

CITY OF SPRINGFIELD CONTRACT

Request for Competitive Price Quote



Project Number: <?>

Project Title: <?>

Description: <?>

THIS CONTRACT, made and entered into this _____ day of _____, 20__, between the City of Springfield, under and by virtue of the Charter, Laws, and Ordinances of the said City of Springfield, and the laws of the State of Oregon, and _____ hereinafter called the Contractor.

WITNESSETH:

That in consideration of the payments, covenants and contracts hereinafter mentioned, attached and made a part of this Contract, to be made and performed by the parties hereto, the parties hereto covenant and agree as follows:

1. GENERAL REQUIREMENTS

This Contract, signed by both parties, supersedes all prior and contemporaneous oral or written communications between the parties, their agents and representatives. This Contract, as signed by both parties, shall be composed of each and every one of the following listed parts and all approved revisions thereto:

1. Change Orders
2. Addenda to the Special Provisions
3. Special Provisions
4. Addenda to General Conditions and Standard Specifications
5. General Conditions and Specifications
6. Contract Plans
7. Standard Drawings
8. Instruction to Bidders (Hereinafter referred to as Instruction to Prospective Contractors)
9. Bid Proposal (Hereinafter referred to as Quote Submittal)

The Contractor shall deliver to the City a complete functioning finished product, in accordance with the requirements of the documents pertinent thereto, including those listed in Section 104.02 of the Standard Specifications in their entirety, which are also set forth hereinabove, and usable for the purpose intended for all construction areas described in the Request for Competitive Price Quote documents. This shall include all supervision, labor, materials, equipment, tools, taxes, permits, utilities, insurance, and all other items which are necessary and incidental to completing this Contract and not specifically designated to be the responsibility of the City.

The Contractor shall so complete this Contract and present same to the City on or before the time specified in the Quote Submittal. The total probable estimated cost of the Contract as stated on the quote is \$ _____ ; _____.

It is agreed that the actual final total cost per item and total Contract may vary in accordance with the provisions of the quote, per Section 102.10 of the Standard Specifications, and Article 4 of the Instruction to Prospective Contractors.

2. CONTRACT COMPLETION

The City of Springfield hereby promises and agrees, with the Contractor, to contract with and does hereby contract with the Contractor to complete this Contract in accordance with the above requirements, including any change orders, provided that a reasonable and equitable change order can be agreed upon between the Contractor and the City. In event of failure to so agree on any required change order, the City may then proceed with such work in any manner the City may elect. Such a situation and action by the City shall in no way relieve either the Contractor or the City of their respective obligations and responsibilities regarding all other requirements of this Contract.

3. FULL PERFORMANCE BY CONTRACTOR

The Contractor, for itself, and for its heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

4. NO LIABILITY TO CITY

It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

5. CITY BONDING

The Contractor shall file with the City of Springfield at the time of execution of this Contract both a Performance Bond and Payment Bond issued by a surety company registered to issue bonds in the State of Oregon, and utilizing bond forms acceptable to the City. The City will accept AIA Document A312-2010 Performance and Payment Bonds. The Bonds may not be altered.

The bonds shall be in the amounts of one hundred percent (100%) of this Contract. All bonding shall remain in force for one (1) year after the date of City Council acceptance of the work, to cover all guarantees against defective workmanship and materials and execution of and in accordance with this Contract, and to guarantee payment to all persons supplying labor and materials for the construction of the work. Failure to maintain the proper bonding shall be grounds for immediate termination of the Contract.

6. HOLD HARMLESS AND INDEMNIFICATION

The Contractor shall defend, indemnify and hold harmless the City from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with performance of this Contract by the Contractor except, pursuant to ORS 30.140, for losses, claims, or actions resulting from the sole negligence of the City.

The Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Contractor, the City, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other causes whatsoever. The Contractor shall assume defense of, indemnify and save harmless the City, its officials, agents, and employees from all claims, liability, loss, damage, and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any Subcontractor under the Contract or any way arising out of the Contract, irrespective of whether an act, omission or conduct of the City connected with the Contract is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Contractor or Subcontractor is merely a condition rather than a cause of a claim, liability, loss damage or injury. The Contractor shall not be liable for, nor be required to defend or indemnify, the City relative to claims for damage or damages resulting solely from acts or omissions of the City, its officials, agents, or employees. The absence of or inadequacy of the liability insurance required in section 7 shall not negate Contractor's obligations in this paragraph.

7. INSURANCE

A. Public Liability and Property Damage

The Contractor shall maintain in force for the duration of this Contract a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$3,000,000 in the aggregate and approved by the City as to terms, conditions and form. The policy will be endorsed with a "per project" aggregate endorsement. Automobile Liability (owned, non-owned, and hired) insurance with limits not less than \$1,000,000 per occurrence shall be maintained. The City, its employees, officials and agents will be named as Additional Insured's where operations are being conducted related to this Contract, on the General Liability policy as respects to work or services performed under this agreement to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Contractor or the fault of the Contractor's agents, representatives or subcontractors. The following statement will appear on the face of the certificate; "The City, its employees, officials and agents are all named as additional insured while acting in their capacity as such." The City's additional insured status for Products and Completed Operations hazards shall extend for at least one year beyond the completion of the project. This insurance will be primary over any insurance the City may carry on its own.

B. Workers' Compensation

The Contractor shall provide and maintain Workers' Compensation coverage with limits no less than \$500,000 for its employees, officers, agents, or partners, as required by applicable Workers' Compensation laws. If the Contractor is exempt from this coverage a written statement, signed by the Contractor, explaining the reason for the exemption will be provided to the City prior to commencement of any work.

C. Course of Construction and/or Installation Floater

The Contractor shall maintain in full force for the duration of this Contract an All Risk insurance policy approved by the City as to terms, conditions and form covering the replacement cost of the work during the course of construction. The policy shall include the interests of the City and Architect/Engineer, as applicable, and the first two layers of Subcontractors. The amount of insurance shall equal the completed value of the Contract. The City, at its option, may elect to supply this coverage.

D. Asbestos Abatement (only applicable to Asbestos Specific Contracts)

If applicable to this Contract, the Contractor shall maintain in full force a Commercial General Liability policy approved by the City as to terms, conditions and form that is Asbestos Specific with a minimum limit of \$2,000,000 per occurrence and \$3,000,000 in the aggregate written on a form that meets the following criteria as follows:

- a. A full occurrence form, or
- b. A limited occurrence form with at least a three-year (3) tail, or
- c. A claims made form with a three-year (3) tail.

E. Pollution Liability Coverage (only applicable to Pollution Specific Contracts)

If applicable to this Contract, the Contractor shall maintain in full force a Commercial General Liability policy approved by the City as to terms, conditions and form that is Pollution Specific with a minimum limit of \$2,000,000 per occurrence and \$3,000,000 in the aggregate written on a form that meets the following criteria as follows:

- a. A full occurrence form, or
- b. A limited occurrence form with at least a three-year (3) tail, or
- c. A claims made form with a three-year (3) tail.

F. Professional Liability Coverage (only applicable to Contract if specified)

If Professional Liability insurance is required, the City must approve the terms, conditions and limits prior to commencement of any work.

G. Railroad Protective Liability Coverage

If work being performed under this Contract is near railroad tracks or a railroad right of way and the Railroad requires special insurance (for example: Railroad Protective Liability Coverage) Contractor will be responsible for meeting the Railroad insurance requirements before any work commences. Any insurance required to be purchased by the Railroad is in addition to the insurance required by the City.

H. Subcontractors

The Contractor shall require all Subcontractors to provide and maintain General Liability, Auto Liability and Workers' Compensation insurance and, as applicable, Professional, Asbestos and Pollution Liability with coverage's equivalent to those required of the General Contractor in this Contract. The Contractor shall require certificates of insurance from all Subcontractors as evidence of coverage.

I. Additional Insured Endorsement

All certificates of insurance, with the exception of Professional Liability and Railroad Protective Liability, must include an endorsement which lists the City of Springfield as a named additional insured. The following statement will appear on the face of the certificate; "The City, its employees, officials and agents are all named as additional insured while acting in their capacity as such."

J. Evidence of Coverage and Notice of Cancellation or Material Change in Coverage

Evidence of the required coverages issued by a company satisfactory of the City shall be provided to the City by way of a certificate of insurance before any work or services commence. A 30-day notice of cancellation or material change in coverage clause shall be included.

If the approved insurance company will not provide this 30 day notice, it shall be the responsibility of the Contractor to provide written notice to the City within two (2) days of the Contractor becoming aware that their coverage has been cancelled or materially changed. The Contractor shall e-mail notification directly to Bob Duey, Finance Director at rduey@springfield-or.gov . Regardless of the circumstances causing the Contractor's insurance coverage to cease or be modified, it is the Contractor's responsibility to notify the City as described above.

Failure to maintain the proper insurance or provide notice of cancellation or material change shall, at the City's option, be grounds for immediate termination of this Contract. _____

(Contractor initials)

K. Equipment and Material

The Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.

8. INDIAN GRAVES AND PROTECTED OBJECTS

The Contractor warrants that it will observe all applicable requirements of ORS 97.740 et. seq. regarding Indian Graves and Protected Objects (ORS 358.905-.961 and ORS 390.235-.240).

In the event the Contractor or any of its Subcontractors or agents discover, become aware of, or find any Native Indian Artifacts, sites, human remains, or funerary objects on the real property on which the Contractor is fulfilling this Contract, the Contractor will immediately safeguard the artifacts and site, halt construction activities at the area of the find, and immediately notify City. Such artifacts may include but not be limited to charred and cracked rocks or charcoal layers of soil indicating a hearth or oven, stone chips of obsidian and other colored rocks, stone bowls, arrow and spear points, stone tools, and bone fragments. All

artifacts found shall be turned over to the City for appropriate disposition in accordance with applicable law. Upon receipt of notification the City will retain a consultant archeologist to conduct an initial assessment of significance of the find. The Contractor and City will work together to comply with all applicable requirements of ORS 97.740 et. seq. in a manner which has least impact upon the construction schedule. If compliance requires some adjustment of the construction schedule, the Contractor and the City shall make reasonable adjustments.

9. LIQUIDATED DAMAGES

The City of Springfield and the Contractor agree that; (a) the amounts so fixed are reasonable forecasts of just compensation for the harm that is caused by the breach; (b) the harm that is caused by the breach is one that is incapable of or very difficult of accurate estimation; and, (c) the amount so fixed is not fixed as a penalty to coerce performance of the Contract but is rather intended to be a genuine pre-estimation of injury to the City of Springfield in lieu of performance within the Contract time by the Contractor.

A. Delay

It is agreed by the City of Springfield and by the Contractor that the need exists for a damage provision in the event the Contractor fails to complete the work within the Contract time specified, or any extension thereof, by the City of Springfield. The City of Springfield and the Contractor further agree that the Contractor shall be liable to the City of Springfield for fixed, agreed and liquidated damages for each and every calendar day of delay in the amount of \$-?> per day in accordance with Subsection 108.07 of the Standard Construction Specifications.

B. Failure to Report Sewage Spills

The Contractor also agrees to liquidated damages in the amount of \$500.00 per incident for failure to report sewage spills plus an amount sufficient to reimburse the City for any civil and administrative penalties paid by the City as a result of the Contractor's failure to report. Failure to report sewage spills may subject the City to (1) civil penalties of up to \$32,500.00 per day of violation pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d); (2) administrative penalties of up to \$11,000.00 per day for each violation, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); or (3) civil action in federal court for injunctive relief pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

10. PREVAILING WAGE RATE PROVISIONS

Oregon law requires that if prevailing wage rate law applies a public agency must pay the prevailing wage rate for all contracts over \$50,000. For contracts over \$50,000, Contractor will comply with the applicable requirements of ORS 279C.800 through 279C.870 including the provisions in this Section 10.

A. Notice

In the event that total cost of the Contract as specified in Section 1 "General Requirements" does not initially exceed \$50,000 but during the scope of work increases through amendments, change orders, additions, supplements, other contracts, or through any other reason or process, formal or informal, planned or unplanned, to an amount greater than \$50,000 then the entire contract is subject to all applicable requirements of the prevailing wage rate laws ORS 279C.800 through 279C.870.

B. Prevailing Wage Rate

Each worker in each trade or occupation employed in the performance of this Contract either by the Contractor, Subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the Contract, must be paid not less than the applicable prevailing wage rate. Prevailing wage rate payments include fringe benefits, for each trade or occupation in the locality where such labor or work is performed, as determined by the commissioner, in which the workers are employed. The existing rate of wage is the rate, in effect at the time the initial specifications were first

advertised for bid solicitations as determined by the Commissioner of the Bureau of Labor and Industries under ORS279C.815. Information regarding the Prevailing Wage Rate that is applicable to this Contract is contained in the document titled "Prevailing Wage Rate Information" which is included within the Request for Competitive Price Quote documents and is incorporated herein by reference.

C. Submission of Certified Payrolls

As specified in ORS 279C.845, the Contractor or the Contractor's surety and every Subcontractor or the Subcontractor's surety shall file certified statements with the public agency in writing, on a 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 the public works, and further certifying that no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract. The certificate and certified 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 the certified statement and certificate and knows the contents thereof and that the same is true to the Contractor or Subcontractor's knowledge. Certified statements (also referred to as certified payroll reports) shall be submitted to the City no later than the 5th day of the following month for which the certified statement and certificate are being presented, regardless of whether any actual work is performed on the project or not. This information must be submitted to the City and also retained by the Contractor and Subcontractor(s) for three years.

Contracting agencies and general contractors are required to withhold 25% of amounts to Contractors if certified payrolls are not filed by the Contractor as required for work performed on projects subject to the prevailing wage rate law. Failure of Contractors to comply with the certified payroll filing requirements of the law, therefore, will result in a negative fiscal impact to those Contractors of up to 25% of their amount owed.

Each worker employed in the performance of this contract, either by the Contractor or Subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work of the contract, must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

11. INELIGIBLE CONTRACTORS LISTS

No Contractor, Subcontractor or any firm, corporation, partnership or association in which the Contractor or Subcontractor has a financial interest who appears on *the List of Contractors Ineligible to Receive Public Works Contracts*, as established by the Bureau of Labor and Industries, will perform work under this Contract, as specified in ORS 279C.860.

No Contractor, Subcontractor or any firm, corporation, partnership or association in which the Contractor or Subcontractor has a financial interest who appears on the Construction Contractor's Board *Not Qualified to Hold Public Contracts* list, will perform work under this Contract, as specified in ORS 701.227(4).

12. PAYMENT, CONTRIBUTION, LIENS, WITHHOLDING

A. Prompt Payment

Contractor shall make payment promptly as due to all persons supplying to the Contractor, labor or material for the performance of the work provided for in the Contract.

As specified in ORS 279C.515, if the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person, or the assignee of the person, in connection with the Public Works Contract as such claim becomes due, the City of Springfield may pay such claim and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract. The payment of a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

If the Contractor or first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Public Improvement Contract within 30 days after receipt of payment from the contracting agency or a Contractor, the Contractor or first-tier 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.

As specified in ORS 279C.515, if the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Public Improvement Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

As specified in ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All employers shall comply with ORS 656.017.

B. Industrial Accident Fund

As specified in ORS 279C.505(1)(b), the Contractor shall promptly pay all contributions or amounts due to the State Industrial Accident Fund or private carrier of accident insurance from such Contractor or Subcontractor incurred in the performance of the Contract. If a private carrier is used, the Contractor shall notify the City Engineer as to the carrier's name and address before commencement of the work.

C. No Liens

As specified in ORS 279C.505(1)(c), the Contractor shall not permit any lien or claim to be filed or prosecuted against the City of Springfield or subdivision thereof on account of any labor or material furnished.

D. Withholding

As specified in ORS 279C.505(1)(d) the Contractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

E. Hours

No person will be employed by the Contractor or Subcontractor for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed shall be paid at least time and one-half the regular rate of pay for all times worked in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on a Saturday, Sunday and on any legal holiday specified in ORS 279C.540.

F. Notice

The Contractor, Subcontractor or other person doing, or contracting to do, or contracting for the whole or any part of the work on the Contract shall give notice to employees working on the contract project in writing, either at the time of hire or before commencement of work on the Contract, and by posting a notice in a conspicuous location which is accessible to and frequented by employees, of the number of hours per day and days per week that the employee may be required to work as specified in ORS 279C.520. The posting must remain in place for the duration of the job.

13. DEMOLITION

If demolition is involved, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective as required by ORS 279C.510(1).

14. LANDSCAPING

If lawn or landscaping maintenance is involved, the Contractor shall compost or mulch yard waste in an approved site, if feasible and cost-effective as required by ORS 279C.510(2).

15. EMPLOYEE DRUG TESTING

By signing this Contract, Contractor certifies that it currently has in place, and will maintain in place over the life of the Contract, an employee drug testing program pursuant to ORS 279C.505(2).

16. COMPLIANCE WITH ALL GOVERNMENT REGULATIONS/TERMINATION FOR FAILURE TO COMPLY

The Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed under this Contract. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Contract. Damages or costs resulting from noncompliance shall be the sole responsibility of the Contractor. Other grounds for termination are set forth in Sections 108.11 and 108.12 of the Standard Construction Specification of the City of Springfield.

17. SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

18. WAIVER

Failure of the City to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the City of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

19. CAPTIONS

The titles to paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Contract.

20. RIGHTS IN DATA

All original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for the City of Springfield pursuant to this Contract, shall become exclusively the property of the City of Springfield. The ideas, concepts, know-how, or techniques developed during the course of this Contract by the Contractor's personnel can be used by either party in any way it may deem appropriate. Material already in the Contractor's possession, independently developed by the Contractor outside the scope of this Contract, or rightfully obtained by the Contractor from third parties, shall belong to the Contractor irrespective of their similarity to materials which might be delivered to the City of Springfield pursuant to this Contract. The Contractor shall not, however, use any written materials developed under this Contract in developing materials for others, except as provided in this section.

21. ASSIGNMENT/SUBCONTRACT

The Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the City of Springfield. No such

written approval shall relieve the Contractor of any obligations of this Contract, and any transferee or subcontractor shall be considered the agent of the Contractor. The Contractor shall remain liable as between the original parties to this Contract as if no such assignment had occurred.

22. SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to this Contract and their respective successors and assigns.

23. ATTORNEY FEES

In the event a lawsuit of any kind is instituted on behalf of the City of Springfield to enforce any provision of this Contract, the Contractor shall pay such additional sums as the Court may adjudge reasonable for attorney fees plus all costs and disbursements at trial and on any appeal.

24. FORCE MAJEURE

Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The City of Springfield may terminate this Contract upon written notice after determining such delay or default will unreasonably prevent successful performance of the Contract.

25. ACCESS TO RECORDS

The City of Springfield and its duly authorized representatives shall have access to books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts and transcripts.

26. AMENDMENTS

The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of the City of Springfield. No modification of this Contract shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.

27. NONDISCRIMINATION

The Contractor shall comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.

28. DUAL PAYMENT

The Contractor shall not be compensated for work performed under this Contract from any City of Springfield agency other than the agency which is a party to this Contract.

29. REMEDIES

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon, and any litigation arising out of this Contract shall be conducted in the courts of the State of Oregon, County of Lane.

IN WITNESS WHEREOF: The said City has caused these presents to be executed by its City Manager pursuant to a motion duly passed by the Common Council of the City of Springfield, and the said Contractor has caused these presents to be executed itself.

**CITY OF SPRINGFIELD, OREGON
(A Municipal Corporation)**

CONTRACTOR

By:

City Manager's Signature

Date

By:

Name of Company *(Please Print)*

Contractor's Signature

Name: *(Please Print)*

Title: *(Please Print)*

Date

Business Address

City **State** **Zip**

Office Phone

Cell Phone

E-Mail Address

SAMPLE