so as not, to interfere with Owner's operations.
- D. During the progress of the Work, Contractor shall protect all finished Work as soon as same is erected and shall maintain such protection until no longer required.
- E. The completed Work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by State and Federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the Work subject to such safety regulations shall be fabricated, furnished,

and installed in compliance with their requirements. Contractor shall be held responsible for compliance with the requirements included herein.

- F. Contractor shall preserve and protect existing vegetation such as trees, lawns and shrubs which may be impacted by the Work and which are not to be removed. Contractor shall consult with Owner concerning trees to remain adjacent to the construction area. Contractor shall protect trees from stockpiling, vehicle driving and parking beneath tree canopies, dumping of refuse or chemically injurious materials or liquids, and continual puddling or running water. Contractor shall not remove more than six inches of existing soil or fill more than two inches over existing soil within six feet of trees to be saved. Contractor shall be permitted to remove interfering branches and roots only where absolutely necessary and without injury to trunks, and shall employ a qualified tree surgeon to remove branches or roots and to treat cuts.

## **ARTICLE 20**

### **Inspections and Tests**

- A. Contractor shall permit and facilitate observation or inspection of the Work by Owner, Owner's representatives, and governmental authorities having jurisdiction, at all times when the Work is in preparation or progress.
- B. The costs for inspections or tests not required by the specifications, but which Owner requests, will be borne by Owner, except where Contractor's Work fails any inspection, Contractor will pay the costs of that inspection. All inspection requests of Owner shall be complied with.
- C. All tests shall be performed by a testing agency approved by Owner and shall be in accordance with the current standards of the American Society for Testing and Materials, unless otherwise specified by Owner. Contractor shall furnish Owner with two (2) copies of the test procedures used.
- D. Acceptance by Owner of test data or inspections of any portion of the Work by Owner shall not relieve Contractor of its obligation to perform the Work as required by the Contract.
- E. Operating equipment and systems shall be performance tested in the presence of Architect/Engineer to demonstrate compliance with the specified requirements. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by Architect/Engineer. Contractor shall schedule such testing with Architect/Engineer at least one (1) week in advance of the planned date for testing. All costs of performance testing shall be borne by Contractor.
- F. Failure of Architect/Engineer or Owner, during the progress of the Work, to discover or reject defective Work or Work not in accordance with the drawings and specifications shall not be deemed an acceptance thereof or a waiver of Owner's right to proper execution of the Work. No partial or final payment or partial or entire occupancy of the premises by Owner shall be construed to be an acceptance of Work

or materials which are not strictly in accordance with the Contract, or a waiver of Owner's rights.

- G. If any Work is covered up without approval of Owner or Architect/Engineer, it shall be uncovered for examination, and, after examination, Contractor shall perform all re-work required to correct defective work and restore it to the condition called for by the Contract. In such case, the cost of uncovering the Work and of all re-work involved shall be borne by Contractor.
- H. If Owner or Architect/Engineer must perform re-inspections due to failure of the Work to comply with requirements of the Contract Documents during final inspection, Owner may deduct its costs and Architect's/Engineer fee for such additional services from the final payment due Contractor.
- I. Contractor shall furnish, without charge, samples of materials or products as requested by Owner or Architect/Engineer, whether or not specifically called for in the Contract. Contractor shall not incorporate any such material or product into the Work until after Owner or Architect/Engineer has approved the samples submitted in writing. The samples shall be submitted to give Owner and Architect/Engineer ample time for review, selection or approval so as to not delay the Work.

**ARTICLE 21**  
**Additional or Deleted Work**

- A. Within twenty-four (24) hours after receipt of a field change order and within five (5) days after receipt of an Owner RFP for changes in the Work not covered by agreed-upon "unit Prices," Contractor shall submit to Owner a lump sum proposal, itemized by cost code, stating the amount to be added to or deducted from the Contract Sum and the effect, if any, on the schedule by reason of such changes. The amount for additional or deleted Work not covered by "unit prices" shall be determined as follows:
  - (1) For additional Work to be performed by Contractor's subcontractors, Contractor shall add an amount equal to each subcontractor's direct costs for labor, materials, equipment rental, and transportation, plus (a) ten percent (10%) thereof for changes costing less than \$5,000, or (b) five percent (5%) thereof for changes costing \$5,000 or more, to cover all other charges for or in connection with such work. For work performed by sub-subcontractors, each ascending tier subcontractor shall be allowed the same supplemental markup as Contractor. The costs for materials shall include taxes, if any. The percentage fee provided in this paragraph includes, but is not limited to, layout, supervision (field and home office), small tools and related items, general expenses, overhead, and profit of Contractor and its subcontractors, and such items shall not be included in the direct cost for the change order work.

(2) For additional Work to be performed by Contractor's own forces, Contractor shall add an amount equal to Contractor's direct costs for labor, materials, equipment rental, and transportation, plus (a) ten percent (10%) thereof for changes costing less than \$5,000, or (b) five percent (5%) thereof for changes costing \$5,000 or more, to cover all other charges for or in connection with such work. The costs for materials shall include taxes, if any. The percentage fee provided for in this paragraph includes, but is not limited to, all charges for layout, supervision (field and home office), small tools and related items, general expenses, overhead, and profit, and such items shall not be included in the direct cost for the change order work.

(3) For work to be deleted, Contractor shall deduct an amount equal to the direct cost savings for labor, material, equipment, transportation, and taxes deleted from the work, plus ten percent (10%), to cover all other savings from, or in connection with, such deleted work. The costs for materials shall include taxes if any. The percentage fee includes only those charges for layout, supervision (field and home office), small tools and related items, general expenses, overhead, and profit attributable to the deleted work.

- B. Upon completion of the change order work, Contractor shall submit supplier invoices and such other documentation as is necessary to allow Owner to verify the direct costs of the change order work.
- C. No fee or other markup of any kind will be applicable to any premium portion of wages, taxes, or related benefits.
- D. If Contractor's proposal, submitted in response to a field change order or Owner RFP, is acceptable to Owner, Architect/Engineer will issue a contract change order consistent with Contractor's proposal.
- E. If Owner and Contractor are unable to agree upon change order terms, or if in the opinion of Owner the Work must proceed before an agreement can be negotiated, Owner will issue a written order to Contractor to proceed with the changes, and the Contractor shall comply. In such event, Contractor shall keep daily records as to all labor employed concerning the changes. Contractor's records shall itemize costs for labor, materials, equipment rental, and transportation. Contractor shall submit the records for approval by the OCR. If Contractor fails to keep such records, all Work will be deemed to have been performed at Contractor's own expense. Owner and Contractor shall attempt to negotiate fair and reasonable adjustments to the Contract for changes in the Work. Contractor shall submit to Owner all evidence in support of Contractor's proposal. In the absence of an agreement to the contrary, the changed work will be priced in accordance with Paragraphs A & B of this Article 21.
- F. When a schedule of unit prices for additions or deletions to the Work is made a part of the Contract, and in the event Owner issues a field change order or Owner RFP for additional or deleted Work to which unit prices are applicable, no percentage fee or other mark-up will be applied to scheduled unit prices. Owner will have the right to

establish verification procedures for all Work performed under unit price Contract provisions.

- G. In the event of addition and deletion of like items in a field change order or Owner RFP, the like item quantity shall be summed and the unit prices or the percentage fee shall be applied to the total.
- H. In no event shall Contractor proceed with changes in the Work without a written order from Owner to so proceed. Owner will be under no obligation to pay for unauthorized extra, additional or changed Work performed by Contractor without a written Change Order or written order to proceed executed by Owner.

## **ARTICLE 22**

### **Schedule**

- A. Contractor shall submit, to Owner, a Type "A" (as defined by 2008 Oregon Standard Specifications section 00180) schedule of the Work within ten (10) days after award of the Contract and shall maintain the schedule on a current basis until the Work is completed. Time limits set forth in the Contract for substantial completion, final completion, or any other project milestones, shall govern, and the schedule must be adjusted to comply. Contractor shall perform the Work in accordance with the schedule as well as within the dates specified in the Contract.
- B. Periodically as required by Owner, Contractor shall report to Owner on the status of the Work on duplicate marked copies of the current schedule. Contractor shall indicate in the status report any Work that is not proceeding according to the current schedule or to modify the schedule. Any modifications to Contractor's schedule notwithstanding, Contractor shall remain responsible to complete the Work within the times specified in the Contract.
- C. If the Work is not proceeding according to the Schedule and the owner does not reasonably believe Contractor's proposed actions or schedule modifications are sufficient to accomplish completion of the Work within the Contract time, Contractor shall be in default under the Contract. If Contractor fails to cure such default by submitting proposed actions or schedule modifications, reasonably acceptable to Owner, within ten (10) days of receiving written notice of the default, Owner may perform such Work as it deems necessary to bring the Work into compliance with the current schedule and to credit the cost thereof against payments due Contractor. Such action shall not constitute Owner's waiver of any other claim or claims against Contractor resulting from Contractor's failure to perform on schedule or within the time limits set forth in the Contract.
- D. Contract Completion Dates and Liquidated Damages: Once the Contractor has moved onto the Project site, work shall commence and continue, uninterrupted, until fully complete and accepted by the Owner. All work associated with the Project shall be completed in all respects by the completion date specified in the Contract.

Owner and Contractor recognize that the Owner will suffer financial loss if the work of the Project is not completed by the dates specified above, plus any mutually agreed upon extensions. They also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by Owner, if the work is not complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that failure to meet the completion date specified in the Contract will result in Liquidated Damages of five hundred dollars (\$500.00) for each and every calendar day, including the correction of deficiencies and final clean up, that completion of the Work is delayed beyond the completion date specified in the Contract.

**ARTICLE 23**  
**Delays and Extension of Time**

- A. If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or by any other firm employed by Owner or by changes ordered in the Work, strikes, lockouts, fires, floods, earthquakes, or acts of God, acts of war, or public enemy, inability to obtain materials due to government restrictions, acts of public officials, or by any cause which Owner shall decide justifies the delay, then the schedule for completion of the Work shall be extended for a period equal to the delay so caused. No such delay shall be recognized unless it alone increases the overall critical path duration of the schedule in effect at the time of the delay.
- B. No schedule extension shall be allowed for delay commencing more than five (5) days before claim therefore is made in writing to the Owner. In case of a continuing delay, only one claim is necessary.
- C. No claim for delay shall be allowed Contractor on account of the Architect's/Engineer's or Owner's failure to return drawings and shop drawings to Contractor until ten (10) working days after Owner's receipt of a demand for such drawings, and not then, unless such claim is reasonable. Disapproval of drawings by Owner shall not be a claim for delay.
- D. Extension of time of completion by Owner, if any, shall be Contractor's sole remedy for delay, no matter how or by whom caused, and Contractor shall not be entitled to any increase in the Contract Sum or to damages or additional compensation as a consequence of such delays, provided however, Contractor shall be entitled to compensation for delays caused by Owner's failure to obtain such permits as are Owner's responsibility in a timely manner.
- E. Contractor shall cause each subcontract or agreement with material suppliers to contain a provision limiting remedies of subcontractors and suppliers for delay to those allowed the Contractor under Paragraph D, above.

**ARTICLE 24**  
**Temporary Sign**

Contractor may, at no cost to Owner, provide a suitable temporary sign acceptable to the Owner advertising the Work and indicating thereon the title of the project and name of

Architect/Engineer and Contractor. The sign shall be no larger than 4 feet by 8 feet. Layout, text and location of such sign shall be as approved by Owner.

## **ARTICLE 25**

### **Temporary Structures and Services**

- A. Toilets. Contractor shall provide suitable toilet facilities at approved locations with proper enclosures for the use of all workers, and shall maintain such in a sanitary and operable condition, all in conformity with local regulations.
- B. Temporary buildings. Contractor shall provide such temporary buildings as may be required for the use of its workers and the safe storage of tools and materials. Such structures shall be located on the job site with location as approved in advance by Owner.
- C. Temporary Electric Power. Contractor shall provide and pay for all temporary light and power required for the Work including all wiring, connections, and accessories, and all power consumed.
- D. Temporary Water Supply. Contractor shall make all necessary arrangements for and provisions of water including temporary piping and hose extensions required for construction purposes. Contractor shall obtain and pay for temporary permits from proper authorities and pay for all water used.
- E. Temporary Facilities. Contractor shall install and operate an adequate number of temporary hoists and furnish and maintain temporary scaffolds, ladders, runways, and the like as required for the proper execution of the Work. As soon as the progress of the Work will permit, Contractor shall erect the permanent stairs, platforms, ramps, catwalks, etc., properly equipped with handrails and other safeguards and shall provide wood or paper coverings to protect these and all other permanent parts of the facility from damage or defacement during the Work.
- F. Removal of Temporary Structures and Services. Contractor shall remove temporary structures and services installed by Contractor upon completion of the Contract or as directed by Owner. Contractor shall make any repairs or alterations necessitated by such removal at Contractor's expense.
- G. Pestilence Control. Contractor shall guard against and, if necessary, exterminate rodents, termites, vermin, and other pests. All personnel on the project site shall be required to dispose of garbage and refuse in covered metal containers, which the Contractor shall furnish and empty regularly.
- H. Pollution Control. Contractor shall comply with requirements of Owner and of governmental authorities have jurisdiction, regarding pollution control.
- I. Contractor shall not disrupt or interrupt electric, gas, water, steam, or other utilities or services to existing structures without prior notice to Owner and then only at a definite time and for a definite duration as approved by Owner in writing.

- J. If Work is to be performed upon or adjacent to an existing structure, the Work shall be executed in such manner as will not interfere with the continued free and comfortable use of the structure, walks and grounds. Contractor shall keep building exits clear of obstructions at all times.
- K. Contractor shall provide designated smoking areas, separate from areas where work is actively being performed, for its employees and subcontractors.

#### **ARTICLE 26**

#### **Security of Equipment and Operable Machinery**

Site-parked mobile equipment, operable machinery, and hazardous parts of the new construction subject to mischief shall be kept locked or otherwise made inoperable whenever left unattended.

#### **ARTICLE 27**

#### **Weather Protection and Heating**

- A. Contractor shall provide and maintain weather protection and temporary heating as required to properly protect all Work from damage. Contractor shall not use any installed or partially installed heating system for temporary heating purposes, unless specifically authorized in writing by Owner.
- B. When necessary to enclose buildings for construction, Contractor shall provide all permanent and temporary enclosures required and shall provide temporary heating by means of adequately ventilated devices to maintain suitable temperatures for the Work of all trades. Temporary heating shall be maintained for such periods as required or as directed by Owner. When directed by Owner, Contractor shall remove all temporary enclosures.
- C. If portable ventilating fans are used to dispel moisture, Contractor shall provide the same with adequate safety guards and the area shall be broom clean to insure protection of personnel.
- D. Contractor shall use only flameproof tarpaulins.

#### **ARTICLE 28**

#### **Cleaning**

- A. Contractor shall at all time keep the premises free from accumulation of waste materials or rubbish caused by employees, subcontractors, or the Work. At the completion of the Work, Contractor shall remove, from the site, all rubbish, tools, scaffolding and surplus materials, and shall leave the Work broom clean unless otherwise directed. If, in the opinion of Owner, Contractor fails to keep the premises clean, Owner may remove waste materials, rubbish, and charge the expense of such removal to Contractor.

- B. Contractor shall thoroughly wash and clean all glass; replace broken glass; clean hardware; remove paint stains, spots, smears, marks, and dirt from all surfaces; clean fixtures; and wash terrazzo tile floors and all exposed concrete so as to present clean work to Owner for acceptance.
- C. Contractor shall neatly stack construction materials such as concrete forms and scaffolding when not in use. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from surfaces to prevent marring or other damage.
- D. Volatile wastes shall be properly stored in covered metal containers and removed daily.
- E. Wastes shall not be buried or burned on the site, or disposed of into storm drains, sanitary sewers, streams, or waterways. Contractor shall remove and dispose of all wastes from the site in a manner complying with local ordinances and state and federal anti-pollution laws.
- F. Contractor shall periodically wet down walls, debris, trucks, chutes, etc. as required minimizing flying dust. Contractor shall provide enclosed chutes for upper floors to selected ground floor collecting or loading areas adjacent to the bottom of chutes shall be sprayed or dampened with water to prevent dust.

## **ARTICLE 29**

### **Progress Payments and Final Payments**

- A. Owner will make progress payments to Contractor on account of the Contract Sum as follows:

On or before the twentieth (20th) day of each month, Contractor shall submit a statement indicating the value of labor and materials acceptably incorporated into the Project during that calendar month. Progress payment invoices will be paid within 30 days from the date the Owner reviews and approves the invoice. Progress payments shall be reviewed by the Owner within 7 days.

There shall be a five percent (5%) retainage of all sums due. The retainage shall be paid to Contractor with final payment.

- B. For lump sum bid items, the Contractor is to submit a lump sum breakdown for the Owner's review and approval prior to progress payment review and approval.
- C. Progress payments submitted shall include the following:
  - 1. Contract bid and/or change order item number(s) and description.
  - 2. Contract bid and/or change order item(s) unit pricing and quantities.
  - 3. Requested bid and/or change order item quantities and amount(s).

4. Previous bid and/or change order item quantities and amount(s).
  5. Remaining bid and/or change order quantities and amount(s) to be billed.
- D. Partial payments shall not constitute acceptance by Owner of Contractor's Work nor be construed as a waiver of any right or claim by Owner in connection with the Work.
  - E. Contractor shall submit invoices with a detailed cost breakdown.
  - F. Contractor shall keep the Project, including any structure or the land upon which the Project is erected free and clear of all liens, claims, security interests or encumbrances in favor of any person and arising by reason of having provided labor, materials or equipment relating to the Work. Contractor shall indemnify and hold Owner, the Project, and the real property harmless from and against any liens, notices, or claims that may be filed in connection with Contractor's performance under this Contract or with construction of the Work, including without limitation, damages, costs, or attorney fees arising therefrom.
  - G. Applications for Payment shall include the value of materials or equipment not incorporated in the Work, but delivered and suitably stored at the site or at some other location agreed upon in writing by the parties hereto. Contractor warrants that title to all equipment and materials shall pass to Owner upon Owner's payment therefore or upon incorporation into the Work, whichever occurs first. Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title. Title thereto shall vest in Owner provided; however, the vesting of title shall not impose any obligation on Owner or relieve Contractor of its obligations under the Contract.
  - H. Contractor shall submit an updated schedule with each application for payment.
  - I. Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Architect/Engineer and Owner will promptly make such inspection. Owner will make final payment to Contractor approximately thirty (30) days after Owner's acceptance of the completed Work.
  - J. Before submitting application for final payment, Contractor shall remove all equipment from the project and complete Contract closeout procedures.
  - K. By acceptance of the final payment, Contractor warrants that it has received payment in full for its performance of the Contract and waives all further claims against Owner in connection with the Work. Final payment by Owner shall be conclusive proof of Owner's performance of the Contract.

**ARTICLE 30**  
**Owner's Right to Withhold Payment**

- A. Owner shall have the right to withhold from payments due Contractor such sums as necessary, in Owner's sole opinion, to protect Owner against any loss or damage which may result from negligence or deficient Work by Contractor; failure by

Contractor to perform its obligations, including failure to maintain satisfactory progress of the Work; or claims against Contractor or Owner relating to Contractor's performance or work. In addition, Owner may withhold payments from Contractor for damages, caused by Contractor, for which no adjustment is made, or any subcontractors; and where reasonable evidence indicates a claim will be filed against Owner or the property.

- B. If Contractor fails to take prompt and adequate action to bring the Work on schedule or to correct deficiencies in the Work, or to perform any other obligations, Owner shall have the right to perform such Work or cure any default by Contractor as Owner deems necessary, and to credit the cost thereof against payments due Contractor.

**ARTICLE 31**  
**Premium Time**

- A. Owner reserves the right to accelerate the schedule from time to time, without cause, upon written direction to Contractor to so accelerate. If the forces of contractor or any of its subcontractors are required to work overtime as a result of such acceleration, Owner will reimburse Contractor for the premium portion of overtime wages paid plus applicable federal and state payroll taxes and other actual payroll costs attributable to the overtime premium. Reimbursement for such acceleration shall not include any overhead or profits of Contractor or its subcontractors on the premium portion of overtime wages.
- B. Contractor shall keep and maintain accurate records of all overtime hours to be reimbursed and shall secure Owner's approval of such records on a daily basis. Reimbursement shall be made based on such approved records by change order as provided herein.
- C. This article shall have no application to overtime work that Contractor is required to perform due to its own failure to meet the Contract schedule or, without limitation, due to any other fault of Contractor.

**ARTICLE 32**  
**Claims and Demands**

- A. If Contractor claims that any written instructions issued after the effective date of this Contract, by drawings or otherwise, involve extra costs under the Contract, Contractor shall not be entitled to reimbursement for such extra costs unless Contractor shall so notify the Architect/Engineer and Owner in writing before proceeding to execute the Work and within seven (7) days after receipt of such instructions.
- B. Claims and demands for any other cause whatsoever, by Contractor against Owner, must be served in writing upon Architect/Engineer and Owner within fourteen (14) days from the occurrence of the cause thereof, except as otherwise expressly provided, or Contractor shall be deemed to have waived such claims or demands.

### **ARTICLE 33**

#### **Taxes**

Contractor shall pay all federal, state, and local taxes, including, but not limited to, excise taxes, sales and use taxes.

### **ARTICLE 34**

#### **Owner's Right to Occupy**

- A. Owner has the right to occupy or use, ahead of schedule, all or any substantially completed or partially completed portion of the Work, notwithstanding the time of completion for all of the Work. If occupancy or use increases the cost of the Work (other than for delay or for corrections which are Contractor's responsibility), Contractor shall be entitled to extra compensation. If such occupancy or use delays completion of the Work, Contractor shall be entitled only to any extension of time. Claims for such extra compensation or extension of time, or notification to Contractor of Owner's intent to so occupy or use, shall be made within five (5) days of the event giving rise to the claim for extra compensation or extension of time, or not later than five (5) days prior to Owner's intended date of occupancy or use.
- B. After Owner has taken occupancy of all or any substantially completed portion of the Project, Contractor shall not disrupt the use and occupancy thereof to make corrections in the Work but shall, at Owner's discretion, make such corrections at Contractor's expense outside of Owner's normal hours of operation.

### **ARTICLE 35**

#### **Owner's Right to Terminate**

- A. If Contractor fails to commence the Work in accordance with the provisions of the Contract; fails to diligently prosecute the Work to completion in a timely, efficient, workmanlike, skillful and careful manner, and in strict accordance with the provisions of the Contract (including the scheduled completion date and any interim scheduled milestone dates); fails to deploy adequate qualified personnel or equipment to complete the Work on time; fails to perform any of its obligations under the Contract; or fails to make prompt payments to its subcontractors, materialmen, or laborers, Contractor must cure any such default within seven (7) days after written notice of the default or Owner shall have the right to (i) terminate the Contract; (ii) take possession of all or any part of Contractor's materials, equipment, supplies, and other property of any kind used in the performance of the Work and to use such property including engaging the services of other parties therefore. No action taken by Owner hereunder shall be deemed a waiver of any other right or remedy. If the cost to Owner of performing the balance of the Work is more than the balance of the Contract Sum that has not been paid to Contractor, Contractor shall be liable, and shall reimburse Owner, for such excess.
- B. If Contractor fails to prosecute the Work properly; or fails to perform any provision of the contract; or does, or omits, anything whereby safety or proper construction may

be compromised or whereby damage or injury may result to persons or property, after three (3) days' written notice to Contractor, Owner shall have the right to make good all omissions or deficiencies and may deduct the cost therefore from the Contract Sum. No action taken by Owner hereunder shall affect any other rights or remedies of Owner or relieve Contractor from any consequences or liabilities arising from such acts or omissions.

- C. Owner may stop or suspend the work, in whole or in part, or terminate the Contract for public interest and without cause by giving seven (7) days' prior written notice of suspension or termination to Contractor. In such event, the Contract price shall be adjusted with respect to the Work completed at the time of termination. Owner will pay Contractor for Work completed according to payment provisions of the Contract and Owner will reimburse Contractor for all costs necessarily incurred in organizing and carrying out the stoppage of the Work and paid directly by Contractor. Owner will not reimburse Contractor for any continuing contractual commitments to subcontractors, materialmen, or others, or for penalties or damages for canceling such contractual commitments inasmuch as Contractor shall make all subcontracts and other commitments subject to this provision.
- D. Contractor and Owner recognize that if Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of the Contract. Accordingly, Contractor and Owner agree that upon the occurrence of any such event, Owner may request of Contractor, or its successor in interest, assurance of future performance in accordance with the Contract. Upon failure to comply with such request within ten (10) days of the request, Owner may terminate the Contract.
- E. If Owner stops or suspends the Work, or terminates the Contract, and an arbitrator or a court determines that Owner's termination was wrongful, such termination will be deemed converted to a termination without cause, set forth above, and Contractor's remedy is limited to the recovery of the payments permitted for such termination for public interest and without cause as set forth in subparagraph C, above.
- F. Termination by Owner shall not constitute any waiver of rights, claims or causes of action Owner may have against Contractor.

### **ARTICLE 36 Arbitration**

Arbitration Required/Mediation First Option. Any dispute or claim that arises out of or which relates to this Contract, or to the interpretation or breach thereof, or to the existence, scope, or validity of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then-effective arbitration rules of Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The Owner, the Contractor, and all subcontractors, sub-subcontractors, material suppliers, engineers,

architects, designers, construction lenders, bonding companies, and all other parties concerned with and involved in the performance of the contract are bound, each to the other, by this arbitration clause, provided such party has signed this Contract, or signs an agreement that incorporates this Contract by reference, or signs any other agreement to be bound by this arbitration clause. The parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any party may propose mediation whenever appropriate by any mediation process or mediator as the parties may agree upon. Any mediation or arbitration shall take place in Jefferson County.

**ARTICLE 37**  
**Attorney Fees**

If any arbitration or litigation is instituted to interpret, enforce, or rescind this Contract, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

**ARTICLE 38**  
**Assignment**

- A. Contractor shall not assign its rights or obligations under, or arising from, the whole or any part of the Contract or any subcontract without Owner's prior written consent.
- B. Contractor hereby assigns, to Owner (and its assigns), all interest in subcontracts and purchase orders, now existing or hereinafter entered into by Contractor, for performance of any part of the Work. Assignment will be effective upon acceptance by Owner, in writing and only as to those subcontracts and purchase orders that Owner so designates. Owner may accept assignment at any time during the course of construction prior to final completion. All of Contractor's subcontracts and purchase orders shall provide that they are freely assignable by Contractor to Owner (and its assigns). It is agreed and understood that such assignment is part of the consideration to Owner for entering into the Contract and may not be withdrawn prior to final completion.

**ARTICLE 39**  
**Guarantees and Warranties**

- A. In addition to any specific guarantees and warranties required by the Contract, Contractor guarantees to perform the Work in a first class, workmanlike manner and guarantees all Work against defects in material or workmanship for a period of one (1) year from the date of acceptance of the Work or final payment by the Owner, whichever is later. Acceptance shall mean final acceptance of the entire Work, early partial occupancy notwithstanding. However, Contractor shall be liable to the Owner

for all damages sustained by Owner due to the failure of any foundation within two (2) years of final payment under the contract.

- B. All guarantees or warranties of equipment or materials furnished to Contractor or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Owner. If any manufacturer or supplier of any equipment or material furnishes a guarantee or warranty for a period in excess of one (1) year from the date of acceptance, Contractor's guarantee, as provided in Paragraph A of this Article shall be deemed to extend for a like period as to such equipment or material.
- C. Contractor shall fulfill any warranties of manufacturers for material or equipment installed.
- D. Within a reasonable time after receipt of written notice thereof, Contractor shall correct defects in material or workmanship which exist prior to or during the period of any guarantee provided herein and any damage to other Work or property caused by such defects or the repairing of such defects, at Contractor's own expense and without cost to Owner, and without interruption to Owner's occupancy.
- E. The guarantees and warranties shall not be construed to modify or limit any rights or actions, which Owner may otherwise have against Contractor by law or statute, or in equity.

**ARTICLE 40**  
**Public Contract**

- A. Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or materials for the performance of the work provided for in this Agreement.
- B. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractor incurred in the performance of the Agreement.
- C. Contractor shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or materials furnished for the Work.
- D. Contractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- E. Contractor shall demonstrate that an employee drug testing program is in place.
- F. To the extent that demolition is part of the Work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

- G. To the extent lawn and landscape maintenance is part of the Work, Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- H. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or any Subcontractor by any person in connection with this Agreement as the claim becomes due, the proper officer or officers representing the Owner may 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 the Contractor by reason of this agreement.
- I. If Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor materials in connection with this Agreement within 30 days after receipt of payment from the Owner or a contractor, the Contractor or Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the Owner or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- J. If Contractor or any Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the agreement, 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. The payment of a claim in the manner authorized in ORS 279C.515 does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.
- K. A person may not be employed by the Contractor or any Subcontractor for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of agreements for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay:
- (1) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - (2) For all overtime in excess of 10 hours in any one day or 40 hours in one week when the work week is four consecutive days, Monday through Friday; and
  - (3) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

- L. Contractor shall give notice in writing to employees either at the time of hire or before commencement of work on the agreement, 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. Contractor shall include an identical provision in its subcontracts and require all Subcontractors, of any tier, to include an identical provision in all subcontracts.
- M. In the case of agreement for personal services as defined in ORS 279C.100, the employee shall be paid at least time and half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services agreements who are excluded under ORS 653.010 to 6533.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- N. Agreements for services must contain a provision that requires that persons employed under the agreement shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.
- O. The provisions of ORS 279C.545 shall apply to all claims for overtime under this Agreement.
- P. Contractor shall promptly, as due, make payment to any person, copartnership, 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 agreement for the purpose of providing or paying for the services.
- Q. All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
- R. Contractor and all Subcontractors shall comply with the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation required for the public works employed in the performance of this Agreement either by the Contractor or Subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated by this Agreement, as specified in the specifications for the Work.
- S. Workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. If the Project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, all workers must be paid

not less than the higher of the applicable state or federal prevailing rate of wage. Contractor shall include this provision in each Subcontract awarded under this Agreement.

- T. Contractor represents and agrees that the specifications contain a sufficient provision stating that Contractor and every Subcontractor must 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).
  - (1) Contractor must 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).
  - (2) Every Subcontract must require the 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).
- U. The hourly rate of wage to be paid by the Contractor or every Subcontractor subject to prevailing wage rates to workers shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed.
- V. Contractor and every Subcontractor subject to prevailing wage rates to workers shall keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the project.
- W. To the extent Contractor or any Subcontractor subject to prevailing wage rates shall also provide for or contribute to a health and welfare plan or a pension plan, or both, for its employees on the project, the Contractor or Subcontractor, as applicable, shall post notice describing such plans in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under Paragraph V, above. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information.
- X. Contractor or the Contractor's surety, and every Subcontractor or Subcontractor's surety, shall file certified statements with the Owner in writing on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the Contractor or the Subcontractor has employed upon such public work, and that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the Contractor or the Contractor's surety, or Subcontractor or the Subcontractor's surety that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name

and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Each certified statement required shall be delivered or mailed by the Contractor or Subcontractor to the Owner. Certified statements shall be submitted for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month by the fifth business day of the following month. If a contractor fails to file the required certified statements, the public agency shall retain 25 percent of any amount earned by the contractor until the contractor has filed with the public agency certified statements as required by this Paragraph X. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

Y. Contractor or Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Agreement.

Z. Contractor represents and agrees that the Owner has fully and timely included a provision that the Contractor and any Subcontractor shall comply with ORS 279C.840 in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents and that the Owner has no liability for unpaid minimum wages.

AA. Owner shall make progress payments under the Agreement monthly as work progresses. Payment shall be based upon estimates of work completed that are approved by the Owner. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein. In instances when an invoice is filled out incorrectly or when there is any defect or impropriety in any submitted invoice when there is a good faith dispute, the Owner shall so notify the Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the Contractor within seven days of being notified by the Owner, shall not cause a payment to be made later than specified in this section.

BB. If requested in writing by a first-tier Subcontractor, the Contractor, within 10 calendar days after receiving the request, shall send to the first-tier Subcontractor a copy of that portion of any invoice, request for payment submitted to the Owner or pay document provided by the Owner, to the Contractor specifically related to any labor or materials supplied by the first-tier Subcontractor.

CC. Payment of interest may be postponed when payment on the principal is delayed because of disagreement between Owner and the Contractor.

DD. The Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As work progresses, the Owner may in its sole discretion reduce the amount of the retainage and the Owner may in its sole discretion eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the contract is completed if, in the Owner's sole opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed

only upon written application by the Contractor, which application shall include written approval of the Contractor's surety; except that when the contract work is 97 ½ percent completed the Owner may, at its discretion, and without application by the Contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the Contractor, the Owner shall respond in writing within a reasonable time.

EE. The retainage held by the Owner shall be included in and paid to the Contractor as part of the final payment of the contract price. The Contractor shall notify the Owner in writing when the Contractor considers the work complete and the Owner shall, within 15 days after receiving the written notice, either accept the work or notify the Contractor of work yet to be performed on the contract.

FF. The Contractor shall not request payment from the Owner of any amount withheld or retained in accordance herewith until such time as the Contractor has determined and certified to the Owner that the Subcontractor is entitled to the payment of such amount. A dispute between the Contractor and a first-tier Subcontractor relating to the amount or entitlement of a first-tier Subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to the terms hereof does not constitute a dispute to which the Owner is a party. The Owner shall not be included as a party in any administrative or judicial proceeding involving such a dispute. The Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including material supplier, for the purpose of performing a construction contract:

(1) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the Owner under such contract; and,

(2) An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to subparagraph (1) of this Paragraph FF. The Contractor or first-tier Subcontractor shall 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 Owner or Contractor when payment was due. The interest penalty shall be:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and,

(B) Computed at the rate specified in ORS 279C.515(2).

- GG. The Contractor shall include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier Subcontractor to include payment clause and an interest penalty clause conforming to the standards of Paragraph FF, above, in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- HH. Contractor certifies, under penalty of perjury, that Contractor is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380 (4).
- II. Contractor certifies that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055, as applicable, before the subcontractors commence Work under the Contract.
- JJ. The provisions of ORS 279C.605 shall apply to any claims against Contractor's payment bond.
- KK. The provisions of ORS 279C.525 shall apply to this Agreement.
- LL. Contractor shall comply and require all Subcontractors to comply with applicable requirements of all laws, codes, ordinances, regulations and statutes, including but not limited to those in ORS Chapter 279C. To the extent that ORS Chapter 279C, or any other law, code, ordinance or regulations, requires any term or condition to be included in this Agreement, such term or condition are hereby incorporated by this reference. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, code, rule, statute, ordinance or regulation and whenever there is any conflict between any provisions contained herein and any statute, law, code, ordinance, rule or regulation the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, code, rule, statute, ordinance or regulation.

**END OF GENERAL CONDITIONS**

## **SPECIAL PROVISIONS**

### **SCOPE OF WORK**

Work covered by this Contract and the basis of payment shall include all labor, equipment, and materials necessary to construct the following improvements required to complete the project.

All Work shall be performed in accordance with these Special Provisions and in accordance with the City of Madras Public Improvement Design and Construction Standards, 2008 Oregon Standard Specification for Construction (hereafter referred to as the "Standards"), as published by ODOT and APWA, Oregon Chapter as applicable. Any conflict between these Special Provisions and the Standards will be resolved in favor of the more restrictive specifications or as directed by the City of Madras.

### **PERMITS**

The Contractor shall obtain and pay for any necessary permits. Contractor shall conform to all permit requirements.

### **SITE INVESTIGATION AND REPRESENTATION**

Bidders and Contractors are responsible for making their own determination of subsurface conditions. The Contractor declares that he has satisfied himself as to the nature and location of the Work, the general and local conditions, the nature of access to the sites, and requirements for disposal, handling and storage of materials. The Contractor further declares he has determined the availability of labor, water, electric power, roads and that he understands the uncertainties of weather, stream stages, or similar physical conditions at the site, the conformation and conditions of the grounds, the character of equipment and facilities needed preliminary to and during prosecution of the Work, and all other matters which can on any way affect the Work or the cost thereof under this contract.

The Contractor further declares that he has inspected the site and satisfied himself as to the character, quality, and quantity of surface and subsurface materials to be encountered. Failure by the Contractor to become acquainted with the physical conditions of the site and all available information will not relieve the Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the Work.

### **ENGINEER / ARCHITECT**

The term Engineer or Architect shall mean an authorized representative of the City of Madras.

## **PRECONSTRUCTION CONFERENCE**

A Preconstruction conference at the City of Madras will be required within ten days prior to beginning of the work.

## **CONSTRUCTION SCHEDULING**

Upon receipt of written notice to proceed from the Owner, a preconstruction meeting shall be scheduled. Prior to the preconstruction meeting, the Contractor shall submit for review and approval a "Type A" Construction Schedule per section 00180.00 of the Standards.

The Construction Schedule, as approved by the Engineer, will be an integral part of the Contract and will establish interim contract completion dates for the various activities. "Day" used throughout the Contract, unless otherwise stated, means "calendar day". Should any activity not be completed within five (5) days after the scheduled date, the Engineer shall have the right to order the Contractor to expedite completion of the activity by whatever means the Engineer deems appropriate and necessary, without additional compensation of the Contractor.

The Contractor shall submit a progress report and schedule to the Engineer on Monday of each week. The progress report and schedule shall indicate a current representation of the expected start and finish of the various parts of the Work under the Contract, the number of working days used during the previous week, causes for any delays, and the estimated date of completion. If the Work is behind the previously submitted schedule, the Contractor shall submit, in writing, a plan acceptable to the Engineer for completing the required work by each of the Contract Completion Dates.

It is expressly understood, and agreed, that failure by the Engineer to exercise the option to either order the Contractor to expedite an activity, or to expedite the activity by other means, shall not be considered precedent setting for any other activities.

## **WORKING HOURS AND NOISE CONTROL**

Work shall occur during regular daytime hours. Regular work hours are defined as the time period between 7:00 a.m. and 6:00 p.m., Monday through Friday. The Contractor shall not conduct any activity or start or operate any equipment outside regular work hours, unless prior written authorization is provided by the Engineer.

The Contractor shall limit noise production to the maximum extent practicable and comply with all federal, state and local regulations concerning noise control. The exhaust of all internal combustion engines and other power equipment used in the project shall be provided with functioning mufflers.

## **MOBILIZATION AND CLEAN UP**

Mobilization shall be performed in accordance with the Standards, as modified herein and shall include procurement of the bonds and insurance coverage required for this contract, mobilization of equipment and materials, air and noise pollution control measures, and project site cleanup.

No burning shall be allowed. The Contractor shall control dust and keep all existing roads used for access to and from the construction area free from dirt, rocks, and debris. After construction, all debris, including stray gravel and any other materials designated by the Engineer to be removed, shall be transported away from the construction site and disposed of in accordance with applicable local, State and Federal laws. All property shall be left in a condition satisfactory to the property owners. The Contractor shall clean-up the construction site daily.

Obtaining permission for additional access to construction areas or additional work space on private properties, if necessary, shall be the responsibility of the Contractor with no additional compensation from the Owner for such access. The Contractor shall be responsible for damages resulting from access to and from the project site. As work is completed, the Contractor shall restore all areas to a condition equal to or better than existed prior to construction activities.

Any monuments or other items not specifically covered under the bid schedules that lie within the construction limits and need to be adjusted to finished grade shall be adjusted as part of this bid item. Disturbed or adjusted survey monuments must be reset or verified by a Professional Land Surveyor.

Clean-up will not be paid for separately, but shall be an obligation of the Contractor as part of the Work covered under other bid items.

## **EROSION AND SEDIMENT CONTROL**

The Contractor shall provide all labor, equipment, and materials necessary to implement erosion, sediment and pollution control measures per plan prepared by Contractor and approved by the Engineer and as required to comply with water quality regulations. This plan must be approved prior to the start of construction. The components of the plan will include: 1) a site plan of the disturbed area due to construction activity; 2) best practices measures (i.e. silt fence, silt containment grading, seeding, erosion matting, etc.); and 3) as part of the monthly progress reporting, the City will check for properly installed and maintained erosion control measures. The Contractor's actions shall follow all provisions of the Clean Water Act (40 CFR Subchapter D) and DEQ's provisions for maintenance of water quality standards for the Deschutes Basin (OAR Chapter 340, Division 41). Toxic substances shall not be introduced above natural background levels in waters of the state in amounts that may be harmful to aquatic life. Any turbidity caused by this project shall not exceed DEQ water quality standards.

Erosion, sediment and pollution control measures required to comply with these specifications shall be installed by the Contractor and reviewed in place by the Owner's representative prior to commencement to construction. The Contractor shall be responsible for maintaining all installed erosion, sediment and pollution control measured throughout the Work of this contract and shall provide all labor, equipment, and materials necessary for said maintenance.

Erosion, sediment and pollution control measures shall be utilized by the Contractor in such a manner as to ensure that sediment and sediment laden water do not enter existing drainage ways, wetlands, roadways, or violate applicable water quality standards. Measures shall be upgraded as needed for unexpected storm events and to ensure that sediment and or sediment laden water do not leave the site. For acceptable Best Management Practices for erosion prevention and sediment control and for specific design criteria, the Contractor shall refer to Chapter 9 of the Central Oregon Stormwater Manual.

Work Crews shall be mobilized to make immediate repairs to damaged erosion control and pollution control devices, or to install additional erosion and sediment controls during regular working and outside regular working hours. Should a control measure not function effectively, the control measure shall be immediately repaired or replaced. Additional controls will be installed as necessary. Contractor shall furnish the Engineer with the name and phone number of a responsible person who will be available 24 hours per day to respond to problems with erosion control and pollution control devices within one hour of notice regarding any such problems.

Work required to providing and maintaining erosion, sediment and pollution control measures will not be paid for separately, but shall be an obligation of the Contractor as part of work covered under other bid items.

### **TEMPORARY TRAFFIC CONTROL AND ACCESS**

The Contractor shall provide all temporary traffic control required to protect the Work areas. All work that requires traffic control shall be completed in accordance with Sections 00220 and 00225 of the Standards.

No construction shall begin until all construction traffic control measures are in place for the street(s) affected by the Work. All construction traffic control measures required for the project shall be furnished by the Contractor and shall conform to the Manual of Uniform, Traffic Control Devices (MUTCD) and the Standards. Proper flagging procedures shall be followed. At no time will lane closures be allowed without proper traffic control measures. The Contractor shall replace in-kind all existing signs, posts, and other traffic control devices that are damaged as a result of construction.

Contractor shall furnish the Engineer with the name and phone number of a responsible person who will be available 24 hours per day to respond to problems with traffic control measures within one hour of notice regarding any such problems. The Contractor shall at

all times, protect access to private property and shall provide temporary plates, rock or asphalt necessary for the convenience and safety of the public.

Work required to provide and maintain traffic control measures, and to maintain access to private and public properties will not be paid for separately, but shall be an obligation of the Contractor as part of work covered under other bid items.

### **CONSTRUCTION STAKING**

The Owner shall provide horizontal and vertical control only. The Contractor shall be responsible for providing constructing staking necessary to complete the Work according to the Contract Documents.

The Contractor shall be responsible for checking for conflicts with the control information and notify the Engineer prior to use. The Engineer may make electronic files available to facilitate layout. If the survey control is knocked out, it shall be reestablished at the Contractor's expense.

All survey monuments shall be preserved in accordance with ORS 209.140 and 209.150. If such monuments are disturbed or destroyed, the Contractor shall comply with the requirements of said ORS at his own expense.

Contractor shall be responsible for the removal and disposal of all flagging, lath, stakes, and other temporary staking materials after the project is completed.

### **PHYSICAL DATE AND SUBSURFACE UTILITIES**

Existing subsurface utilities in the project are shown in the plans to the best of the Engineer's knowledge. However, it is the Contractor's responsibility to verify the existence of these or any other utilities and to determine their exact location and depth prior to start of construction by potholing. Any utilities, which are found to obstruct the new construction, shall be relocated or replaced by the Contractor at the direction of the Engineer. Use of the utilities shall be maintained during construction through temporary connections or other measures suitable to the Owner of the utility obstructing the new construction. It is the Contractor's responsibility to ensure that all the utilities are fully operational upon completion of the project. No extra compensation beyond the bid prices will be made for removal, temporary connections, relocations, or replacements of utilities.

In accordance with ORS 757.541 to 757.571 it shall be the Contractor's responsibility to notify all utility offices that will be affected by the construction operation at least 48 hours in advance of his intension to begin construction. Under no circumstances shall the Contractor expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, the Contractor may locate, expose, and provide temporary support for all existing underground utilities. The Contractor shall reschedule his/her work to allow relocation of any conflicting utility.

Neither the City of Madras, including its officers or agents, nor other involved parties shall be responsible to the Contractor for damages as a result of the Contractor's failure to protect utilities encountered in the Work.

**PROTECTION OF FACILITIES, EXISTING STRUCTURE AND  
ARCHAEOLOGICAL ITEMS**

The Contractor shall take the necessary precautions to protect existing structures, landscaping, pavement markings, fences, waterways, drainage swales, and other features during construction. The Contractor shall repair or replace existing structures, improvements and features damaged as a result of construction or damaged by flood, fire, vandalism or neglect. The Contractor shall be responsible for all costs for such repairs or replacements, as directed by the Engineer and shall complete necessary repairs or replacements prior to acceptance by the Owner of the completed Work.

An attempt has been made to show existing structures and features on the drawings. The completeness and accuracy of information shown cannot be guaranteed, and it is presented simply as a guide to avoid known possible difficulties.

The Contractor shall protect underground and aboveground structures from damage, whether or not they lie within the limits of rights-of-way or easements obtained by the City of Madras. Where such existing structures must be removed for construction, the Contractor shall restore said structures to a condition equal to or better than their original condition as specified.

The contractor shall notify the Engineer of any damage to underground structures and make repairs or replacements before backfilling. Without additional compensation, the Contractor may remove and replace in a condition equal to or better than the original, such small miscellaneous structures as fences and mailboxes that interfere with the Contractor's operations.

During the process of construction, it is expected that minor relocations of parts of the Work may be necessary. Such relocations shall be made only at the direction of the engineer. If existing structures are encountered that are not accurately shown on the drawings and that prevent the construction from proceeding as shown, the Engineer shall be notified before continuing with the construction, in order that the Engineer may make such field revisions as necessary to avoid conflict with the existing structures. If the Contractor fails to notify the Engineer with an existing structure is encountered, and proceeds with the construction despite the interference, the construction shall do so at his own risk.

In the event that archaeological materials or human remains are discovered during the implementation of the project, all work will cease in the area of discovery and handled in according with ORS 358, 390 and 97.740-760, NHPA and the Native American Graves Protection and Repatriation Act.

## **TECHNICAL SUBMITTALS AND SHOP DRAWINGS**

The Contractor shall submit technical data and shop drawings in accordance with these Special Provisions and the Standards for all materials that shall be incorporated into the Work. The submittals shall consist of such descriptive information as necessary to enable the Engineer to advise the Owner whether the Contractor's proposed materials are in general conformance to the design concept and in compliance with the drawings and specifications. The information to be submitted shall include applicable drawings, descriptive data, material specifications, certificates, samples and/or test results. If a complete submittal is made, the Owner will review and return comments within 14 calendar days.

Unless specific requirements are called for in other sections, the Contractor shall submit six copies of all technical submittals and shop drawings. The Engineer will review and return two copies of such data and drawings to the Contractor. The Contractor shall make such corrections to the data and drawings as have been indicated by the Engineer and shall furnish the Engineer with corrected copies, if so directed.

## **CONTRACT DOCUMENTS AND RECORD DOCUMENTS**

The Contractor will be supplied with up to two sets of plans (half size and specification and one set of full-size drawings. The Contractor may obtain additional sets at \$50 per set from the Engineer and full sized drawings at \$3 per sheet of 22"x34" size.

The Contractor shall maintain at the project site one set of specifications, full-sized drawings, shop drawings, equipment drawings, and supplemental drawings that shall be corrected as the Work progresses to show all changes made and the location of existing underground utilities, structure, valves, etc. encountered or located. Identify the above items clearly on the drawings with proper tie (i.e. dimensions) to existing above-ground objects or property lines. Record and accurately indicate depths, sizes and locations of all buried and concealed pipes, conduits and cables installed or encountered; as well as changes, additions, and revisions due to change orders, addenda, obstruction or clarifications. If requested by the Engineer, current record drawings with changes marked shall be submitted weekly to the engineer for review. Any identified discrepancies shall be corrected and drawings shall be remarked.

A monthly progress payment to the contractor will not be made until the record drawings are correctly marked with current information in sufficient details to the satisfaction of the Engineer. Upon completion of the contract, current specifications and drawings shall be turned over the Engineer for inclusion with the project records. If deficiencies are found in either the quality or the accuracy of the record specifications and drawings, they will be returned unapproved for the Contractor's revision and resubmission. Additional review of subsequent submissions by the Engineer shall be at the contractor's expense.

Final payment will not be made until satisfactory records have been submitted to the Engineer by the Contractor.

### **SAFETY REQUIREMENTS**

The Contractor shall have the sole responsibility for complying with the requirements of the Oregon Occupational Safety and health Code, particularly Division 83, "Construction." Failure of the Contractor to comply with specific safety requirements shall be the Contractor's liability. The Engineer, Owner, or other involved parties will assume no liability for safety violations.

### **ENTERING AND WORKING WITHIN CONFINED SPACES**

Contractor's working on any public improvement project, while under contract with the Owner or a private entity, shall comply with the following regulations as they pertain to entering and working within confined spaces (as defined by OR-OSHA):

1. Identify any confined space entry that is required to perform the Work and submit a list of locations to the Owner.
2. Follow the Owner's confined space entry procedures or submit an alternate procedure that meets or exceeds OR-OSHA confirmed space entry regulations.

Submit written notice to the Owner of any hazardous situation that is encountered during the entry of or while working within a confined space.

### **MATERIAL TESTING**

General: Cost for sampling and testing of materials in accordance with the Standards, coordination and scheduling of sampling and testing, and laboratory testing services shall be the responsibility of the Contractor. All labor, equipment, and materials needed to accommodate sampling and testing shall be the Contractor's responsibility and payment shall be included in the respective bid items that require this work. The Contractor shall also be responsible for any retesting cost and additional sampling and laboratory service costs that result from work that does not meet the specification.

The following items may be requested by the Owner and shall be the responsibility of the Contractor to provide:

1. Sieve analyses for gradation testing and all other conformance testing.
2. Compaction testing for Earthwork, Trench Backfill, Base Rock and Hot Mix Asphalt Cement.
3. Air, Slump and Compressive Strength Testing for Concrete.

The testing laboratory shall provide verification that all testing shall be performed in conformance with the applicable ASTM, AASHTO, ODOT, or other standards as identified in the specifications. The laboratory shall have been conducting the same or

similar testing for at least three (3) years. A certification from the laboratory that these requirements can and will be met shall be provided to the Owner.

Coordination and scheduling of laboratory services shall be the responsibility of the Contractor. Test results shall be made available to the Owner upon completion of each test. Written copies shall be provided to the Owner daily or as agreed upon with the engineer.

The Contractor shall provide a minimum two (2) working days advance written notice to the Engineer of any sampling and testing activity. Owner's representative must be on-site and witness all in-situ tests. Test results shall be made available to the Engineer upon completion of each test. The contractor shall construct no improvements over buried pipes, conduits and structures until they are inspected, tested, and accepted.

*Earthwork compaction Testing.* Compaction testing of granular materials shall be in accordance with Section 0330.43 of the Standards. The frequency and location of compaction testing shall be adequate to verify conformance with compaction requirements of the standards and shall be determined by the Engineer during construction. Compaction testing must be observed by the Owner's representative and shall include, at a minimum, tests on the backfill, embankment fill (one test after two feet of fill and one test at the top of the fill), subgrade, base course and leveling course. The contractor shall coordinate with the testing services as needed to provide material samples, and testing access. All labor, equipment, and material needed to accommodate compaction testing shall be the contractor's responsibility and payment shall be included in the respective bid items that require the testing work.

*Trench compaction Testing.* Compaction testing shall be provided by the Contractor in accordance with section 0330.43 of the Standards. Density tests shall be conducted on a lift of compacted backfill immediately prior to placing the next lift. Tests shall be conducted every 300 feet per 12" lift of a continuous trench. All Class B backfill shall be compacted to 95 percent maximum relative density as determined by AASHTO T-99 Method "A" ODOT. All Class A backfill shall be compacted to 85 percent maximum relative density as determined by AASHTO T-99 Method "A" ODOT. Coordination and scheduling of sampling and laboratory services shall be the responsibility of the Contractor.

*Aggregate Subbase, Base and Shoulders.* Compaction testing shall be provided by the Contractor in accordance with section 00641.44 of the Standards. Density tests shall be conducted on a lift of compacted backfill immediately prior to placing the next lift.

*HMAC Compaction Testing.* Compaction testing shall be provided by the Contractor in accordance with section 00745.49 of the Standards.

## **REMOVAL OF STRUCTURES AND OBSTRUCTIONS**

All work shall be performed in accordance with Section 00310.00 of the Standards. Disposal of materials is the responsibility of the Contractor. No separate payment will be made for removal and disposal of the building, foundation, parking lot, utilities, landscaping, concrete, underground storage tanks, etc.

## **CLEARING AND GRUBBING**

All work shall be performed in accordance with Section 00320.00 of the Standards. Debris to be disposed of off-site and is the responsibility of the Contractor. No separate payment will be made for clearing and grubbing of the site.

## **EARTHWORK, EXCAVATION AND BACKFILL REQUIREMENTS**

Contractor shall perform all earthwork and sub grade stabilization required to prepare sub grades for sidewalks, curbs, gutters, landscaping, seeding and other improvements in accordance with Sections 00330 and 00331 of the Standards. Contractor shall separate and stockpile selected topsoil in conformance with Sections 00330 and 01040.43.

Contractor shall perform trench excavation, bedding and backfilling for all buried piping, conduits, utility structures and accessories in accordance with Section 00405 of the Standards. Place and compact Select Backfill above pipe zone in trenches for all sanitary and storm sewers. Place and compact Select Backfill above pipe zone for conduits installed in trenches under AC pavement and concrete curbs and gutters. Select Backfill shall be placed up to sub grade. Place and compact Class A Native Backfill above pipe zone for conduits installed in trenches behind curbs. The Contractor shall be responsible for dewatering and protecting the trenches and shall be responsible for all costs of cleaning pipes, conduits, manholes, catch basins and vaults soiled with debris from the Contractor's operations.

All select backfill used in this project shall be Class B backfill, ¾-inch minus crushed rock, conforming to Section 00405.14 of the Standards or Class E backfill, controlled density fill Standards, as directed by the Engineer. CDF/CLSM shall be used as shown on the plans and may be used as an alternative to Class B backfill at Contractor's option, but at no additional cost to the Owner. Native Backfill shall conform to Section 00405.14 of the Standards and shall contain no particle with any dimension greater than 3 inches.

Pipe zone bedding and backfill material for sewer lines and conduits larger than 4-inch shall be commercially-available, ¾-inch minus crushed aggregate. Pipe zone bedding and backfill material for conduits, 4-inch and smaller, shall be sand drainage blanket material or well-graded sand. All pipe zone bedding and backfill material shall conform to Section 00405.12 of the Standards and shall be free of all foreign materials and debris. No more than 5 percent by weight of all pipe zone bedding and backfill material shall

pass the No. 200 sieve. Place pipe zone bedding and backfill in lifts no more than 8 inches in thickness.

Rock sources for all bedding and backfill that have not been approved by the Engineer will require appropriate documentation prior to the rock precuts being used on the project. Documentation of rock products and native-type materials where specified, shall consist of a gradation analysis, air degradation analysis, and development of the appropriate Proctor by an approved, independent testing lab. Documentation for imported rock products shall be submitted to the engineer at the Preconstruction meeting in accordance with requirements specified herein for Technical Submittals.

The contractor shall be responsible for performing and coordinating all modified proctor and compaction testing and shall bear all costs of testing. Proctors for native backfill material may be developed any time prior to compaction testing in those areas. Compaction testing of native material shall occur prior to placement of base course or topsoil. The Owner will not assume responsibility for lost time or scheduling difficulties that are experienced by the Contractor due to delays in providing the Engineer with proper documentation for testing.

The contractor shall remove and dispose of excess or otherwise unused, excavated materials in accordance with all governing Federal, State and local regulations. A fill schedule shall be provided listing the amount and location of excavated materials that are disposed of within Jefferson County, regardless of whether the site is publicly or privately owned. The placement of excavated materials to a legal fill location shall conform to County Standards.

All excavations within the public right-of-way shall be covered with approved material or temporarily backfilled at the end of each working day. Steel sheets may be used in lieu of complete backfill for excavations within or adjacent to a roadway.

No separate payment will be made for earthwork, excavation and backfill.

### **ASPHALTIC CONCRETE PAVEMENT**

Asphaltic concrete (AC) pavement shall conform to Level 3, ½" Dense graded, Hot Mixed AC with PG 64-28 oil as specified in Section 00745 of the standards. AC pavement shall be constructed as specified in Section 00745 of the Standards and as detailed on the plans. The material for the gravel leveling course, where shown on the plans, shall be ¾"- minus, dense-graded crushed rock conforming to Section 02630 of the Standards.

During construction, the hot mix AC temperature shall be within the range established by the viscosity-temperature curve, but shall be achieved through small rollers, hot hand tampers, or mechanical tampers.

A tack coat shall be placed on the bottom AC lift prior to placing the top AC lift in conformance with Section 00730 of the standards. Any adjacent existing pavement shall be saw cut to produce an even joint and blown clean using compressed air. A tackifier emulsion conforming to Section 00730 of the Standards shall be used on the saw cut joint prior to lay-down of new AC.

Crack seal all joints from new pavement to existing pavement with a polymer crack sealant. Sand sealing is not permitted.

Payment for HMAC will be paid for actual quantity installed by unit price. No separate payment will be made for tack coat, crack sealant and testing.

### **PORTLAND CEMENT CONCRETE**

Miscellaneous PCC structures for street improvements, including curbs, gutters, sidewalks, ramps and sign footings shall be constructed in accordance with Section 00759 of the Standards. The PCC shall be Class 3600 commercial grade concrete in accordance with Section 2001 of the Standards.

### **WATERING**

The Contractor shall provide the labor and equipment necessary for the furnishing and application of water for: (a) compaction and preparation of excavation, backfill and sub grades; (b) alleviation or presentation of dust nuisance originating within the project limits; and (c) cleaning of vehicles and other equipment before they leave the Work site. Water used in the Work shall be free of silts and other material deleterious to the quality of the material to which it is applied. The contractor shall make all arrangement for obtaining water and shall pay all costs involved with obtaining, transporting and using water. The Contractor shall maintain an adequate supply of water at all times.

Watering shall be by means of tanker trucks equipped with spray bars, by hose and nozzle, or by other means that ensure uniform and controlled application. The use of splashboards will not be permitted without prior approval of the engineer.

Water jetting shall not be allowed.

Wetting materials in stockpile or in excavation areas prior to excavating and other watering efforts shall be performed at any hour of the day and on any day of the week that the Engineer may determine as necessary for the proper performance or protection of the Work, and for the adequate alleviation of dust nuisance. Wasting water or watering that is detrimental to other work shall be avoided and such operation shall cease until the Engineer determines what corrective measures must be taken.

No separate payment will be made for watering; it shall be included in the work.

**COORDINATION OF THW WORK:**

Contractor shall coordinate their work with the Madras Municipal Airport and Erickson Group so as not to interfere with operations. Business access shall remain open at all times.

**INCIDENTAL WORK- NO SEPARATE PAYMENTS (ALL SCHEDULES)**

It is the intent of these documents that the bid item amounts listed in the Proposal shall provide full and complete payment for this project, as described in the Plans and Specifications. Payment for any work, whether or not it is noted on the Plans or in the Specifications, that is necessary for the completion of the project as designed, but not listed explicitly as or with a bid item, shall be included in the payments for the listed bid items.

**BID FORM**

TO: PUBLIC WORKS DIRECTOR

Project Name: Old City Hall and Police Station Demolition

City of Madras

125 SW "E" Street

Madras, OR 97741

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Bid are those named herein; that this Bid is, in all respects, fair and without fraud; and it is made without collusion with any official of the City of Madras, Madras, Oregon, hereinafter called City; and that this Bid is made without any connection or collusion with any person making another Bid on this Contract.

The Bidder further declares that he has carefully examined the project site and the Contract documents; is satisfied as to the quantities involved, including materials and equipment, and conditions of work involved; and that this Bid is made according to the provisions and under the terms of the Contract documents, which documents are hereby made a part of this Bid. Bidder acknowledges that bidder has read and understands the terms and conditions of the Bid Documents, and accepts and agrees to be bound by the terms and conditions of the Bid Documents.

The Bidder agrees that all of the applicable provisions of Oregon law relating to public contracts (ORS Chapter 279A, 279B & 279C) and the City's public contracting rules are, by this reference, incorporated in and made a part of this Bid. Bidder hereby states that Bidder agrees to be bound by and comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.

The Bidder certifies that Bidder has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining required subcontracts.

[Circle one.] Bidder (is) (is not) a resident of the State of Oregon. If Bidder is a resident of another state, specify state of residency: \_\_\_\_\_.

Construction Contractors Board Registry Number: \_\_\_\_\_.

The Bidder agrees that if this Bid is accepted, Bidder will, within ten (10) days after notification of acceptance, execute a contract with the City in the form of Contract attached to the Invitation to Bid; and will, at the time of execution of the Contract, deliver to the City the Performance Bond and Payment Bond required herein, together with proof of required insurance; and will, to the extent of this Bid, furnish all materials necessary to complete the work in the manner, in the time, and according to the methods as specified in the Contract documents and required by the Business Manager.

The Bidder agrees to commence work upon the issuance of a “Notice to Proceed” by the City and fully complete the project according to the times specifically set forth in the Contract documents. Bidder further agrees to pay liquidated damages as set forth in the Contract documents for failure to complete within the specified time.

It is agreed that if the Bidder is awarded the Contract for the work herein proposed and shall fail or refuse to execute the Contract and furnish the specified Performance Bond, Payment Bond and proof of required insurance within ten (10) days after receipt of notification of acceptance of The Bid, the City shall retain the bid security deposited herewith according to the conditions of the Invitation to Bid and Information for Bidders as liquidated damages and not as a penalty; and it is agreed that the said sum is a fair measure of the amount of damage the City will sustain in case the Bidder shall fail or refuse to enter into the Contract for the said work and to furnish the Performance and Payment Bonds as specified in the Contract documents.

Base Bid: Having become completely familiar with the local conditions and legal requirements affecting the cost of the work at the place where the work is to be executed, and having carefully examined the site conditions as they currently exist, and having carefully examined the Bid Documents, titled:

**NW Berg Drive Extension and Cherry Lane Upgrade Project.**

Together with any addenda to such Bid Documents as listed hereafter, the undersigned hereby proposes and agrees to provide all labor, materials, equipment, transportation, supervision and other facilities and services as necessary and/or required to execute all of the work described in the Bid Documents for the consideration:

<b>Berg Drive</b>				<b>UNIT</b>	<b>ITEM</b>
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>QTY</b>	<b>UNIT</b>	<b>PRICE</b>	<b>PRICE</b>
1	Common Utility Trench (56" deep x 42" wide +/- )	868	LF		
2	Light Pole Bases	2	EA		
3	Adjust Cleanout rim and Connect to Existing	1	EA		
4	12" SDR 35 PVC Gravity Sewer Main (min 30" deep)	232	LF		
5	4" HDPE Pressure Sewer Main (min 30" deep)	671	LF		
6	2" HDPE Pressure Sewer Service Assembly	1	EA		
7	Sewer Manhole, 48" ID Precast	2	EA		
8	4" Pressure Sewer Gate Valve	1	EA		
9	4" Pressure Sewer Termination Manhole & Cleanout	1	EA		
10	10" SDR 35 PVC Storm Drain (4-7' deep)	397	LF		
11	Curb Inlet	4	EA		

12	Bio-Bag Sediment Control at Inlet	4	EA		
13	10" Outfall Assembly	5	EA		
14	10" Plug	2	EA		
15	Pond 1 Excavation	1954	CY		
16	Pond 2 Excavation	2130	CY		
17	4"-6" River Rock	2083	SY		
18	Infiltration Material	1041	CY		
19	Pea Gravel	116	CY		
20	Saw Cut Existing Curb and Gutter	30	LF		
21	24" Curb and Gutter	1,718	LF		
22	3" of 1/2" Dense HMAC PG 64-28	2943	SY		
23	8" of 3/4" State Spec Base Rock	2943	SY		
24	6' Concrete Sidewalk (including base rock)	5262	SF		
25	Concrete Drive Aprons (including base rock)	532	SF		
26	Type 3 Road Barricades (Permanent)	4	EA		
27	Olmstead Norway Maple Tree	21	EA		
28	Irrigation System	1	LS		
29	Sod	5936	SF		
30	Pond Planting: 12' - 14' Aspen	25	EA		
31	Pond Planting: Red Osier Dogwood Shrub	108	EA		
32	Pond Planting: Yellow Twig Dogwood	43	EA		
33	Pond Planting: Wild Rose	43	EA		

**SUB  
TOTAL**

**Cherry Lane**

ITEM	DESCRIPTION	QTY	UNIT	PRICE	PRICE
34	Pavement Repair (2" HMAC, 8" Agg Base, 12" 2-0" Clean Drain Rock)	832	SY		
35	0-2" Taper Milling against C&G	3154	LF		
36	Adjust Manhole to Finish Grade	2	EA		
37	Adjust Water Valve Box to Finish Grade	1	EA		
38	2" of 1/2" Dense HMAC PG 64-28	5314	SY		
39	Pavement Striping	1	LS		

**SUB  
TOTAL**

**TOTAL BID**

Addenda Acknowledgement: The undersigned acknowledges receipt of the following addenda: (List by number and date appearing on addenda.)

Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____
Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____

NOTE:

This Bid shall be irrevocable and open for acceptance for a period of sixty (60) days from the date of closing of bids. If notified in writing by the City of the acceptance of this Bid within sixty (60) days of the bid closing date, subject to such other period as may be specified in the Bid Documents, the Bidder shall execute the Contract between the City and Bidder no later than ten (10) calendar days after the City's acceptance of the Bid.

The name of the Bidder who is submitting this Bid is:

Firm Name: \_\_\_\_\_  
Printed Name of Individual: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Address: \_\_\_\_\_

All communications concerning this Bid and with the Contract will be sent to Bidder at the above address, fax number or e-mail address.

The names of the principal officers of the corporation submitting this Bid, or of the partners or members of the partnership or limited liability company submitting this Bid, or of all persons interested in this Bid as principals, are as follows:

_____	_____
_____	_____
_____	_____

**(IF SOLE PROPRIETOR, PARTNERSHIP OR LIMITED LIABILITY  
COMPANY)**

IN WITNESS HERETO, the undersigned has set his/her (its) hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Title

**(IF CORPORATION)**

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Name of Corporation: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**BID BOND**

Bond # \_\_\_\_\_

KNOWN ALL MEN 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

\_\_\_\_\_, hereinafter called the  
Obligee, in the penal sum of \_\_\_\_\_  
DOLLARS (\$ \_\_\_\_\_), for the payment of which, 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 Bond is that, whereas, the Principal herein is herewith submitting  
his/her or its bid for the **NW Berg Drive Extension and Cherry Lane Upgrade Project**  
said bid proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the said bid proposal submitted by the said Principal be  
accepted, and the Contract be awarded to said Principal, and if the said Principal shall  
execute the proposed Contract as required by the bidding and Contract documents with  
the time fixed by said documents, then this obligation shall be void, otherwise to remain  
in full force and effect. Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SURETY:

CONTRACTOR:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**CONTRACT**

**THIS AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
between

**“CITY”:**

City of Madras  
125 SW “E” Street  
Madras, OR 97741  
Phone: 541/475-2344  
Fax: 541/475-1038

and

**“CONTRACTOR”:**

“Contractor”  
“Address”  
“Phone”  
“Fax”

for **“PROJECT”:** NW Berg Drive Extension and Cherry Lane Upgrade Project

City and Contractor agree as set forth below:

**The Contract Documents.**

The following documents (the “Contract Documents”) form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Invitation to Bid
3. Information for Bidders
4. Proposal
5. Conditions of the Contract (General, Supplementary and other Conditions).
6. Drawings.
7. Specifications.
8. Payment and Performance Bonds.
9. Approved Submittals.
10. Addenda issued prior to, and all Modifications and Change Orders issued after execution of this Agreement.
11. Special Provisions

**The Work.**

The Contractor shall furnish all labor, tools, equipment, and services necessary to perform the following Work: NW Berg Drive Extension and Cherry Lane Upgrade Project described in the Contract Documents.

Contractor shall perform all of the Work in strict accordance with and as required by the Contract Documents and in accordance with any instructions as issued by the City.

**The Contract Sum.**

City shall pay Contractor for the performance of the Work, subject to additions and deductions by Written Change Order as provided in the Contract Documents, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) (the "Contract Sum"). Monthly progress payments and final payment shall be made in accordance with the General Conditions.

**Time of Commencement and Completion.**

The Work shall be commenced on the date stipulated in a written notice issued to Contractor by City (the "Notice to Proceed"), and subject to authorized adjustments, Substantial Completion shall be achieved according to the schedule set forth in the specifications.

Should Contractor fail to complete performance of the Work within the time prescribed herein, the harm that will be caused by such delay will be impossible or very difficult to accurately determine. Contractor agrees to pay City \$500 per day as agreed liquidated damages for the delay, not as a penalty, but as a reasonable forecast of just compensation for loss and expenses for each and every calendar day or fraction thereof elapsing between the specified substantial completion date and the date the work is actually substantially completed by Contractor. Substantial work shall be completed by June 1, 2014.

**Suspension and Debarment.**

Contractor shall fully comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 regarding debarment and suspension, and agrees to include or cause to be included in any subcontract at any tier the requirement that the subcontractor comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 if the contract is expected to equal or exceed \$25,000. Contractor, by signing this Agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If Contractor is unable to certify to the statements contained in this certification, they must provide an explanation as to why they cannot. Contractor shall provide immediate written notice to the Department if at any time Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of

changed circumstances. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Contractor agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Contractor further agrees by signing this Agreement, that it will include this section titled “**Suspension and Debarment**” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions. Pursuant to 2CFR180.330, Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. Contractor acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment. Contractor agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to the Department upon request. Contractor must run a search in [www.epls.gov](http://www.epls.gov) and print a copy of completed searches to document proof of compliance.

**Severability.**

If any provisions of this Contract are found to be unenforceable by a court of competent jurisdiction, all other provisions of this Contract shall remain in full force and effect and the Contract shall be read and interpreted without the invalid provision.

**Entire Agreement.**

This contract signed by both parties, constitutes a final written expression of all of the terms of this agreement and is the complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by Contractor or Contractor’s agents that differ in any way from the terms of this written agreement shall be given no force and effect.

**City of Madras**

**Contractor**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**PERFORMANCE BOND**

Bond # \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called  
(Corporation, Partnership or Individual)  
Principal and \_\_\_\_\_ hereinafter called  
(Name of Surety)  
Surety, are held and firmly bound unto

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_  
DOLLARS (\$ \_\_\_\_\_)

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

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof which may be granted by the OWNER, with or without notice to the Surety and during the one-year guaranty period, and if the Principal shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which the OWNER may suffer by reason of the Principal's failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

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 the SPECIFICATIONS accompanying the same 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 the Contract or to the WORK or the SPECIFICATIONS.

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

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_(number) counterparts, each one of which shall be deemed an original, this \_\_\_\_\_day of \_\_\_\_\_, 2013.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

(Address)

\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Surety)

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

(SEAL)

\_\_\_\_\_  
(Witness as to Surety)

(Address)

By: \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
(Address)

**Name, phone number & address of agent:** \_\_\_\_\_

**PAYMENT BOND**

Bond # \_\_\_\_\_

KNOWN ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal, and  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name and Address of Surety)

hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_  
DOLLARS (\$ \_\_\_\_\_)

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

THE CONDITIONS OF THIS OBLIGATION are such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such Contract, and any authorized modification thereof, including all amounts due for materials lubricants, oil, gasoline, coal and coke, repairs of machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor performed in such WORK whether by a subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

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 there under of the SPECIFICATIONS accompanying the same 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 the Contract or to the WORK or to the SPECIFICATIONS.

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

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_(number) counterparts, each on of which shall be deemed an original, this \_\_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary (Principal)

(SEAL) By: \_\_\_\_\_

\_\_\_\_\_  
(Witness as to Principal) (Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Surety)

ATTEST:

\_\_\_\_\_  
(Witness as to Surety) By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address) (Address)

**Agent name, phone number & address of agent:** \_\_\_\_\_  
\_\_\_\_\_

## **FIRST-TIER SUBCONTRACTOR DISCLOSURE**

### Instructions for First-Tier Subcontractor Disclosure:

Bidders are required to disclose information about first-tier subcontractors who will be furnishing labor, or labor and materials, on the Project when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or materials would be greater than or equal to: (i) 5% of the project bid, but at least \$15,000, whichever is greater, or (ii) \$350,000 regardless of the percentage of the total project bid, the bidder must disclose the following information about that subcontract either in its bid submission, or within two (2) hours after bid closing:

1. The subcontractor's name;
2. The category of work that the subcontractor would be performing; and
3. The dollar value of the subcontract.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate "NONE" on the accompanying form.

The attached first-tier subcontractor disclosure form must be utilized. **THE CITY WILL REJECT A BID IF YOU FAIL TO SUBMIT THE DISCLOSURE FORM WITH THE REQUIRED INFORMATION BY THE STATED DEADLINE** (see OAR 137-049-0360)

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM  
(ORS 279C.370)**

Prime Contractor Name \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

BID CLOSING: Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM PM

REQUIRED DISCLOSURE DEADLINE: Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM PM

**INSTRUCTIONS:**

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two (2) working hours after the advertised bid closing time.

Unless otherwise stated in the solicitation, this document shall not be submitted by facsimile. It is the responsibility of bidders to submit this disclosure form and any additional sheets, with the project name clearly marked, at the location indicated by the specified disclosure deadline. See Invitation to Bid.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED).

Name	Dollar Value	Category of Work
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		

**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 No.: \_\_\_\_\_

## PREVAILING WAGES

This project is expected to exceed \$50,000 in cost and therefore conformance with the Oregon Bureau of Labor and Industry requirement for wages and payroll submittals is required. Workers on the projects must be paid no less than the higher of the applicable state or federal prevailing rate of wage. Contractors will be required to pay the higher of the applicable state or federal prevailing rate of wage to workers on public works projects subject to both state and federal prevailing wage laws. The attention of Bidders is directed to the State requirements (ORS 279C.800 to 279C.870) and conditions of employment to be observed and minimum wage rates to be paid under the contract. The prevailing rate provisions and fees for Oregon Public Works projects are available on-line at <http://www.oregon.gov/BOLI/WHDPWR/index.shtml>.

### BOLI Public Works Bond

Pursuant to ORS 279C.830(2), the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements.

Every subcontract shall contain a provision that the subcontractor's workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be

classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the report to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this

contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under

the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## Part 2

### **Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required

or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall, upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Oregon Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.