

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; and shall be interpreted so as to give the effect to the purpose of the Contract. In the event of a conflict or ambiguity, the precedence provision of Section 104.03 shall apply.

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 parties acknowledge that this is a Lump Sum Project. 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. Such Lump Sum status 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 Request for Competitive Price Quote documents. The City agrees to pay the Contractor the total sum of \$ _____; _____ upon completion of the project satisfactory to the City.

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 (sample forms enclosed). 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

All insurance shall be approved by the City as to terms, conditions and form prior to beginning work.

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. 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 and Automobile Liability policies 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 acceptance of the project. This insurance shall be primary and shall be paid and applied first in its entirety prior to any application of 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. Additional Policies and Special Coverages

Refer to the Special Provisions section of this Contract for additional coverages that may be required.

H. 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.

I. 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.

J. 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."

K. 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)

L. 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. TIME IS OF THE ESSENCE

Time is of the essence in the Contractor's performance of the Contract. Delays in the Contractor's performance of the work may inconvenience the public, interfere with business and commerce, and increase cost to the City. It is essential and in the public interest that the Contractor prosecute the work vigorously to Contract completion. The City does not waive any rights under the Contract by permitting the Contractor to continue to perform the Contract, or any part of it, after the Contract Time of Completion specified, or as adjusted by Contract Change Order, has expired.

A. Liquidated Damages

The City of Springfield and the Contractor agree that; (a) time is of the essence; (b) the amounts so fixed are reasonable forecasts of just compensation for the harm that is caused by the breach; (c) the harm that is caused by the breach is one that is incapable of or very difficult of accurate estimation; and, (d) 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 or the Contractor's failure to report sewage spills. Therefore, it is agreed as follows:

1. 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.

2. 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 covered under the requirements of the prevailing wage rate law as described below.

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 Information" which is included within the Invitation to Bid 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. BONDING TO BE FILED WITH THE CONSTRUCTION CONTRACTORS BOARD

As specified in ORS 279C.836, the Contractor shall file a public works bond with a corporate surety in the amount of \$30,000.00 with the Construction Contractors Board before starting work on a Contract for a public works project subject to the provisions of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) with a total Contract price greater than \$100,000. In addition, as specified in ORS 279C.830, the Contractor shall include a provision in any and all subcontracts requiring the all Subcontractors have a valid bond filed with the Construction Contractor's Board before starting work on a project, as applicable, unless exempt.

Exemptions from the bond requirement may be granted under specific circumstances as outlined in ORS 279C.836(7) for certified disadvantaged, minority, women or emerging small business enterprises. The Contractor shall contact BOLI regarding qualifications for such exemptions.

If qualified, the enterprise must provide the Construction Contractor's Board with written notification of its certification. In addition, the enterprise must notify the City that a public works bond has not been filed and provide proof of qualification prior to commencing work.

By signing this Contract, the Contractor certifies that the Contractor, and any Subcontractor who will perform work under this Contract, will file a public works bond with the Construction Contractors Board as required prior to beginning work on the project.

12. INELIGIBLE CONTRACTORS LIST

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).

13. 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.

In accordance with ORS 279C.505, the Contractor shall;

- a) 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.
- b) Promptly pay all contributions or amounts due 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 Engineer as to the carrier's name and address before commencement of work.
- c) 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 material furnished.
- d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- e) Have an employee drug testing program in place at the time of signing the Contract and will maintain such drug testing program in place over the life of the Contract. Upon request, the Contractor shall furnish a copy of the employee drug testing program to the City.

In accordance with ORS 279C.510, 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). 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).

In accordance with 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 in the amount of 9 percent per annum 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.

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.

In accordance with ORS 279C.520, 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.

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. The posting must remain in place for the duration of the job.

In compliance with ORS 279C.525, the Contractor is made aware that the following federal, state, and local agencies have enacted ordinances or regulations relating to the prevention of environmental pollution or the preservation of natural resources which may affect performance of City of Springfield contracts. This is not intended to be a complete listing of agencies. Other agencies may have enacted ordinances or regulations that may apply.

If the Contractor is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in the Contract or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful quote, the contracting agency may, at its discretion, terminate the Contract, complete the work itself; use non-agency forces already under contract with the City, require that the underlying property owner be responsible for cleanup, solicit quotes for a new contractor to provide the necessary services or issue the Contractor a change order setting forth the additional work that must be undertaken.

If the Contractor encounters a condition not referred to in the Invitation to Bid documents, not caused by the Contractor or any subcontractor employed on the project and not discoverable by a reasonable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under this regulation, the Contractor shall immediately notify the City of the condition.

FEDERAL AGENCIES

Department of Agriculture
Forest Service
Soil Conservation Service
Department of the Army Corps of Engineers
Coast Guard
Department of Health and Human Services
Department of the of Interior
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Outdoor Recreation
Department of Commerce

Fish and Wildlife Service
Office of Surface Mining
Reclamation and Enforcement
Bureau of Reclamation
Department of Labor
Occupational Safety and Health Administration
Mine Safety and Health Admin
Department of Transportation
Federal Highway Administration
Environmental Protection Agency

STATE AGENCIES

Department of Agriculture
Department of Energy
Department of Environmental Quality
Department of Fish and Wildlife

Department of Human Resources
Land Conservation and Development Commission
Division of State Lands
State Soil and Water Conservation Commission

Department of Forestry
Department of Geology and Minerals

Water Resources Department
Oregon Department of Transportation

LOCAL AGENCIES

City of Springfield
Planning Commission, City of Springfield
Springfield Development and Public Works
Metropolitan Wastewater Management Commission
Springfield Utility Board

Lane County
Planning Commission, Lane County
Willamalane
Lane Regional Air Pollution Authority
Lane Council of Governments

In accordance with ORS 279C.530, the Contractor will;

Promptly, as due, make payments to any person, co-partnership, association or corporation, furnishing medical, surgical, and hospital care or other needed care and attention, incidental to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor:

- a) May or shall have deducted from the wages of his employees for such services pursuant to the terms of Oregon Revised Statutes and any contract entered in pursuant thereto; or
- b) Collected or deducted from the wages of his employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service; and
- c) Will 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.

In accordance with ORS 279C.580, each subcontract the Contractor enters into with a first-tier Subcontractor for property or services, including a material supplier, for the purpose of performing this Contract must include the following:

- a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the contracting agency pays to the Contractor under the Public Improvement Contract.
- b) A clause that requires the Contractor to provide a first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor.
- c) A clause that requires the Contractor, except as otherwise provided, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:
 - 1.) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
 - 2.) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
- d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within 30 days after receiving payment from the contracting agency, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the contracting agency or Contractor when payment was due. The interest penalty:
 - 1.) Applies to the period that begins on the day after the required payment date and that ends on

the date on which the amount due is paid; and

2.) Is computed at the rate specified in ORS 279C.515 (2).

The Contractor shall require the first-tier Subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (3) of ORS 279C.580 in each of the first-tier Subcontractor's subcontracts and to require each of the first-tier Subcontractor's Subcontractors to include such clauses in the first-tier Subcontractors' subcontracts with each lower-tier Subcontractor or supplier.

14. NONDISCRIMINATION

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

15. RIGHTS IN DATA/OWNERSHIP OF WORK PRODUCT

(a) Work Product - All Work Product created by the Contractor and originated and prepared for the City of Springfield pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of the City. 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.

(b) Limited City Indemnity - If the City reuses or modifies the Work Product without the Contractor's involvement or prior written consent, to the extent permitted by Article XI, Section 7, of the Oregon Constitution, and subject to the protections afforded by the Oregon Tort Claims Act, the City shall indemnify the Contractor, within the limits of the Tort Claims Act and any other protections afforded the City, against liability for damage to life or property arising from the City's reuse or modification of the Work Product; provided however, the City shall not be required to indemnify the Contractor for any such liability arising out of or related to defective Plans and Specifications, or Contractor's breach of the Contract, professional negligence, or the negligent or wrongful acts of the Contractor's Subcontractors, employees, or agents in preparing the Plans and Specifications or testing and inspection conducted for the Project.

(c) Contractor Use of Work Product - The Contractor, despite other conditions of this provision, shall have the right to utilize such Work Products on its brochures or other literature that it may disseminate for its sales promotions, and in addition, unless specifically otherwise prohibited elsewhere in the Contract documents, the Contractor may use its standard line drawings, specifications, and calculations on other, unrelated projects.

16. PATENTS, COPYRIGHTS AND TRADEMARKS

Prior to use of designs, devices, materials, or processes protected by patent, copyright, or trademark, the Contractor shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of legal right. The Contractor shall indemnify, defend, and hold harmless the City from claims of patent, copyright, or trademark infringement, and from costs, expenses, and damages the Contractor or the City may be obligated to pay as a result of such infringement during or after completing the work.

17. ASSIGNMENT

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.

18. SUBCONTRACTING

Subcontracts shall provide that work performed under the subcontract shall be conducted and performed according to the terms of this Contract. Whether stated in the Subcontract Agreement itself or not, the Contractor shall remain solely responsible for administration of the subcontract, including, but not limited to the performance of the subcontracted work, progress of the subcontracted work, payment for accepted subcontracted work, and disputes and claims for additional compensation regarding all subcontracted work.

The City's approval of a Subcontractor will not create a contract between the City and the Subcontractor, shall not convey to the Subcontractor any rights against the City, and shall not relieve the Contractor or the Contractor's Surety of any of their responsibilities under this Contract.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. CAPTIONS

The headings, subheadings and 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. They do not form a part of this Contract, and shall not be used in construing this Contract.

26. 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.

27. REMEDIES

This Contract shall be governed and construed in accordance with the laws of the State of Oregon, apart from choice of law provisions. The parties agree that the Circuit Court for the County of Lane, State of Oregon, or the Federal District Court of the State of Oregon (Eugene) is the sole and proper forum for resolving any

disputes involving this Contract, any breach of this Contract, or relating to its subject matter. The Parties agree to submit themselves to the jurisdiction of such courts without challenge to the jurisdiction of these courts. This Contract shall not be construed more favorably to the City due to the preparation of this Contract by the City.

28. OWNERSHIP STATUS

Both parties understand and acknowledge that the City is a public body as specified in ORS 30.260 and maintains its status as a public body and retains all immunities and privileges granted it and its officers, agents, and employees by the Tort Claims Act (ORS 30.260 – ORS 30.295) and any and all other statutory rights granted the City as a result if its status as a public body.

29. 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.

IN WITNESS WHEREOF: The said City has caused these presents to be executed by its City Manager (or Designee) as authorized by Ordinance 6281 of 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:

By:

City Manager's Signature

Name of Company *(Please Print)*

Date

Contractor's Signature

Name: *(Please Print)*

Title: *(Please Print)*

Date

Business Address

City **State** **Zip**

Office Phone

Cell Phone

E-Mail Address