

# CITY OF SPRINGFIELD CONTRACT

Request for Competitive Price Quote



**Project Number: P21121**

**Project Title: Regional Fuel Facility Upgrade**

**Description: This project consists of installation of a new sanitary sewer lateral, stormwater catch basin with shutoff valve, concrete work, surface restoration and paving.**

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. 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 6 shall not negate Contractor's obligations in this paragraph.

## **6. INSURANCE**

All insurance shall carry a rating of A- or better with A. M. Best and must be approved by the City as to terms, conditions and form prior to beginning work. Certificates of insurance evidencing all policies and endorsements required by this Contract shall be delivered to the Owner prior to the commencement of any work. The Owner has the right to reject any certificate or endorsement for unacceptable coverage and/or companies.

### **A. Public Liability and Property Damage**

The Contractor shall maintain in force for the duration of the Contract, to include the warranty period, 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 Additional Insured, Per Project Aggregate, Products and Completed Operations and Primary and Noncontributory endorsements. 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 Commercial General policy as respects to work or services performed under this Contract 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 formal Council 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. A 30-day notice of cancellation or material change in coverage clause shall be included.

The Contractor shall maintain in force for the duration of the Contract, to include the warranty period, an Automobile Liability insurance policy (owned, non-owned, and hired) with limits not less than \$1,000,000 per occurrence. The policy will be endorsed with Additional Insured and Primary and Noncontributory endorsements. 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 Automobile Liability policy as respects to work or services performed under this Contract 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." 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. A 30-day notice of cancellation or material change in coverage clause shall be included.

#### **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**

In the event Course of Construction/Installation Floater insurance is required by the City due to unique project specifications the Contractor shall provide Course of Construction/Installation Floater insurance in the amount specified by the City. In addition, if the Contractor requests advance payment by the City for the purchase of materials pursuant to Section 109.07 of the City of Springfield Standard Construction Specifications, the Contractor shall provide Course of Construction/Installation Floater insurance in an amount equal to the value of the advance payment requested. The policy shall provide coverage for all risks and shall be approved by the City as to terms, conditions and form prior to the release of payment. The policy shall name the City of Springfield as Loss Payee. The coverage shall be maintained in full force for the duration of this Contract. The City, at its option, may elect to obtain additional 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:

- 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:

- 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 Nathan Bell, Finance Director at [nbell@springfield-or.gov](mailto:nbell@springfield-or.gov) with a copy to Terri White at [twhite@springfield-or.gov](mailto:twhite@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.

**7. 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.

## **8. 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 \$50.00 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).

## **9. NOTICE OF PREVAILING WAGE REQUIREMENT**

In the event that the total cost of this 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 and the Contractor will comply with all applicable requirements of ORS 279C.800 through 279C.870.

## **10. 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).

## **11. 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 Forestry  
Department of Geology and Minerals

Department of Human Resources  
Land Conservation and Development Commission  
Division of State Lands  
State Soil and Water Conservation Commission  
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  
City of Springfield Urban Renewal Districts -  
Downtown and Glenwood  
Springfield Utility Board

Lane County  
Planning Commission, Lane County  
Willamalane  
Lane Regional Air Protection Authority  
Lane Council of Governments  
Rainbow Water District  
Emerald People's Utility District

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.

## **12. NONDISCRIMINATION**

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

## **13. 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.

## **14. 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.

## **15. 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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.

## **23. 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.

## **24. 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.

**25. 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.

**26. 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.

**27. 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:

\_\_\_\_\_  
Department Director'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