



# CITY OF MANZANITA

Public Works Department

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[ci.manzanita.or.us](http://ci.manzanita.or.us)

Request for Proposals

for

Construction Services

Manzanita Classic Street Connection

Issue Date: April 17, 2025

Proposal Due Date:

May 20th, 2025, at 2:00 PM

City of Manzanita

PO Box 129

Manzanita, Oregon 97130

503 368-5343

**Request for Proposals**  
City of Manzanita—Construction Services

The City of Manzanita (City) is seeking proposals from qualified and experienced General Contractors (GCs) for construction services for the construction of a water line expansion, storm water system, retaining wall, pedestrian pathway, paving and traffic calming measures along Classic Street. The project is referred to as the “**Manzanita Classic Street Connection**” by the City. The City’s objective is to enter into a Construction Agreement with a qualified GC that will provide these services.

The City’s expectation of the contractor which the City contracts with is that the contractor’s values align with the City’s values of highly ethical conduct, fiscal responsibility, respect for the City and others, and responsiveness to the City’s customers.

The Request for Proposals (RFP) documents may be viewed and obtained at no cost from the City website <https://ci.manzanita.or.us/>. Or, the RFP documents may be viewed in person, by appointment, at 167 S 5th Street, Manzanita, Oregon 97130. City Hall is open for walk up service Monday through Thursday from 9 a.m. to 12 p.m. Appointments to view the documents outside of that timeframe may be scheduled by contacting Nancy Jones (see contact information below).

Successful proposers will be required to sign a Construction Contract with the City. The Construction Contract is a public works agreement subject to ORS 279C.800 to 279C.870. A sample of the agreement is attached as part of the RFP documents. The City will require specific levels of insurance, applicable contract bonds, a Manzanita business license, a contractor license, and a tax identification number. Proposers must evaluate these sample agreements and agree with the terms and conditions contained therein, unless written objections are submitted to City as set forth in Section V.B of the RFP. Objections made after the deadline set forth in Section V.B, including after award of the Construction Contract, will not be considered and are grounds for subsequent denial of the Construction Contract.

Proposals shall be submitted as required in Section V of the RFP.

Proposals shall be submitted by email with a subject line plainly identifying the RFP and the proposer’s name and address. Proposals shall be delivered to Leila Aman, City Manager, [lanan@ci.manzanita.or.us](mailto:lanan@ci.manzanita.or.us).

Proposals will be received until 2:00, PM May 20, 2025. Proposals received after the 2:00 PM deadline will not be considered.

For additional information regarding this RFP, please contact Leila Aman, [lanan@ci.manzanita.or.us](mailto:lanan@ci.manzanita.or.us). City reserves the right to reject any and all proposals or to negotiate individually with one or more proposers, and to select one or more contractors if determined to be in the best interest of City.

The City will hold a mandatory pre-proposal meeting and site tour on Tuesday, April 29, 2025, at 11:00 am. The meeting will begin at the Police Department, 167 S. 5th Street, Manzanita, OR. Please contact Nancy Jones at [cityhall@ci.manzanita.or.us](mailto:cityhall@ci.manzanita.or.us) to RSVP.

This meeting will allow proposers the opportunity to gain information about the construction site and a better understanding of the Project (defined below).

## **I. INTRODUCTION**

The City of Manzanita (City) is seeking the services of a General Contractor (GC) with demonstrated experience in constructing public infrastructure for the construction of an expanded waterline, storm water system, retaining wall and pedestrian pathway, paving and traffic calming measures along Classic Street (the Project). The site of the Project is set forth in the plans and specifications for the Project. The scope of work consists of construction services as outlined in the sample Construction Contract attached to this RFP as Exhibit C. Anticipated contract start date is approximately June 23, 2025. The actual start date may vary and will depend on completion of advertisement, Qualifications Plus Bid opening and review and subsequent Award and contract signing steps.

## **II. PROJECT BACKGROUND**

City is surrounded by the natural beauty of the Pacific Ocean, Neah-Kah-Nie Mountain, and state and private forests on the north Oregon coast, just two hours west of Portland. City is home to 625 full-time residents and 1,600 part-time homeowners, and it is a destination for visitors from around the world. It is a vibrant and complex city with an active and engaged community.

The City received a grant from the State of Oregon to construct necessary infrastructure in order to support 120 units of affordable housing currently in the development pipeline, and additional housing development anticipated in the southeastern section of the City's Urban Growth Boundary (UGB), commonly referred to as the Highlands. Currently, there is not sufficient fire flow/pressure to serve the land within the City's UGB, including the site of the proposed affordable housing. Knowing this issue was coming, City has been exploring options to expedite the construction of this expanded water line along Classic Street. This expansion would divide a large, looped water system, creating two smaller linked loops, increasing available water flow to meet current/future fire flow standards for the entire UGB, including the area where the 120 units are proposed. The Project will also provide critical redundancy, increasing resiliency within the City's water system. The waterline will generally be built on the eastern side of the roadway outside of the travel lanes.

The Project will include a storm drainage component. The absence of a stormwater connection for Classic Street leads to flooding and erosion issues on what has become a very critical transportation connection. Flooding not only poses a safety hazard for drivers and pedestrians, but it also hinders the overall functionality and longevity of the travel way. The construction of a stormwater system will allow the current storm basin to flow in two separate directions and connect to the recently completed storm line constructed in Dorcas Lane, which intersects with Classic Street. The stormwater element of the Project will require retaining walls on the western side of Classic Street to allow for proper grading and to ensure long-term roadway stability.

Finally, the Project will include some landscaping to the west to ensure slope stability and in some locations will include a vegetative strip between the paved area over the water line and the travel lanes to the east. There will be some traffic calming measures on Classic Street, including speedbumps, paint, signage and reconstruction of one corner bulbout on Laneda to make it Americans with Disabilities Act (ADA) compliant for a north south crossing.

The priority of the Project is to provide necessary water and stormwater infrastructure to unlock affordable housing in the urban growth boundary (UGB) and allow for new housing development consistent with the new SB 406 Oregon's Middle Housing Rules.

The nature of the Project requires a level of knowledge and experience working with construction on public projects with significant slope issues, unique soil conditions, and retaining walls (these issues are described in greater detail below). The Project will be at a higher risk and have a higher level of technical complexity due to the slope issues, soil conditions, the proximity of construction area to homes and heavily-trafficked rights of way, and an adjacent commercial construction project which will require coordination. Additionally, the majority of the Project is funded by a grant from the Oregon Business Development Department and, therefore, is subject to completion deadlines and budget limitations that require close monitoring of the Project schedule and budget. It is critical to maintain both the schedule and budget of the Project.

Slope issues of concern are documented in the plans and specifications for the Project and are currently shown in the Construction Documents, which include existing topographic data as well as proposed improvements. The existing topography features steep slopes on portions of the east side of Classic Street. There are homes, private backyards, a public street, and other public and private items such as fences, small retaining walls, and landscaping on the slope and above the slope. There are also steep slopes on portions of the west and east side of Classic Street.

The unique soil conditions are described in two Geotechnical Reports (a report prepared by Carlson Geotechnical on 08/16/2024 and a report prepared by Pali Consulting. Both reports are available for viewing. The native soil conditions found in much of the Project area is loose sand. The sand creates construction challenges including such activities as trenching, shoring, compacting, and retaining.

Retaining walls will be needed to stabilize slopes in some locations along Classic Street. The retaining walls will be installed in sandy ground conditions. The proximity to adjacent homes will require minimal vibration construction techniques as well as other measures to minimize any impacts to existing structures and properties.

### **III. PROJECT DESCRIPTION**

See Section II above. The above description is intended to be informational to proposers considering submittal of proposals in response to the RFP. The actual information included in the Construction Documents, plans and specifications and associated RFP documents, alongside any Addenda which may be issued, shall be the controlling documents describing the existing conditions and the proposed improvements.

### **IV. ISSUANCE OF RFP DOCUMENTS**

The RFP documents may be obtained at no cost from the City website at <https://ci.manzanita.or.us/> or viewed in person at 167 S 5th Street, Manzanita, Oregon 97130, by appointment. City Hall is open for walk up service Monday through Thursday from 9 a.m to 12 p.m. Appointments to view the documents outside of that timeframe may be scheduled by contacting Nancy Jones at [cityhall@ci.manzanita.or.us](mailto:cityhall@ci.manzanita.or.us).

Leila Aman is the sole point of contact for all questions, concerns, and protests related to this RFP. She may be reached by email at [lanan@ci.manzanita.or.us](mailto:lanan@ci.manzanita.or.us).

### **V. PROPOSAL SUBMISSION**

Proposals (including all required attachments) should be submitted and delivered by 2:00 PM on April 24, 2025, in PDF format via email to Leila Aman - [lanan@ci.manzanita.or.us](mailto:lanan@ci.manzanita.or.us)

Electronic submissions are preferred; however, hard copies can be mailed or personally delivered, if necessary, to:

The City of Manzanita  
Attn: Leila Aman  
167 S 5th Street  
Manzanita, OR 97130

Phone and facsimile proposals will not be accepted. There will be no formal opening of proposals.

#### **A. SCHEDULE OF EVENTS**

City anticipates the following general timeline for receiving and evaluating the proposals and selecting a consultant. This schedule is subject to change if it is in the City's best interest to do so.

Advertisement/Release of RFP	Thursday, April 17, 2025
Mandatory Pre-bid Conference - Police Department Conf. 167 S. 5 <sup>th</sup> Street	Tuesday, April 29, 2025 11:00 a.m. PT
Due Date for Written Questions, Protests, Requests for Change, and Requests for Clarification	Friday, May 10, 2025
Last Day to Issue Addenda	Wednesday, May 13, 2025
Proposal Due Date and Time (the "Bid Closing")	Tuesday, May 20, 2025 2:00 p.m. PT
Proposal Opening	Tuesday, May 20, 2025 2:00 p.m. PT
Interviews (if required)	Friday, May 23, 2025
Notice of Intent to Award the Contract	Wednesday, May 28, 2025
Deadline for Award Protests	Wednesday, June 4, 2025 5:00 p.m. PT
Award of Contract	Wednesday, June 11, 2025
Projected Start Date (Notice to Proceed)	Monday, June 23, 2025
Project Substantial Completion Deadline (179 calendar days from Notice to Proceed)	November 21, 2025
Projected Final Completion Date	December 5, 2025

Upon request, City will meet with proposers that it did not select for the award of contract from June 4, 2025 to June 6, 2025.

#### **B. RFP CLARIFICATION AND PROTESTS; ADDENDA**

- i. Informal Questions or Requests for Clarification. Any proposer requiring clarification of the

information provided in this RFP may submit specific questions or comments in writing to the contact set forth in Section IV of this RFP. Email is the preferred form of written communication. The deadline for submitting such questions is set forth in Section V(A).

- ii. Request for Change. Any proposer wishing to request a change to the specification or contract terms contained in the solicitation documents must submit the request in writing to the contact set forth in Section IV of this RFP. The deadline for submitting such requests is set forth in Section V(A). The request for change must include a statement of the requested change(s) to the contract terms and conditions, including any specifications, together with the reason for the requested change. The request must be marked “Contract Provision Request for Change” and contain sufficient information to identify the solicitation that is the subject of the request for change.
- iii. Protest. Any proposer wishing to protest this RFP or specifications, or contract terms contained in the solicitation documents, must submit such protests to the contact set forth in Section IV of this RFP. The deadline for submitting such protests is set forth in Section V(A). The proposer’s written protest must include all of the following and otherwise comply with OAR 137-049-0260(3):
  - a. A detailed statement of the legal and factual grounds for the protest;
  - b. flawed description of the resulting prejudice to the proposer;
  - c. A statement of the desired changes to the contract terms and conditions, including any specifications; and marking of the protest as follows: “Contract Provision Protest” with sufficient information to identify the solicitation that is the subject of the protest.
- iv. Addenda. City reserves the right to make changes to the RFP by written addenda. If City determines that a change or clarification to the solicitation documents is necessary, such information, clarification, or interpretation will be supplied in a written addendum, posted to City’s website at <https://ci.manzanita.or.us>.
  - a. Proposers should consult City’s website regularly until the proposal due date and time to assure that they have not missed any addendum announcements. By submitting a proposal, each proposer thereby agrees that it accepts all risks, and waives all claims, associated with or related to its failure to obtain addendum information. Proposers will also be required to acknowledge receipt of each addendum in writing as part of their proposals. Additionally, City will send addenda to all prospective proposers known to have obtained the solicitation documents at the time addenda is issued. Statements made by City representatives, including but not limited to oral or written responses to a request for clarification, are not binding on City unless confirmed by written addendum.
  - b. No addenda will be issued later than five days before the date that proposals are due, except an addendum, if City deems necessary, postponing the due date for proposals, withdrawing the RFP, or modifying elements of the RFP resulting from delayed process.

#### **C. CONFIDENTIALITY**

City is subject to the Oregon Public Records Law (ORS 192.311 to 192.478), which requires City to disclose all records generated or received in the transaction of City business, except as expressly

exempted under ORS 192.338 to 192.355, or other applicable law.

Pursuant to ORS 279C.107, City need not open proposals for public inspection until after execution of the contract(s) awarded under this RFP. Thereafter, City will not disclose records submitted by a proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations:

The proposer must mark all proposal pages containing the records it has determined as confidential under Oregon Public Records Law and must segregate those pages in the following manner:

- i. Such pages must be clearly marked "Confidential" on each page of the confidential document.
- ii. For hard copy submissions, proposer must separate confidential pages from its other proposal pages by providing the confidential pages to City in a separate envelope or package. For email submissions, proposer must separate confidential pages from its other proposal pages by providing the confidential pages to City in a separate email file attachment.
- iii. In its proposal, proposer must cite the specific statutory exemption in Oregon Records Law exempting such pages from disclosure.
- iv. Subsections (i) and (ii) above will prevail in the event these provisions conflict with formatting or response instructions elsewhere in this document.
- v. Proposers may not mark an entire proposal confidential. Should a proposal be submitted in this manner, City will hold no portion of the proposal as confidential, unless such a portion is segregated as required under subsection (ii) above and is determined exempt from Oregon Public Records Law.

Notwithstanding the above procedures, City reserves the right to disclose information that City determines, in its sole discretion, is not exempt from disclosure or that City is directed to disclose by the district attorney or a court of competent jurisdiction.

Prior to disclosing such information, City will make reasonable attempts to notify the proposer of the pending disclosure.

#### **D. CANCELLATION**

City reserves the right to cancel this RFP at any time or to reject any and all proposals if City determines that doing so is in the public interest.

#### **E. LATE PROPOSALS**

All proposals that are not received by the proposal due date in Section V(A) will not be considered and will be returned unopened to the proposer(s). Phone and facsimile proposals will not be accepted. Delays due to mail and/or delivery handling, including but not limited to delays within City's internal distribution or email systems, do not excuse the proposer's responsibility for submitting the proposal to the correct location by the proposal due date.

**F. DISPUTES**

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of City shall be final and binding upon all parties.

**G. PROPOSER'S REPRESENTATION**

Each proposer, by the act of submitting its proposal, represents that:

- i. It has read and understands the proposal documents and its proposal is made in accordance therewith;
- ii. It has familiarized itself with the local conditions under which services solicited in this RFP will be performed; and
- iii. Its proposal is based upon the requirements described in the RFP without exception, unless clearly stated in the response.

**H. CONDITIONS OF SUBMITTAL**

By the act of submitting a proposal in response to this RFP, the proposer certifies that:

- i. To its best knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or part by City, has a direct or indirect financial interest in the proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the proposer's response to this solicitation.
- ii. The proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and, if its proposal is accepted, the proposer shall accept the contract documents thereto, unless substantive changes are made in same, without the approval of the proposer.
- iii. The proposer is of lawful age (if an individual); is the only one interested in this proposal; and no person, firm, or corporation, other than that named, has any interest in the proposal, or in the proposed contract.
- iv. The proposer has quality experience providing requested services in a capacity similar to the duties outlined within the scope of services.

**I. COST OF REQUEST FOR PROPOSALS AND ASSOCIATED RESPONSES**

Proposers will bear sole responsibility for all costs incurred in preparing and providing their proposals in response to this RFP. City is not liable to any proposer for any loss or expense caused by or resulting from the cancellation of a solicitation or rejection of a proposal.

**J. CITY REQUESTS FOR CLARIFICATION, ADDITIONAL RESEARCH, & REVISIONS**

City reserves the right to obtain clarification of any point in a proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a proposer to respond to such a request for additional information or clarification may result in a finding that the proposer is non-responsive and consequent rejection of the proposal.

City may obtain information from any legal source for clarification of any proposal or for information of any proposer. City need not inform the proposer of any intent to perform additional research in this respect or of any information thereby received.



City may perform, at its sole option, investigations of any proposer. Information may include, but shall not necessarily be limited to current litigation and contracting references. All such documents, if requested by City, become part of the public records and may be disclosed accordingly.

City reserves the right to request clarifications of proposals after the submission of proposals and before award.

**K. REJECTION OF PROPOSALS**

As set forth in Section V(D), City reserves the right to reject any or all proposals received as a result of this RFP if City determines that rejection is in the public interest. Reasons for proposal rejection may include but are not limited to the following:

- i. Failure of the proposer to adhere to one or more of the provisions established in the RFP;
- ii. Failure of the proposer to submit a proposal in the format specified herein;
- iii. Failure of the proposer to submit a proposal within the time requirements established herein;
- iv. Failure of the proposer to adhere to ethical and professional standards before, during, or following the proposal process; or
- v. Failure of proposer to otherwise comply with all prescribed public procurement procedures and requirements.

**L. MODIFICATION OR WITHDRAWAL OF PROPOSAL BY PROPOSER**

A proposal may not be modified, withdrawn, or canceled by the proposer for 60 calendar days following the time and date designated for the receipt of proposals. Proposals submitted before the proposal due date may only be modified or withdrawn in person with proper identification, or by issuing a written request on company letterhead, signed by an authorized representative, prior to the proposal due date and time. Written requests for withdrawal must be so worded as not to reveal material contents of the original proposal.

Withdrawn proposals may be resubmitted up to the proposal due date and time, provided that they are then fully in conformance with the RFP.

**M. PROPOSAL OWNERSHIP**

All material submitted for any portion of a proposal in response to this RFP, or during any phase of this solicitation, will become the property of City and will not be returned to proposers.

**N. DURATION OF PROPOSAL**

Proposal terms and conditions shall be firm for a period of at least 60 days from the proposal due date. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the 60-day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

**O. AFFIRMATIVE ACTION/NONDISCRIMINATION**

By submitting a proposal, the proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive Order 11246, Fair Employment Practices, Equal Employment

Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the proposer certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business in awarding a subcontract.

**P. TAX COMPLIANCE**

By submitting a proposal, the proposer represents and warrants that the proposer has complied with the applicable tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. The proposer and any consultants listed on the Oregon Bureau of Labor and Industry's (BOLI) List of Ineligibles will be rejected.

**Q. PREVAILING WAGE REQUIREMENT**

By submitting a proposal, the proposer agrees to be bound by and will comply with the provisions of ORS 279C.838, and 279C.840.

**R. PROPOSAL AND SUBMISSION REQUIREMENTS**

Proposer shall respond to specific criteria that shall facilitate proposal evaluation. Responses should be prepared simply and economically, providing a straightforward, concise description of provider capabilities to satisfy the requirements of the request. Responses need not include pictures or images. Proposals should be limited to a maximum of eight (8) pages (the Introductory Letter, list of Lawsuits and Claims, Exhibit A, and Exhibit B, however, are not included in the page count for purposes of the page limit). All proposals submitted in response to this RFP must include Exhibit A (Proposal Sheet); Exhibit B (Bid Form) and the following:

i. Introductory Letter

An introductory letter providing background information about the proposer, including number of years in continuous operation, bonding capacity, anticipated volume of work for this year, construction capabilities (types of work that proper specializes in, preferred range of job size, etc.), and why proposer is uniquely suited to provide construction services for the Project.

ii. Qualifications

This criteria relates to the proposer's capabilities and resources in relation to the Project. Please address the following:

a. Relevant Experience:

- Describe your company's experience with the construction of public infrastructure projects, and describe how this previous experience will benefit City.
- Identify at least three (3) examples of projects that are similar to the Project in terms of:
  - Infrastructure type (i.e., water line expansion, storm water systems, pedestrian pathways, and traffic calming measures);
  - Locale (i.e., coastal construction site with unique sandy soil conditions similar to those present at the Project site);

- Complicating factors (i.e. slope issues and unique soil conditions requiring significant lengths of retaining wall construction), work within limited right of way; and
    - Safety concerns (i.e. construction sites in heavily trafficked areas and adjacent to other construction sites).
    - Describe how these examples relate to your ability to satisfy the requirements of this RFP. Provide client references for each example.
  - If your project examples do not include public projects, list and briefly describe at least 3 projects of comparable size and complexity to the Project.
- b. Proposed Personnel and Project Organization:
- Provide an organizational chart showing all key personnel for the Project. Indicate your company's commitment to assign those personnel to the Project through Project completion, including the percentage of time each key individual will devote to the Project.
  - For each individual listed on your proposed organization chart, provide background information with relevant project experience.
  - Provide a staffing plan indicating how you will manage and supervise the Project.
  - Note that Owner will not approve of the subcontracting of more than 75% of the Work to be performed under the Contract.
- c. Schedule:
- Provide a Project schedule from commencement of construction to final completion of the Project.
  - Provide any risks and/or opportunities and solutions in achieving the schedule. If possible, provide examples of how you have faced and solved similar challenges on other projects.
- d. Bid Amount:
- Provide a bid (Sample shown in Proposal Form Exhibit A) Total to perform the work required under the Construction Contract that corresponds to the unit prices submitted on the Schedule of Prices (Exhibit B).
- e. Approach:
- What is your company's approach to building the Project in terms of local trades, valley trades, self-perform, etc. and delivering a high-quality product?
  - To what extent will your company self-perform work? How does your company ensure a quality product is built?
  - What practices ensure quality is delivered and attention to detail is maintained?
  - What are some lessons learned or experiences that have shaped your company's attention to quality?
  - What are some potential challenges you see for completing the Project, and how would you resolve them?
- f. Lawsuits and Claims:
- Provide a list of any outstanding lawsuits including claims, both settled and unsettled, for the past five years. [this section is excluded from the page limit]

iii. Proposer Requirements

Any contractor submitting a proposal must meet the following minimum requirements:

- a. All proposers must be licensed to perform business in the State of Oregon and properly licensed to perform the services described in this RFP, including but not limited to being registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230;
- b. All proposers must be experienced in those services requested by City;
- c. All proposers must agree to execute City's Construction Contract, if awarded; and
- d. All proposers must carry required insurance, naming City an additional insured. Insurance requirements are set forth in the Sample Construction Agreement attached to this RFP as Exhibit C.

**S. PROPOSAL EVALUATION**

The evaluation process for this RFP will consist of a written proposal evaluation and an optional interview evaluation. City, in its sole discretion, will determine whether to require or forego the interview process and evaluation.

A selection committee will be assembled by the City and will be comprised of at least three (3) members. If City elects to conduct interviews, the interview panel will consist of the same selection committee members. Each proposal shall be evaluated by the selection committee on its completeness and quality in accordance with the criteria identified in this RFP. City has the right to require any clarification or change needed to understand the proposer's approach to the Project.

Each proposal shall be evaluated as a demonstration of the proposer's capabilities and understanding of the Project. Evaluation criteria and weighting factors for the proposal shall be as follows:

Criteria	Maximum Points
Introductory Letter	Pass/Fail
Relevant Experience, Lawsuits & claims	15
Proposed Personnel and Project Organization	5
Bid Amount	70
Approach & Schedule	10
<b>TOTAL</b>	100

Each member of the selection committee will independently score proposals in accordance with the evaluation criteria above. The selection committee will then average the proposal scores per category and sum the category averages for a total score for each proposal.

Bids will be scored as shown in the following example:

Low Bid = 70 points

Formula:  $(\text{Low Bid}/\text{Bid}) \times 70 \text{ points} = \text{score}$ , rounded to nearest tenth

For example:

Bids received: Bid#1 \$5,000, Bid#2 \$4,700, Bid#3 \$4,950, Bid#4 \$6,100, Bid#5 \$5,500

Low Bid = Bid#2 = \$4,700 = 70 points

Bid#1:  $(4700/5000) \times 70 = 65.8$

Bid#2:  $(4700/4700) \times 70 = 70.0$

Bid#3:  $(4700/4950) \times 70 = 66.5$

Bid#4:  $(4700/6100) \times 70 = 53.9$

Bid#5:  $(4700/5500) \times 70 = 59.8$

If City elects to require an interview process, the interview panel shall interview the three highest-ranked proposers whose proposals evidence the highest level of qualification and experience to proceed to an oral interview and presentation. Should fewer than three proposals be received, the proposers submitting a proposal that meets minimum requirements will be interviewed. Each proposer selected to interview and present will require the proposer's proposed project manager for the Project to attend the interview and presentation.

Each member of the interview panel will re-score the proposals submitted by the proposers invited for interviews, in accordance with the evaluation criteria described in the table above, on the basis of each proposer's interview. The interview panel will average the proposal scores per category and sum the category averages for a total score for each proposal to determine the highest-ranked eligible proposer. Bid scores will not be re-scored on the basis of interviews but will be included in the total post-interview score for each proposal.

City reserves the right to:

- Reject any and all proposals not in compliance with all public procedures and requirements including but not limited to the requirement to demonstrate responsibility under ORS 279C.375(3)(b);
- Reject any proposal not meeting the specifications set forth herein;
- Waive any or all irregularities in proposals submitted;
- Award contracts for any or all parts of the services solicited under this RFP; and
- Request references and other data to determine responsiveness.

Following evaluations and interviews (if applicable) of the proposers, City will provide written notice of its intent to award the contract to the highest-ranked proposer.

#### **T. PROTEST OF CONTRACT AWARD**

- i. A proposer may protest the intent to award the contract in accordance with OAR 137-049-0450, provided:
  1. The proposer is adversely affected because the proposer would be eligible to be awarded the contract in the event that the protest is successful; and

2. The reason for the protest is:
    - All higher-ranked proposals (or, in the event multiple contracts are awarded, a sufficient number of proposals) are non-responsive or failed to meet the requirements of this RFP, or are all higher-ranked proposers; or
    - City committed a substantial violation of a provision in this RFP or of an applicable procurement statute or administrative rule, and the protesting proposer was unfairly evaluated and would have, but for such substantial violation, been the responsible proposer offering the highest-ranked proposal.
  3. The protest is clearly marked as a protest, includes a description of this RFP, and is delivered to the point of contact and address set forth in Section V of this RFP.
  4. All protests of award must be in writing and physically received by the contact set forth in Section IV of this RFP no later than 5:00PM on the deadline for submitting such protests as set forth in Section V(A).
  5. Protests must specify the grounds for the protest including the specific citation of law, rule, regulation, or procedure upon which the protest is based. The judgment used in scoring by individual evaluators is not grounds for protest of award.
- ii. Protests not filed within the time specified in Section V(A), or which fail to cite the specific law, rule, regulation, or procedure upon which the protest is based will be dismissed. An issue that could have been raised by request for clarification or protest of the solicitation documents is not a ground for protest of award.
  - iii. City will resolve all protests in accordance with OAR 137-049-0450.

#### **U. CONTRACT REQUIREMENTS**

City reserves the right to negotiate final terms of a Construction Contract as City determines to be in its best interest.

City will negotiate the Construction Contract once the selection committee and interview panel (if applicable) have chosen the highest-ranked proposer. If City cannot come to terms with the top-ranked proposer, City may enter into negotiations with the second-ranked proposer. This process may continue until City reaches an agreement which City deems appropriate for the services.

The award of a contract is accomplished by executing a written Construction Contract that incorporates the proposer's proposal, clarifications, addenda, additions, and insurance. All such materials constitute the contract documents.

## Exhibit A

### **Proposer Sheet**

*Complete and execute this proposal sheet and include it with your proposal*

Proposal From: \_\_\_\_\_

The undersigned hereby proposes to provide to City all materials, services, and labor necessary to perform all work in connection with the Project in strict accordance with the terms of the RFP.

In submitting this proposal, the undersigned agrees:

- a. To hold this proposal open for 60 days from the date of the proposal due date and to accept the provisions of the RFP regarding proposal security.
- b. To execute the contract relating to this RFP if the proposal is selected.
- c. To provide all goods, equipment, and services to perform the contract.
- d. To perform under the contract according to the agreed-upon schedule.

1. **Addenda:**

*Complete this section if any Addenda were issued and received.*

Proposer has received Addenda # \_\_\_\_\_ through # \_\_\_\_\_; the most recently received addendum is dated \_\_\_\_\_.

***Proposer must respond to each of the yes/no prompts below, otherwise the proposal will not be considered.***

2. **Proposal Security:**

Each proposal must be accompanied by proposal security in the form required by OAR 137-049-0290 (surety bond; irrevocable letter of credit, or cashier's check or certified check) in an amount of not less than 10% of the total bid price. City will release proposal security as provided in OAR 137-049-0290.

3. **Performance, Payment, and Public-Works Bonds:**

No later than ten days after the receipt of Notice of Award, the selected proposer must be prepared to execute the contract provided by City and to file a public works bond with the Contractors Construction Board as required under ORS 279C.836. The selected proposer must deliver to City and maintain performance and payment bonds as required by the contract and OAR 137-049-0460.

4. **Prevailing Wages:**

Oregon Prevailing Wages: The Construction Contract calls for the payment of the Oregon prevailing wage rates, as determined by the Commissioner of BOLI. The "applicable prevailing wage rates" are those rates set forth in the BOLI Publication "Prevailing Wage Rates for Public

Works Contracts subject to BOTH the State PWR and Federal Davis-Bacon Act” and any applicable published amendment or correction to it. BOLI publications can be reviewed electronically at <https://www.oregon.gov/boli/employers/pages/prevaling-wage-rates.aspx>. The applicable prevailing wages will be those in effect on the date of publication of this RFP as described above, and which rates are incorporated by reference in this RFP and Construction Contract.

Proposer certifies that proposer will pay the Oregon prevailing wage rate.

☐ Yes ☐ No

5. **Nondiscriminatory Subcontractor Participation:**

Proposer certifies that it has not and will not discriminate, in violation of ORS 279A.110(1), against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a veteran-owned business, or an emerging small business in awarding any subcontract relating to this RFP or any contract awarded under it.

6. **Construction Contractors Board or Landscape Contractors Board Registration:**

City will not consider a bid from a proposer that is not registered with the Oregon Construction Contractors Board, if required by ORS 701.021, or the Oregon Landscape Contractors Board, if required by ORS 671.530.

Oregon Construction Contractors Board

Registration Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Oregon Landscape Contractors Board

Registration Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

7. **Tax Compliance:**

Proposer has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.

☐ Yes ☐ No

8. **Asbestos Abatement:** Not Required.

9. **Oregon Office for Business Inclusion and Diversity Certification:** Please indicate whether your business is certified under ORS 200.055 as any of the following:

- |  |  |
|--|--|
| <input type="checkbox"/> Disadvantaged Business Enterprise       | <input type="checkbox"/> Minority-Owned Business |
| <input type="checkbox"/> Woman-Owned Business                    | <input type="checkbox"/> Emerging Small Business |
| <input type="checkbox"/> Service-Disabled Veteran Owned Business |  |

10. **Bid Form.** The price bid must include one lump-sum cost for the Project and correspond to the schedule of prices in Exhibit B to this RFP.

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

The amount must be written in both words and figures. Proposer represents that the price bid is made



according to the terms of this RFP, and that the price bid covers all expenses incurred in providing City with all materials, services, and labor necessary to perform all work in connection with the Project.

**Proposer's Signature and Identification:**

Proposer certifies that this proposal is genuine, has been arrived at by the proposer independently, and has been submitted without collusion with any other person or entity designed to limit independent bidding and competition.

Please print or type all information requested below (except where signature is required) and attach Bid Security to this form.

Name of Proprietor, Partnership, or Corporation: \_\_\_\_\_

Authorized Official Name and Title (Please Print): \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
Mailing Address (if different from street address)

\_\_\_\_\_  
City, State, and Zip Code

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

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Employer Federal ID Number

**Exhibit B**

**Schedule of Prices**

ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1	MOBILIZATION	LS	1	Lump Sum	\$
2	TEMPORARY PROTECTION AND DIRECTION OF TRAFFIC	LS	1	Lump Sum	\$
3	EROSION AND SEDIMENT CONTROL	LS	1	Lump Sum	\$
4	CLEARING AND GRUBBING	AC	1.25	\$	\$
5	ASPHALT PAVEMENT SAWCUTTING	LF	701	\$	\$
6	SALVAGE AND REINSTALL HYDRANT	EA	1	\$	\$
7	REMOVAL OF PAVEMENT, AC/PCC (INCLUDING HAUL)	SY	5004	\$	\$
8	REMOVAL OF WALK	SY	31	\$	\$
9	REMOVAL OF CURBS	LF	297.6	\$	\$
10	REMOVE OR PLUG-FILL AND ABANDON EXISTING PIPE (WATER)	LF	294	\$	\$
11	REMOVAL OF PIPE (STORM SEWER)	LF	337	\$	\$
12	REMOVAL OF STRUCTURES (STORM SEWER, CB ONLY)	EA	9	\$	\$
13	SALVAGE EXISTING SIGNS	LS	13	Lump Sum	\$
14	GENERAL EXCAVATION	CY	560	\$	\$
15	TOPSOIL (SEEDED AREA)	CY	205	\$	\$
16	BORROW EXCAVATION	TN	760	\$	\$
17	BASE COURSE AGGREGATE	CY	1693	\$	\$
18	LEVELING COURSE AGGREGATE	CY	208	\$	\$
19	RETAINING WALL (AVG. HEIGHT 22')	LF	835	\$	\$
20	4 FOOT CHAIN LINK FENCE	LF	835	\$	\$
21	W-BEAM GUARDRAIL, TYPE 2A	LF	880	\$	\$
22	W-BEAM END TREATMENT-TYPE 5	EA	2	\$	\$
23	LEVEL 2 - 3/8 INCH ACP MIXTURE WEARING COURSE (ROADWAY)	TON	647	\$	\$
24	LEVEL 2 - 1/2 INCH ACP MIXTURE BASE COURSE (ROADWAY)	TON	577	\$	\$
25	LEVEL 2 - 3/8 INCH ACP MIXTURE (PATH)	TON	186	\$	\$
26	2" COLD PLANE PAVEMENT REMOVAL	SY	603	\$	\$
27	EXTRA FOR PEDESTRIAN LANDINGS-ADA RAMPS	EA	11	\$	\$
28	6" CONCRETE CURBS, CURB & GUTTER	LF	1050	\$	\$
29	4" CONCRETE CURBS, MOUNTABLE-ROLLED CURB & GUTTER	LF	410	\$	\$

ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
30	VALLEY GUTTER CONCRETE SURFACING	LF	679	\$	\$
31	MINOR ADJUSTMENT OF MANHOLES	EA	3	\$	\$
32	CONNECTIONS TO EXISTING WATER MAIN	EA	7	\$	\$
33	6" PVC IPS, SDR 21 WATERMAIN	LF	55	\$	\$
34	6" DI PIPE Class 52	LF	7	\$	\$
35	8" DI PIPE Class 52	LF	8	\$	\$
36	10" HDPE SDR 14, WATERMAIN	LF	2152	\$	\$
37	8" DI MJ BENDS (VARIOUS ANGLES)	EA	1	\$	\$
38	10" DI MJ BENDS (VARIOUS ANGLES)	EA	10	\$	\$
39	10"X10"X6" DI FLG TEE	EA	3	\$	\$
40	10"X10"X6" DI MJ TEE	EA	1	\$	\$
41	10" DI FLG TEE	EA	1	\$	\$
42	10" DI MJ TEE	EA	1	\$	\$
43	10" FLG X MJ TEE	EA	2	\$	\$
44	6" MJ GATE VALVE	EA	2	\$	\$
45	6" FLGXMJ GATE VALVE	EA	2	\$	\$
46	10" FLGXMJ GATE VALVE	EA	12	\$	\$
47	10" MJ GATE VALVE	EA	2	\$	\$
48	6" MJ LONG PATTERN SLEEVE	EA	2	\$	\$
49	8" MJ LONG PATTERN SLEEVE	EA	4	\$	\$
50	10" MJ LONG PATTERN SLEEVE	EA	1	\$	\$
51	10" TO 8" MJ REDUCER	EA	6	\$	\$
52	6" DI FLG CAP	EA	1	\$	\$
53	2" AIR RELEASE VALVE AND VAULT	EA	1	\$	\$
54	HYDRANT ASSEMBLY	EA	2	\$	\$
55	CDF BACKFILL MATERIAL	CY	5	\$	\$
56	CONNECTIONS TO EXISTING STORM SEWER	EA	4	\$	\$
57	8 INCH HDPE PIPE, 5 FT DEPTH	LF	179	\$	\$
58	12 INCH HDPE PIPE, 5 FT DEPTH	LF	1718	\$	\$
59	18 INCH HDPE PIPE, 5 FT DEPTH	LF	48	\$	\$
60	TYPE 1 CATCH BASIN	EA	27	\$	\$
61	NYLOPLAST CATCH BASIN	EA	5	\$	\$
62	48" STORM SEWER MANHOLE (ALL DEPTHS)	EA	5	\$	\$
63	INFILTRATION BASIN STRUCTURE	EA	1	\$	\$
64	CENTER LINE (YELLOW DOUBLE LINE)	LF	2553	\$	\$
65	FOG LINE (WHITE SINGLE LINE)	LF	500	\$	\$

ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
66	STOP BARS (THERMOPLASTIC)	LF	107	\$	\$
67	CROSSWALK STRIPES (6 X 2 THERMOPLASTIC)	EA	54	\$	\$
68	SPEED BUMPS	EA	8	\$	\$
69	TRAFFIC DELINEATORS	EA	51	\$	\$
70	TEMPORARY SEED	SY	3688	\$	\$
71	PERMANENT SEED	SY	3688	\$	\$
72	COMPOST EROSION BLANKET	SY	3688	\$	\$
73	LANDSCAPING	LS	1	Lump Sum	\$
SUBTOTAL SCHEDULE A - CLASSIC STREET SECTION					\$

ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
74	8" HDPE SDR 14, WATERMAIN	LF	1483	\$	\$
75	8" HDPE SDR 14, WATERMAIN (TRENCHLESS)	LF	116	\$	\$
76	8" DI BENDS (VARIOUS ANGLES)	EA	1	\$	\$
77	8"X8"X6" DI FLG TEE	EA	2	\$	\$
78	8" DI FLG TEE	EA	2	\$	\$
79	6" MJ GATE VALVE	EA	1	\$	\$
80	6" FLGXMJ GATE VALVE	EA	1	\$	\$
81	8" FLGXMJ GATE VALVE	EA	9	\$	\$
82	8" DI MJ LONG PATTERN SLEEVE	EA	2	\$	\$
83	8" DI MJ CAP	EA	1	\$	\$
84	2" AIR RELEASE VALVE AND VAULT	EA	1	\$	\$
85	HYDRANT ASSEMBLY	EA	1	\$	\$
86	CONNECTIONS TO EXISTING WATER MAINS	EA	3	\$	\$
SUBTOTAL SCHEDULE B – NECARNEY CITY ROAD SECTION					\$

Any estimate of the quantities of work to be done and set forth by City under unit price bids is approximate and is given only as a basis of calculation for comparison of bids and award of the Construction Contract. City does not warrant that the actual amount of work will correspond to any quantity of work as shown or estimated. Payment will be made at unit prices under a contract only for work actually performed or materials actually furnished according to actual measurement. Proposers must include in their bid prices the entire cost of each item of work set forth in the bid, and when, in the opinion of City, the prices in any bid are obviously unbalanced, such bid may be rejected. The unit prices for the various bid items shall be full compensation for all things of whatsoever nature required for the complete incorporation of the item into the work the same as though the item were to read "In Place."

**EXHIBIT C**

**Sample Construction Agreement**

## **AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2025 by and between

### **CITY OF MANZANITA**

hereinafter called the Owner, and \_\_\_\_\_, hereinafter called the "Contractor."

WITNESSETH, that the Contractor and the Owner, for the considerations hereinafter named, agree as follows:

### **ARTICLE I - Scope of the Work**

The Contractor hereby agrees to furnish all labor, materials, equipment and supplies necessary for the construction and completion of the project entitled

Manzanita Classic Street Connection

all in accordance with the requirements and provisions of the Contract Documents. The term "Contract Documents" means and includes the following:

- a. Request for Proposal
- b. Contractor's Executed Proposal Form and Schedule of Prices
- c. This Agreement
- d. General Conditions to the Agreement
- e. Performance Bond
- f. Payment Bond
- g. Notice of Intent to Award
- h. Notice to Proceed
- i. All Change Orders issued after execution of this Agreement
- j. Drawings prepared by Windsor Engineers and North Coast Civil Design, and dated April 15, 2025
- k. Specifications prepared or issued by Windsor Engineers with input from North Coast Civil Design, dated April 15, 2025
- l. Addenda:

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025.

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025.

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025.

All the above form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

### **ARTICLE II - Time of Completion**

The Work to be performed under this Contract shall be commenced within 10 calendar days after the date of written notice by the Owner to the Contractor to proceed. The written Notice to Proceed shall be issued within 10 days following receipt of the acceptable Performance Bond, Payment Bond, and Agreement signed by the party to whom the Agreement was awarded. Substantial Completion shall be achieved not later than November 21, 2025 with such extensions of time as are provided for in the

General Conditions. The time allotted to reach Substantial Completion is the "Contract Time." Contractor must fully complete all Work required under the Contract within 14 days after Substantial Completion.

### **ARTICLE III - Time is of the Essence**

The Owner and Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not substantially complete within the time specified in Article II above, plus any extensions of time allowed in accordance with the General Conditions. Such financial loss includes, but is not limited to, a loss of funding for the Project (a majority of the Owner's funding for the Project is grant-funded and is contingent on timely Project completion).

### **ARTICLE IV - Contract Price**

The Owner will pay the Contractor for the performance of the Contract the amounts determined for the total number of each of the units of Work in the Schedule of Prices completed at the unit price stated. The number of units contained in the Schedule of Prices is approximate only, and the final payment will be made for the actual number of units that are incorporated in, or made necessary by, the Work covered by the Contract.

### **ARTICLE V - Progress Payments**

1. On no later than the fourth calendar day of every month the Contractor shall prepare and submit to the Engineer a progress payment estimate filled out and signed by the Contractor. The estimate shall cover the total quantities under each item of Work that have been completed from the start of the job up to and including the last day of the preceding month. The estimate shall include the value of the Work so completed determined in accordance with such supporting evidence as may be required by the Owner and/or the Engineer. The estimate shall also include an allowance for the cost of such materials and equipment required in the permanent Work as has been delivered to the site and suitably protected but not as yet incorporated in the Work.
2. The Engineer will, within 5 days after receipt of each progress payment estimate, either indicate in writing the Engineer's approval of payment and present the progress payment estimate to the Owner, or return the progress payment estimate to the Contractor indicating in writing the Engineer's reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the progress payment estimate.
3. The Owner will, after deducting previous payments made, promptly pay to the Contractor 95% of the amount of the estimate as approved by the Engineer within 30 days of the Contractor's application for payment or within 14 days after the Owner approves the Contractor's application for payment, whichever occurs first. The 5% retainage will be held by the Owner until the final completion of all Work under the Contract. Money retained by the Owner under ORS 279C.570 (7) or OAR 137-049-0820 shall be:

Retained in a fund by the Owner and paid to the Contractor in accordance with ORS 279C.570;

4. 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 in connection with this public improvement Contract as the claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.
5. The Owner will, after deducting previous payments made, any payments made under ORS 279C.515 and the above-described retainage, promptly pay to the Contractor the amount of the estimate as

approved by the Engineer. Progress payments shall not be considered acceptance or approval of any Work or waiver of any defects therein. In accordance with ORS 279C.570, the Owner will pay to the Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall be charged and paid in accordance with ORS 279C.570.

6. Notwithstanding ORS 279C.555 or 279C.570 (7), if a Contractor is required to file certified payroll statements under ORS 279C.845 the Owner shall retain 25% of any amount earned by the Contractor on the public works until the Contractor has filed with the Owner certified payroll statements as required by ORS 279C.845. The Owner shall pay the Contractor the amount retained under this subsection within 14 days after the Contractor files the certified payroll statements as required by ORS 279C.845, regardless of whether a Subcontractor has failed to file certified payroll statements as required by ORS 279C.845.
7. Such progress payments shall be made in accordance with Section 9.8 of the General Conditions and under the terms and conditions governing final payment, except that progress payments shall not constitute a waiver of claims.

#### **ARTICLE VI – Substantial Completion, Acceptance, and Final Payment**

1. When Contractor considers that the Work is substantially complete, Contractor shall prepare for and submit to the Owner and Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
2. Upon receipt of the Contractor's list described in Section VI.1 above, the Engineer shall make an inspection to determine whether the Work is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, Contractor shall then submit a request for another inspection by Engineer to determine Substantial Completion. When the Work is substantially complete, the Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion
3. Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Engineer shall make such inspection. When the Engineer and the Owner finds the Work acceptable under the Contract and Contract fully performed, the Engineer will promptly issue a final certificate stating that the Work required by this Contract has been completed and is accepted by the Engineer and all regulatory approval agencies under the terms and conditions thereof. The entire balance found to be due the Contractor including the retained percentage, will be paid to the Contractor by the Owner within 30 days after the date of said final certificate.
4. Before final payment is due, the Contractor shall submit evidence satisfactory to the Engineer in accordance with Section 9.11 of the General Conditions that all payrolls, material bills, and other indebtedness connected with the Work have been paid. In the case of disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment a surety bond satisfactory to the Owner guaranteeing payment of all such disputed amounts when adjudicated, in cases where such payment has not already been guaranteed by surety bond.
5. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, except those arising from: (a) liens, claims security interests, or encumbrances arising out of the Contract and unsettled; (b) failure of the Work to conform with the requirements of the Contract Documents; (c) terms of special warranties required by the Contract Documents; or (d) audits performed by the Owner if permitted by the Contract Documents, after final payment. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.



6. If after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Engineer so certifies, the Owner shall upon certificate of the Engineer, and without terminating the Contract, make payment of the balance due for the portion of the Work fully completed and accepted.

## **ARTICLE VII - General Conditions**

### **GC-1 DEFINITIONS AND ABBREVIATIONS**

#### **1.1 DEFINITIONS:**

In these Specifications and the Contract, the following words or expressions shall be understood to have the meanings given below:

**"Addenda"** - Written or graphic instruments issued by the Engineer prior to the execution of the Agreement which modify or interpret the Contract Documents.

**"Bidder"** - Any individual, firm or corporation formally submitting a Bid for the Work contemplated, or any portion thereof, acting directly or through an authorized representative.

**"Bid"** - The written offer of the Bidder on the Bid Form furnished in the Contract Documents, that is required to be signed by the Bidder, for the Work contemplated.

**"Bid Security"** - The security to be furnished by the Bidder as a guarantee of good faith to enter into a contract for the Work contemplated if it be awarded to the Bidder.

**"Change Order"** - A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or an adjustment in the Contract Price or the Contract Time.

**"Contract Price"** - The total amount payable to the Contractor under the terms and provisions of the Contract Documents.

**"Contract Time"** - The number of calendar days stated in the Contract Documents allowed the Contractor to reach Substantial Completion.

**"Engineer"** - The firm of Windsor MEP Engineers, LLC dba Windsor Engineers, or authorized personnel acting for the firm, the Engineer being the agent of the Owner.

**"Field Order"** - A written order effecting a change in the Work but not involving an adjustment in the Contract Price or an extension of the Contract Time.

**"Inspector"** - The authorized representative of the Engineer or the Owner assigned to observe the Work or materials therefore.

**"Notice of Intent to Award"** - The written notice from the Owner to the successful Bidder that the Owner intends to award the Contract to the Bidder.

**"Notice to Proceed"** - The written notice given by the Owner to the Contractor authorizing the Contractor to proceed with the Work and establishing the date of commencement of the Work.

**"Payment Bond"** - The form of security approved by the Owner, furnished by the Contractor and the Contractor's Surety guaranteeing the Owner that Subcontractors and suppliers will be paid the monies that they are due from the principal Contractor.

**"Performance Bond"** - The form of security approved by the Owner, furnished by the Contractor and the Contractor's Surety guaranteeing the complete and faithful performance of all of the obligations and conditions placed upon the Contractor by the Contract.

**"Plans"** - The maps, plans and drawings as listed and referred to in the "Contract Documents" together with any additional maps, plans, or drawings furnished by the Contractor if and when they

are approved by the Engineer. This also includes any supplemental drawings furnished by the Engineer to the Contractor and also all approved shop drawings submitted by the Contractor and approved by the Engineer, all as provided elsewhere in these Specifications or other Contract Documents.

"Public Works Bond" - The public works bond as required by Enrolled Senate Bill 477 (SB 477B) as enacted by the State Legislature in 2005, which shall be in addition to any other bond the Contractor or Subcontractor is required to obtain.

"Specifications" - The directions, requirements, explanations, terms and provisions pertaining to the various features of the Work to be done, the manner and method of performance, and the manner and method of measurement and payment. The Specifications include such directions, requirements and explanations as appear on the Plans.

"Subcontractor" - Any individual, firm or corporation acting for or in behalf of the Contractor in the execution of all or any part of the Contract. This does not include those working for hire or suppliers of material or equipment except that production of materials or supplies at the project site shall be deemed as being produced by a Subcontractor where such is not produced by the Contractor's own forces and equipment.

"Substantial Completion" - The date as certified by the Engineer when the Work, or a specified part thereof, is sufficiently completed in accordance with the Contract, so that the Work or specified part can be utilized for the purposes for which it is intended.

"Supplemental Agreement" - Any written agreement or understanding entered into between the Contractor and the Owner to supplement or clarify, or alter the Plans, Specifications, or Contract, or to otherwise provide for unforeseen Work, contingencies, alterations in Plans, and other matters not contemplated by or adequately provided for in the Plans and Specifications.

"Surety" - The company or association which is bound with and for the Contractor for the acceptable performance of the Contract and for the Contractor's payment of all obligations arising out of the Contract. Where applying to the "Bid Security," it refers to the company or association that engages to be responsible for the Bidder's execution of a satisfactory Contract when and if the Contractor's Bid is accepted by the Owner.

"Work" - Work shall be understood to mean the furnishing of all labor, materials, equipment and other incidentals necessary or convenient to the successful completion of the project or the portion of the project involved and the carrying out of all the duties and obligations imposed by the Contract.

"Work Area" - The area provided by the Owner for use in constructing the Work covered by the Contract, including the appurtenances thereto. The Work Area so designated may be either temporary or permanent.

"Written Notice" - A written communication delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered or sent by mail to the last business address known to the one who gives the notice. It shall be the duty of each party to advise the other parties to the Contract as to any change in business address until completion of the Contract.

## 1.2 ABBREVIATIONS:

Whenever the following abbreviations are used in these Contract Documents, they are to be construed the same as follows:

- AASHTO - American Association of State Highway and Transportation Officials
- ACI - American Concrete Institute
- AGC - Associated General Contractors of America
- AISC - American Institute of Steel Construction
- ISI - American Iron and Steel Institute
- ANSI - American National Standards Institute

APWA - American Public Works Association  
ASCE - American Society of Civil Engineers  
ASME - American Society of Mechanical Engineers  
ASTM - American Society for Testing and Materials  
AWPA - American Wood Preservers Association  
AWS - American Welding Society  
AWWA - American Water Works Association  
CRSI - Concrete Reinforcing Steel Institute  
DEQ - Department of Environmental Quality  
DFPA - Division for Product Approval of American Plywood Assoc.  
EPA - Environmental Protection Agency  
FHWA - Federal Highway Administration  
ITE - Institute of Traffic Engineers  
NEC - National Electrical Code  
NEMA - National Electrical Manufacturer's Association  
NLMA - National Lumber Manufacturer's Association  
ORS - Oregon Revised Statutes  
OSHA - Occupational Safety and Health Administration  
ODOT - Oregon State Department of Transportation  
PCA - Portland Cement Association  
UBC - Uniform Building Code  
UL – Underwriter's Laboratories, Inc.  
WWPA - Western Wood Products Association

## **GC-2 BID REQUIREMENTS**

### **2.1 [RESERVED.]**

## **GC-3 AWARD AND EXECUTION OF CONTRACT**

### **3.1 [Reserved.]**

### **3.2 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK:**

It is understood that the Contractor, before signing the Contract, has made a careful examination of the Plans, Specifications, and Contract; that the Contractor has become fully informed as to the quality and quantity of materials and the character of the Work required; and that the Contractor has made a careful examination of the location and condition of the Work and the sources of supply for any and all materials. The Owner will in no case be responsible for any loss or for unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to carry out the provisions of this Section 3.2.

### **3.3 AMOUNT OF CONTRACT:**

The Contract Price shall be understood to be the total sum of the amounts computed from the prices of the items included in the Schedule of Prices or the lump sum as given in the Proposal Form. Where prices are given on alternate items, only the amounts of the alternates accepted by the Owner will be included in the total.

### **3.4 ESTIMATES OF QUANTITIES APPROXIMATE ONLY:**

It is expressly agreed that the quantities shown in the Bid Form whether for a "Unit Price Contract" or in connection with a "Lump Sum Contract," given under the heading "Schedule of Prices" are approximate only and are not to be taken to be either representations or warranties. The Owner does not expressly nor by implication agree that the actual amount of Work will correspond therewith, and reserves the right

to increase or decrease the amount of any class or portion of the Work as may be deemed necessary or expedient by the Engineer, without extra or special compensation to the Contractor except as provided in Section 4.5.

### 3.5 PERFORMANCE BOND, PAYMENT BOND AND GUARANTEE:

#### *Bonds*

The Contractor shall within 10 days from the date of notification by the Owner that the Contract is ready for signature and before commencing Work thereunder, furnish to the Owner and maintain in force during the continuance of this Contract a Performance Bond and a separate Payment Bond that meet the requirements of ORS 279C.380 and are satisfactory to the Owner and with such Surety or Sureties as the Owner may approve. The bonds shall be in the full amount of the Contract Price and shall be for the faithful performance of this Contract in all respects, including but not limited to payments for materials, labor, etc., and no Contract shall be binding until the said bonds are furnished and approved by the Owner. The Payment Bond shall be solely for the protection of claimants under ORS 279C.600. If said bonds are not so furnished within the 10 days herein specified, the Contract may be immediately terminated by the Owner without any notice to the Contractor. No Work may be commenced until the bonds have been approved by the Owner.

In accordance with ORS 279C.600, a person claiming to have supplied labor or materials for the prosecution of the Work of this Contract, including any person having direct contractual relationship with the Contractor furnishing the bond or direct contractual relationship with any Subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the State Department of Employment Trust Fund or the Department of Revenue in connection with the performance of the Contract, has a right of action on the Contractor's Payment Bond as provided for in ORS 279C.380 and 279C.400, only if (a) the person or the assignee of the person has not been paid in full; and (b) the person gives Written Notice of claim, as prescribed in ORS 279C.605, to the Contractor and to the contacting agency (the Owner).

In addition to the above requirements, the Contractor shall make the Contractor's own determinations as to the amount of the bond which will be required by any corporation or agency granting a permit for Work to be done under these Plans and Specifications. Such bonds shall be in addition to that required by the Owner as indicated above.

#### *Guarantees*

The Contractor guarantees to the Owner and the Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further guarantees that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. Such guarantees shall include care of backfilling of ditches or of structures should the fill settle to such extent as to require refilling or resurfacing roadway surfaces to restore the original or intended condition or grade. This guarantee shall be understood to imply prompt attention to any remedy of such defects as those mentioned above if and as they occur after the Contractor shall have Written Notice of their existence. The Contractor's guarantee excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

All material, equipment, Subcontractor, or other special guarantees or warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and

shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The obligations under this Section 3.5 shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

#### *Correction of the Work*

Provided that Substantial Completion has not yet been reached, if after 10 days' notice, the Contractor fails to proceed to cure any breach of its guarantee, the Owner may have the defects corrected and the Contractor and its Surety shall be liable for all reasonable expenses incurred. In case of an emergency in which, in the opinion of the Engineer and the Owner, delay would cause serious loss or damage, corrective Work may be undertaken without advance notice to the Contractor, and the Contractor and its Surety shall remain liable for all expenses incurred. The remedies stated in this Section are not exclusive, but are cumulative of any other Owner remedies.

In addition to the Contractor's obligations under this Section 3.5 if, within one year after the date of final completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly, for no additional compensation, after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or the Engineer, the Owner may correct it in accordance with Section 8.10. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after final completion by the period of time between final completion and the actual completion of that portion of the Work.

Establishment of the one-year period for correction of Work as described in the paragraph above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

To support the Contractor's obligations with respect to the one-year period for correction of the Work, the Contractor's Performance Bond shall remain in full force and effect for one year following the acceptance of the project by the Owner. The bond shall be executed by a Surety company authorized to do business within the State of Oregon and it shall be subject to the approval of the attorney for the Owner.

The Contractor shall obtain from Subcontractors, manufacturers, and suppliers written guarantees and warranties consistent with any requirements of the Contract Documents and in all events with the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties.

All guarantees or warranties of third parties furnished to the Contractor or Subcontractor, including without limitation from any manufacturer or supplier, shall be deemed to run for the benefit of the Owner.

All documents, warranties, record drawings, and other deliverables shall be furnished as required by the Contract Documents.

The Contractor shall deliver to the Owner via the Engineer three bound volumes of all guarantees and warranties on materials, systems, and equipment furnished by all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees

and warranties to the Owner. These warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign and deliver to the Owner all manufacturers' warranties not later than the date of Substantial Completion.

Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

#### *Assignment of Warranties*

The Contractor hereby assigns to the Owner all warranties and guarantees of all Subcontractors and sub-subcontractors, but the assignment shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

### 3.6 SUBCONTRACTING OR ASSIGNMENT OF CONTRACT:

The Contractor agrees not to assign, sell, convey, dispose of, or transfer rights, nor delegate duties under this Contract, or otherwise dispose of the Contract or the Contractor's right, title, or interest therein, or the Contractor's power to execute such Contract, either in whole or in part, to any other person, firm, or corporation, or to subcontract any part of the Work without the previous written consent of the Owner. In this connection, it is to be understood that the Owner will not approve of the subcontracting of more than 75% of the Work to be done under the Contract.

It is understood and agreed that, if any part of the Work to be done under the Contract is subcontracted, the subcontracting shall be done in accordance ORS 279C.580. In addition, the Contractor shall be bound by the following provisions:

- The Contractor shall submit a list of all First-Tier Subcontractors to the Owner. The Contractor shall notify the Owner of all proposed changes in Subcontractors prior to making any changes in Subcontractors.
- All subcontracts shall be in writing and shall provide that all Work to be performed thereunder shall be conducted and performed in accordance with the terms of the main Contract. All subcontracts shall include a provision requiring the Subcontractor to have a Public Works Bond filed with the Construction Contractors Board before starting work on the project, unless exempt under section 2 (7) or (8) of Enrolled Senate Bill 477 (SB-477B) as enacted by the State Legislature in 2005. Upon request, certified copies of any or all subcontracts shall be furnished to the Engineer.
- Notwithstanding ORS 279C.555 or 279C.570 (7), the Contractor shall retain 25% of any amount earned by a first-tier Subcontractor on the public works until the Subcontractor has filed with the Owner certified payroll statements as required by ORS 279C.845. The Contractor shall pay the first-tier Subcontractor the amount retained under this subsection within 14 days after the Subcontractor files the certified payroll statements as required by ORS 279C.845.
- In case the Work being done or to be done under any subcontract is not conducted in a manner satisfactory to the Engineer, the Contractor shall, upon Written Notice to this effect, cause such subcontract to be terminated and the Subcontractor and the Subcontractor's employees to be removed from the Work. Any loss or damage that may be suffered on account of such action shall be borne by the Contractor. The Contractor agrees that the Contractor is as fully responsible to the Owner for the acts and omissions of the Contractor's Subcontractors and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of the Contractor's own employees. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.
- Insofar as is practicable, the Contractor shall make payment for subcontract Work in the same units and on the same basis of measurement as apply under the main Contract. The Owner will not be responsible for loss resulting from the Contractor's failure to do so. In making payments to

Subcontractors, the Contractor shall protect against the possibility of overpayment, and the Contractor shall assume such losses as may result from overpayment.

- The subcontracting of any or all of the Work to be done will in no way relieve the Contractor of any part of the Contractor's responsibility under the Contract. The Contractor shall have on the Work at all times a qualified and capable superintendent whose duty shall be to direct and coordinate the operations of the Subcontractors and to see that the orders of the Engineer are carried out promptly and intelligently. Failure of the Contractor to control the Work of the Subcontractors to the satisfaction of the Engineer will result in the issuance of orders requiring the cancellation of the Subcontractors and the removal of the Subcontractors from the Work.
- All Subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) are required to be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence work under the Contract.
- Contractor shall include in each subcontract for property or services with a first-tier Subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the Owner. The Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). The Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Contractors to include a similar clause in each contract with a sub-subcontractor or supplier.

### 3.7 [RESERVED.]

## **GC-4 SCOPE OF WORK**

### 4.1 INTENT OF THE PLANS AND SPECIFICATIONS AND CONTRACT:

The true intent of the Plans and Specifications and Contract is to provide for the execution and completion in every detail of the project or Work. Except as otherwise specifically provided, the Contractor shall furnish all labor, tools, implements, machinery, supplies, materials, and incidentals, and shall do all things necessary to perform and to complete, according to the Specifications and Plans, the Work to be done under the Contract.

### 4.2 DEVIATION FROM THE PLANS:

No deviation from the Plans or the approved working and/or shop drawings is permissible except on written order of the Engineer.

### 4.3 INTERPRETATION OF CONTRACT, SPECIFICATIONS AND PLANS:

In cases of conflict in the terms, requirements and provisions as set out by the contract, the Specifications or the Plans, such conflict shall be reconciled by the acceptance of the following order of precedence for the various Contract Documents; (1) Amendments to the Contract, including Change Orders, with the more recent amendment taking precedence over an earlier amendment; (2) The Agreement; (3) Special Provisions; (4) these General Provisions; (5) Exhibits to the Agreement, including the Payment Bond and Performance Bond; (6) Plans (including Drawings), Specifications, and Addenda issued before the execution of the Contract, subject to the two paragraphs immediately below; (7) the Notice of Proceed; (8) the Notice of Intent to Award; (9) the Advertisement to Bid and Instructions to Bidders (10) Contractor's Bid, including the Contractor's completed Bid Form, First-Subcontractor Disclosure, and

## Bid Bond.

The apparent silence of the Specifications and Plans as to any detail or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to prevail and that only approved material and workmanship of first quality are to be used.

The Contractor shall take no advantage of any errors or omissions in the Specifications and Plans or of any discrepancies in or between same; but where such errors, omissions or discrepancies occur, the Contractor will be governed by the apparent intent of the Specifications and Plans and by orders of the Engineer. Work performed by the Contractor as a result of an error or omission in the Plans and Specifications when such error or omission is not called to the attention of the Engineer shall be at the Contractor's risk.

### 4.4 PLANS, SHOP AND SUPPLEMENTAL DRAWINGS:

The Contractor will be supplied with four sets of Specifications and prints of the Plans prepared by the Engineer showing the project in detail. The Contractor may obtain any additional prints required from the Engineer by compensating the Engineer for the cost of printing involved.

Figured dimensions on the drawings shall be used in preference to scaling the drawings. Where the Work of the Contractor is affected by finish dimension, these shall be determined by the Contractor at the site, and the Contractor shall assume responsibility therefore.

General drawings showing such details as are necessary to give a comprehensive idea of the construction contemplated will be included in the Plans; but the Contractor shall submit to the Engineer for review and approval such additional shop details, settings, schedules and such other supplemental drawings as may be required for the construction of any part of the Work, and prior to the review and approval of such Plans any Work done or material ordered shall be at the Contractor's risk. All shop and supplemental drawings shall be made in such a manner that clear and legible reproductions can be made from them. Any drawings submitted for review which are, in the Engineer's opinion, carelessly prepared, erroneous or unchecked, will be returned to the Contractor for redrawing and checking; and after such redrawing and checking shall be resubmitted to the Engineer.

Shop drawings for mechanical equipment and other structures or equipment shall consist of such detailed Plans as may be reasonably required for the successful prosecution of the Work and which are not included in the Plans furnished by the Engineer. These may include Plans for false work, bracing, centering and form work, masonry layout diagrams, bending diagrams for metal reinforcement, shop details for precast concrete items, and installation drawings or instructions.

It is expressly understood that the review by the Engineer of supplemental drawings or shop drawings submitted by the Contractor or the Contractor's agents will not relieve the Contractor from responsibility for errors in details, dimensions, or quantity or strength of such materials. Material improperly fabricated shall be replaced or modified at the Contractor's expense.

The Contractor shall submit, with such promptness as to cause no delay in the Contractor's own Work or in that of any other Contractor, 3 copies of each shop drawing or setting drawing and schedule required for the Work of the various trades. The Engineer will check and return 2 copies of such drawings and schedules only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. The Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer with 2 corrected copies. If requested by the Engineer, the Contractor shall furnish additional copies as requested. Regardless of corrections made in or approval given to the drawings by the Engineer, the Contractor shall be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless the Contractor notifies the Engineer in writing of any deviations at the time the Contractor furnishes such drawings.



The Contract Bid prices shall include the cost of furnishing all shop and installation drawings and the Contractor will be allowed no extra compensation for such drawings.

The Contractor shall keep one copy of all drawings (including shop drawings) and Specifications on the Work, in good order, available to the Engineer and to the Engineer's representatives at the construction site

#### 4.5 INCREASED OR DECREASED QUANTITIES:

The right is reserved by the Owner, without impairing the contract, to make such increases and decreases in the quantities of the Work as may be considered necessary to complete fully and satisfactorily the Work included in the Contract. The Contractor shall have no claim for damages or for anticipated profits on account of any portion of the Work that may be reduced or deleted. Deletion of entire items generally shall be made when the Contract is executed but in case the Contractor shall have performed some Work on account of any item which is subsequently deleted, the Contractor shall be paid therefore on the basis of extra Work.

#### 4.6 CHANGES IN WORK:

4.6.01 Changes Requested by the Contractor – Changes in specified methods of construction may be made at the Contractor's request when approved in writing by the Engineer. Changes in the Plans and Specifications, requested in writing by the Contractor, which do not materially affect the Work and which are not detrimental to the Work or to the interests of the Owner, may be granted by the Engineer.

Payment will be made per Section GC-9 MEASUREMENT AND PAYMENT, of this Contract.

4.6.02 Changes Initiated by the Owner – The Owner may change the Plans, Specifications, character of the Work, or quantity of Work. Change Orders shall be in writing and state the dollar value of the change or establish method of payment, any adjustments in Contract Time and, when negotiated prices are involved, shall provide for the Contractor's signature indicating acceptance. Payment for all Work will be made per Section GC-9 MEASUREMENT AND PAYMENT, of this Contract.

#### 4.7 CHANGED CONDITIONS:

The Contractor shall notify the Engineer in writing of the following Work site conditions, hereinafter called changed conditions, promptly upon their discovery and before they are disturbed:

- a. Subsurface or latent physical conditions differing materially from those represented in the contract; and
- b. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character being performed.

The Engineer will promptly investigate conditions of which notified or any conditions discovered by the Engineer which appear to be changed conditions. If it is determined that the conditions are changed conditions and that they will materially increase or decrease the costs of any portion of the Work, a written Change Order will be issued by the Engineer adjusting the compensation for such portion of the Work. If the Engineer determines that conditions of which notified by the Contractor do not justify an adjustment in compensation, the Contractor will be so advised in writing. Should the Contractor disagree with such determination, a notice of potential claim may be submitted to the Engineer.

#### 4.8 EXTRA WORK:

Upon the written Extra Work (as defined in Section 5.3) order of the Engineer, the Contractor shall perform such additional or Extra Work that may or may not be included under or covered by Contract

Prices, as may be necessary for the satisfactory completion of the project. If the Work is of a kind for which a Specification is given herein, it shall be performed in accordance with that specification subject to such supplemental or additional Specifications, Plans, and instructions as the Engineer may issue. If the Work is of a kind not covered by a Specification given herein, it shall be performed in accordance with accepted practice for the class of Work intended and in accordance with such Plans as may be issued by the Engineer. The Owner shall have the option of paying for additional or Extra Work at the stipulated unit prices or stipulated lump sum prices given in the Bid Form or on a force account or cost plus basis described in Section 9.5 of these Specifications. Payment for Extra Work will be made only when the Work involved has been authorized by the Engineer, in writing prior to performance of the Work.

Change Order pricing, provided by the Contractor, shall be commensurate with the Bid, Schedule of Unit Prices. If requested by the Engineer, the Contractor shall supply a Schedule of Unit Values detailing the component breakdown of the provided unit prices within the Bid. The Schedule of Unit Values shall detail all labor, equipment, materials, profit and overhead associated with each component of the unit price, as requested or directed by the Engineer. These supplied values will be used to verify pricing for Extra Work when the scope of the Extra Work does not fall under an established Bid item. Pricing for Extra Work provided by the Contractor which is not commensurate to the Schedule of Unit Values will be rejected.

#### 4.9 CLAIMS FOR EXTRA COMPENSATION:

In any case where the Contractor deems extra compensation is due the Contractor for Work or materials not clearly covered in the Contract or not ordered by the Engineer as an extra as defined herein, the Contractor shall in writing notify the Engineer and the Owner of the Contractor's intention to make claim for such compensation in accordance with Section 8.12 before the Contractor begins the Work on which the Contractor bases the claim. If such notification is not given or the Owner and Engineer are not afforded proper records and reports by the Contractor for keeping strict account of actual cost, then the Contractor hereby agrees to waive the claim for extra compensation. Such notice by the Contractor and the fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim. In case the claim is found to be just, it shall be allowed and paid for under a Supplemental Agreement to be entered into between the parties to the Contract.

#### 4.10 RECORDS:

The Contractor shall furnish the Engineer every reasonable record and report necessary for obtaining such information as the Engineer may desire respecting the nature and quality of the materials used or to be used and the progress and manner of the Work.

The Contractor shall maintain records in such a manner as to provide a clear distinction between the direct cost of Extra Work paid for on the force account basis and the costs of other operations performed in connection with the Contract. The Contractor shall furnish to the Engineer daily reports in duplicate of the Extra Work to be paid for on a force account basis. The reports shall itemize the materials used and shall set forth the direct cost of labor and the charges for equipment rental whether furnished by the Contractor, or Subcontractor. The reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked together with the size, type and identification number of equipment and hours of equipment operation.

Material charges shall be submitted by vendors' invoices. Such invoices shall be submitted with the reports; or, if not available, they shall be submitted with subsequent reports. In the event said vendors' invoices are not submitted within 15 days after acceptance of the Work, the Owner reserves the right to establish the cost of such materials at the lowest current price at which said materials are available in the appropriate quantities delivered to the location of the Work.

All reports shall be signed by the Contractor or an authorized representative.

The Engineer will compare records with the reports furnished by the Contractor, make any necessary adjustments and then compile the costs of Extra Work paid for on a force account basis on forms furnished by the Owner. When these Extra Work reports are agreed upon and signed by both parties, they shall become the basis of payment for the Work performed.

#### 4.11 NO COMPENSATION:

Subject to Section 4.12, Compensation for Standby, the Contractor shall not have any claim for compensation or damages against the Owner or the Engineer for any suspension, stoppage, hindrance or delay from any cause whatsoever.

#### 4.12 COMPENSATION FOR STANDBY:

When the Work or any part of it is suspended by order of the Engineer for a reason which is not related to the Contractor's performance of the Work, the Owner may consider a claim for payment of standby costs which may be incurred by the Contractor. When such costs are claimed they shall be legitimate, reasonable, and supported by proper documentation as required by the Engineer.

The Owner will not pay for standby costs related to any of the following:

- Weather or other natural conditions;
- Failure by the Contractor to carry out orders given by the Engineer;
- Any failure by the Contractor to comply with a requirement or provision of the Contract;
- Any failure by the Contractor to appropriately schedule the sequence of Work;
- Any failure by the Contractor to appropriately explore underground conditions and report findings to the Engineer in a timely manner and well in advance of critical path items such as crossings, tie-ins, special order parts or equipment, etc.;
- Any failure by the Contractor to provide for the safety of the public or his, the Owner's or the Engineer's work force;
- Any failure by the Contractor to protect the property of the Owner or others;
- Any delay occurring while defects or failures in the Work are being remedied;
- Any change in the quantity of any item of Work from the estimated quantity shown in the Contract Unit Price Schedule;
- Any equipment or work force which was not actually present and actively working on the Work immediately prior to the suspension of the Work;
- Any haul trucks or their drivers used on the Work;
- Any suspension of the Work that is less than 4 hours in duration; and
- Testing of Material or Work for compliance with Specifications and Plans.

When the Owner fails to provide right-of-way necessary for access to the Work, and has not so notified the Contractor in the special provisions of the Contract, and in the Engineer's opinion alternate Work Areas are not available or practical to allow continued prosecution of the Work, the Owner may consider the payment of a claim for standby, which shall not in any case exceed 10 days.

When a claim for standby is considered by the Owner, direct costs which, in the opinion of the Engineer, could not have been avoided by the judicious handling of forces, equipment or plant, will be paid to the Contractor in an amount that the Owner finds to be fair and reasonable. No item of cost other than idle time rate of equipment and necessary payments for idle time of workers will be considered.

Compensation for standby time of workers and equipment will be determined by the Owner, and in

accordance with the following:

- (i) The time paid for will not exceed 8 hours in any one day;
- (ii) Saturdays, Sundays and statutory holidays will be excluded;
- (iii) Overhead and profit will be excluded; and
- (iv) The idle time equipment rates will be determined by the Owner.

Upon termination of the suspension by the Engineer or the Owner, the Contractor shall resume operations at once.

#### 4.13 RIGHT TO ADDITIONAL COMPENSATION LIMITED:

The Contract Price includes all elements necessary to complete the Work in accordance with the Contract Documents and, consequently, Change Orders adjusting the Contract Price will not be necessary except in the limited circumstances set forth below:

- Owner-initiated changes as set forth in Section 4.6.02, provided that such changes are material changes to Project scope items upon which the current Contract Price is based. For purposes of this Section 4.13, a material change is one that the Owner or Engineer determines will affect the Contract Price or the Contract Time.
- Concealed or unknown conditions as described in Section 4.7
- Costs incurred as a result of changes in regulatory requirements but only where such requirements change after execution of this Agreement.
- Material errors or omissions in the Plans or Specifications that could not have been reasonably anticipated or discovered by the Contractor before execution of this Agreement, including but not limited to Work required or directed by the Owner that differs from any assumptions or clarifications included in the Contract Documents. Design errors and omissions do not include: (a) failure to coordinate between trades; or (b) design changes made at the request of the Contractor in order to facilitate the constructability of the Project.
- Escalation in materials and equipment caused by tariffs, taxes, assessments, fees, and other regulatory costs enacted after the effective date of this Agreement, but only as set forth in Section 4.14 below.
- As otherwise expressly permitted in this Agreement.

Events for which the Contract Price shall not be adjusted and no Change Order will be issued include the following:

- Gaps in scope coverage between Subcontractors, including self-performed Work, that occur after this Agreement is executed.
- An item indicated in the Plans or Specifications that was not picked up in the Contract Price and not specifically excluded from the Contract Price.
- Ambiguities in the Construction Documents that the Contractor knew of or that a reasonable contractor would have identified and raised with the Owner prior to agreeing on the Contract Price.
- A Subcontractor goes bankrupt or otherwise fails to perform.
- Except as otherwise provided in this Section 4.13, escalation of materials, equipment, or labor prices.
- The Contractor's estimating errors.
- Expediting costs for critical materials.
- Costs related to Subcontractor claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Contractor or among Subcontractors.

4.14 MATERIAL ESCALATION: As of the date of the effective date of this Agreement, essential materials and equipment to the Project could potentially see industry-wide price fluctuation during the performance

of the Agreement. If, during the term of this Agreement, a Potentially Impacted Material experiences an increase of more than 10% of its Baseline Price, the Contractor may seek an equitable adjustment to the Contract Price subject to the following conditions:

- The increase in Baseline Price must be verifiably be caused by tariffs, taxes, assessments, fees and other regulatory costs enacted or announced after the effective date of this Agreement; and
- The Contractor must notify the Owner in writing within thirty days from the date of the increase in Baseline Price and provide appropriate documentation substantiating the increase (including but not limited to evidence satisfactory to Owner of the Baseline Price and the increase to the Baseline Price) and detailing Contractor's efforts to mitigate the increase; and
- The Potentially Impacted Materials must be delivered on or after the date on which the notice described directly above is given; and
- The Contract Price shall be adjusted by not more than 5% of the original Contract Price for the aggregate of the increases in the Baseline Prices of Potentially Impacted Materials.

Notwithstanding anything to the contrary in this Agreement, the Contractor is not entitled to any equitable adjustment for escalation in materials and equipment under Section 4.13 and this Section 4.14 that, either alone or in aggregate of other increases to the Contract Price granted under Section 4.13 for escalation in materials and equipment and this Section 4.14, would cause the Contract Price to exceed 5% of the original Contract Price.

For purposes of this Section 4.14, Potentially Impacted Materials are limited to the following: watermain pipe materials, asphalt materials, and materials required for the construction of the retaining wall. For purposes of this Section 4.14, the Baseline Price of a Potentially Impacted Material is the price (consisting of the direct cost to the Contractor) of the Potentially Impacted Material that the Contractor used as the basis for the bid it submitted to Owner to awarded this Agreement to perform the Work. The Baseline Price of a Potentially Impacted Material is the material cost only; it does not include labor or delivery costs.

## **GC-5 CONTROL OF THE WORK**

### **5.1 AUTHORITY OF THE ENGINEER:**

To prevent misunderstandings, disputes and litigation it is expressly understood and hereby agreed to by all of the parties to the contract, including the Surety, that the Engineer will, in all cases, determine any and all questions which may arise concerning the quality, quantity and acceptability of materials furnished and Work performed; the manner and rate of progress of the performance of all Work; the interpretation of Plans and Specifications; and the amounts and classifications of the several kinds of Work and materials; and the Engineer's estimates and decisions in these matters will be final, binding, and conclusive upon all parties to the Contract.

The Engineer will be the Owner's representative during the construction period and will observe the Work in progress on behalf of the Owner; that said Work will not be considered completed until approved by the Engineer and accepted by the Owner; that the Contractor shall at all times carry out and fulfill the instructions and directions of the Engineer insofar as the Work to be performed under the Contract is concerned; and that in the event the Contractor fails to carry out and fulfill such instructions and directions, the Owner may refuse to make any partial or final payments to the Contractor so long as such instructions and directions are not complied with. All communication between the Owner and the Contractor shall be through the Engineer. In case of the termination of the employment of the Engineer, the Owner shall appoint a capable and reputable Professional Engineer whose status under the Contract shall be that of the former Engineer.

### **5.2 AUTHORITY AND DUTIES OF INSPECTORS:**

Inspectors shall be authorized to inspect all Work done and all materials furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the

materials to be used. It is the duty of the Inspector to report to the Engineer as to the progress of the Work and the manner in which it is being performed, also to report whenever it appears that the material furnished or the Work performed by the Contractor fails to fulfill the requirements of the Plans and Specifications, and to call to the attention of the Contractor any such failure.

In case of any dispute arising between the Contractor and the Inspector as to materials furnished or manner of performing the Work, the Inspector shall have authority to reject materials or suspend the Work until the question at issue can be referred to and decided by the Engineer. The Inspector is not authorized to revoke, alter, enlarge, relax or release any requirements of the Plans and Specifications, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Plans and Specifications.

The Contractor's responsibility for Work performed under this Contract shall in no way be relieved because of the presence or absence of an Inspector. No Work shall be deemed acceptable by reason of the presence of an Inspector.

### 5.3 INSPECTION:

The Engineer or the Engineer's representatives shall be always allowed access to all parts of the Work and shall be furnished with every reasonable facility for ascertaining whether or not the Work as performed is in accordance with the requirements and intent of the Plans and Specifications. The Contractor shall cut and replace with new materials, at the Contractor's own expense, such samples as are customarily required for testing purposes. If the Engineer requests it, the Contractor shall, at any time before acceptance of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Specifications. Should the Work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or the making good of the parts removed shall be paid for as "Extra Work," but should the Work so exposed or examined prove unacceptable, the uncovering or removing, and replacing of the covering and the making good of the parts removed, shall be at the Contractor's expense.

Additionally, the State of Oregon or its representatives, acting by and through its Oregon Business Development Department, shall allowed to access and inspect all parts of the Project at any time.

### 5.4 RESPONSIBILITY OF THE CONTRACTOR:

The Contractor shall do all the Work and furnish all labor, materials, equipment, tools and machines necessary for the performance and completion of the project in accordance with the Contract Documents within the specified time.

Material and construction details of plants, forms, shoring, false work and other structures built by the Contractor but not a part of the permanent project shall meet the approval of the Engineer, but such approval shall not relieve the Contractor from responsibility for their safety and sufficiency.

The Contractor shall be responsible for all expense involved in making any required changes in the Plans or Specifications to accommodate a substitution approved by the Engineer for the convenience of the Contractor or to circumvent an unforeseen difficulty in obtaining a specified article.

The Contractor shall assume all responsibility for the Work. As between the Contractor and the Owner, the Contractor shall bear all losses and damages directly or indirectly resulting to the Contractor, to the Owner or to others on account of the character of performance of the Work, unforeseen difficulties, accidents or any other cause whatsoever.

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, the Engineer, and the consultants, agents, officers, and employees of any of them for, from and

against claims, actions, damages, losses, liabilities, and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the Work by the Contractor, a Subcontractor, or anyone for whose acts they may be liable:

1. For death, personal injury (including without limitation sickness, disease, or bodily injury), or property damage to the extent caused by (a) the material breach of these General Conditions or the Contract Documents; (b) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (c) any negligent or tortious acts or omissions of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable; and
2. For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 5.4.

Additionally, the Contractor shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors of Contractor.

In claims against any person or entity indemnified under this Section 5.4 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section 5.4 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Notwithstanding anything to the contrary in this Section 5.4, the Contractor is not required to indemnify the Owner, the Engineer, the State of Oregon, or the consultants, agents, officers, or employees of any of them for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of the Owner, the Engineer, the State of Oregon, or the consultants, agents, or employees of any of them, but the Contractor is required to indemnify the Owner, the Engineer, the State of Oregon, and the consultants, agents, and employees of any of them for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property 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.

Contractor's indemnification obligations under this Section 5.4 shall survive termination of this Contract.

#### 5.5 NOTICE TO CONTRACTORS:

Any Written Notice to the Contractor which may be required by law or by the provisions of the Specifications may be served on said Contractor or the Contractor's representative, either personally or by mailing to the address given in the Contract or by leaving the same at said address.

#### 5.6 NOTICE BY CONTRACTORS:

Wherever in the Specifications the Contractor is required to notify the Engineer concerning the progress of the Work, or concerning any complaint which the Contractor may have to make, or for any other reason, it shall be understood that such notification is to be made in writing, delivered to the Engineer or the Engineer's representative in person, or mailed to the office of the Engineer at the address given in the official "Advertisement for Bids."

## 5.7 UTILITIES AND EXISTING IMPROVEMENTS:

In accordance with ORS 757.557, the Contractor shall, prior to performing any excavation, notify appropriate utility organization and comply with provisions stated in referenced statute.

Any information shown as to the location of existing water courses, drains, sewer lines or utility lines which cross or are adjacent to the project, has been compiled from the best available sources, but is not guaranteed to be accurate.

The Contractor shall provide for the flow of sewers, drains or water courses interrupted during the progress of the Work, and shall restore such drains or water courses as approved by the Engineer. The Contractor shall make excavations and borings ahead of Work as necessary, to determine the exact location of utilities or underground structures. Ordinarily, utility companies responsible for facilities located within the Work Area will be required to complete any installation, relocation, repair, or replacement prior to the commencement of Work by the Contractor. However, when this is not feasible or practicable or the need for such Work was not foreseen, such utility owners or the Owner shall have the right to enter upon the Work Area and upon any structure therein for the purpose of making new installations, changes or repairs. The Contractor shall conduct operations so as to provide the time needed for such Work to be accomplished during the progress of the improvement.

The Contractor shall be responsible for all costs for the repair of damage to the Contract Work or to any utility, previously known or disclosed during the Work, as may be caused by operations. The Contractor shall maintain in place utilities now shown on the drawing to be relocated or altered by others and shall maintain utilities which are relocated by others in their relocated positions in order to avoid interference with structures which cross the project Work. All costs for such Work shall be included in the prices Bid for the various items of Work.

## 5.8 SURVEY SERVICE:

Construction staking will be provided by the Contractor. The Engineer will provide survey control information for use to the Contractor prior to Notice to Proceed.

5.8.01 Construction Survey Staking – Onion Peak (Surveyor) provided surveying services to the City and to the Engineer. The Contractor may choose to contract directly with a qualified and licensed project surveyor of their choosing to provide any construction staking, as-builting, or other surveying services.

## 5.9 PROTECTION OF SURVEY MARKERS:

5.9.01 Permanent Survey Markers – The Contractor shall not disturb permanent survey monuments, stakes, or bench marks without the consent of the Engineer, and shall notify the Engineer and bear the expense of replacing any that may be disturbed without permission. Replacement shall be done by a registered land surveyor at no expense to the Owner.

When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, the monument cover shall be adjusted to the new grade.

5.9.02 Lines and Grades – The Contractor shall preserve construction survey stakes and marks for the duration of their usefulness during construction. If any construction survey stakes are lost or disturbed, and in the judgment of the Engineer need to be replaced, such replacement shall be by the Engineer at no expense to the Owner. The cost of replacement shall be charged against, and shall be deducted from, the payment for the Work.



#### 5.10 USE OF LIGHT, POWER AND WATER:

The Contractor shall furnish temporary light, power and water complete with connecting piping, wiring, lamps and similar equipment necessary for the Work as approved. The Contractor shall install, maintain and remove temporary lines upon completion of Work. The Contractor shall obtain all permits and bear all costs in connection with temporary services and facilities at no expense to the Owner.

#### 5.11 VERBAL AGREEMENTS:

No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon the Owner.

#### 5.12 UNAUTHORIZED WORK:

Work done contrary to or regardless of the instructions of the Engineer, Work done beyond the lines shown on the Plans or as given, except as herein provided or any Extra Work done without written authorization, will be considered as unauthorized and will not be paid for by the Owner. Work so done may be ordered removed or replaced at the Contractor's expense.

#### 5.13 CLEANUP:

From time to time as the Work progresses and immediately after completion of the Work, the Contractor shall clean up and remove all refuse and unused materials of any kind resulting from the Work. Upon failure to do so within 24 hours after directed, the cleanup may be done by the Owner and the cost thereof be deducted from any payment due to the Contractor.

#### 5.14 FINAL TRIMMING OF WORK:

The Work to be done under the Contract shall include such repair Work as may be necessary to overcome such deterioration as may occur on some portions of the Work while other portions of the Work are being performed. The project shall be in a neatly trimmed and well finished condition throughout at the time of completion and acceptance.

#### 5.15 FINAL CLEAN UP:

Upon completion of the Work and as a condition precedent to final acceptance of the Work and final payment to the Contractor, the Contractor shall clean up the Work Area and all properties on which the Contractor has operated in the construction of the project, including removing or burning all discarded materials, rubbish and debris. The Contractor shall tear down, remove or burn all construction plant structures erected by or for the Contractor, or by or for the Contractor's Subcontractors or employees on the Work Area or on property controlled by the Owner. The Contractor shall do all things necessary to put the whole of the Work Area and such other property controlled by the Owner as the Contractor may occupy in a neat clean and orderly condition.

#### 5.16 FINAL INSPECTION:

At such time as all Work on the project is complete and all Extra Work bills, forms, and documents required under the Contract are submitted, the Contractor shall so notify the Engineer in writing. The Engineer will make an inspection of the project and project records within 15 days of receiving said notice. If, at such inspection, all construction provided for and ordered under the Contract is found completed and satisfactory and all certificates, bills, forms and documents have been properly submitted, such inspection shall constitute the final inspection.

If any Work in whole or in part is found unsatisfactory, or it is found that all certificates, bills, forms, and documents have not been properly submitted, the Engineer will give the Contractor the necessary instructions as to replacement of material and performance or reperformance of Work necessary and prerequisite to satisfactory final completion of Work and will give the Contractor the necessary instructions for submission of bills, forms and documents, and the Contractor forthwith shall comply with and execute such instructions. At such time as such instructions are complied with and executed, the Contractor shall so notify the Engineer in writing. The Engineer will make another inspection within 15 days after such notice and this inspection shall constitute the final inspection, if all requirements of the instructions have been met to the satisfaction of the Engineer.

If the instructions are not completed to the satisfaction of the Engineer, additional instructions will be issued by the Engineer and the process will be repeated until the Engineer is satisfied all requirements are complied with. The inspection, when the Engineer is satisfied all requirements have been met, will be considered the final inspection.

## **GC-6 CONTROL OF MATERIALS AND EQUIPMENT**

### **6.1 TRADE NAMES, APPROVED EQUALS OR SUBSTITUTIONS:**

In order to establish standards of quality, the Engineer may have, in the technical Specifications referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers. The words "approved equal" shall be considered following all such listings regardless of whether or not they so appear. The Contractor shall furnish to the Engineer the complete list of proposed desired substitution in sufficient time prior to their use to give the Engineer adequate time for the Engineer's review, together with such Engineering and catalog data as the Engineer may require.

Failure on the part of the Contractor to supply data to the Engineer prior to ordering or using such alternate material or equipment shall not relieve the Contractor of furnishing acceptable material or equipment as required by the Engineer.

The Contractor shall abide by the Engineer's judgment when proposed substitute materials or items of equipment are judged to be unacceptable and shall furnish the specified material or item of equipment in such case. All proposals for substitutions shall be submitted in writing by the Contractor and not by individual trades or material suppliers. The Engineer will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute materials shall be used unless approved in writing.

Only materials conforming with the specified requirements and approved by the Engineer shall be used in the Work. Before the delivery of any material to be used in the Work is commenced, the Contractor shall have advised the Engineer as to the source from which the material is to be obtained, shall have furnished such samples as may be required for testing purposes, and shall have received the Engineer's approval of the use of that particular material. The approval of any source of supply by the Engineer will not imply that all material from that source will be approved, and should material from an approved source fail to maintain a quality meeting the requirements of the Specifications, use of material from that source shall be discontinued, and the Contractor shall furnish approved material from other sources. Regardless of the source, any material delivered upon the project which fails to meet the requirements will be rejected, and only material meeting all requirements will be allowed to be incorporated in the Work. Any material or item incorporated in the Work which does not meet requirements of the Contract Documents, even though it be installed with the consent and/or in the presence of an Inspector, shall be removed and approved material shall be used in its place and all costs for removal and installation of approved material shall be at the Contractor's expense.

Material which after approval has, for any reason, become unsuitable for use, shall be rejected and not used.

## 6.2 TESTS OF MATERIALS:

All tests of materials shall be made in accordance with approved methods as described and designated in the Specifications. When tests of materials are required, such tests shall be made by a testing laboratory approved by the Engineer and at the expense of the Owner. The Contractor shall afford such facilities as may be required for collecting and forwarding samples and shall hold the materials represented by the samples until tests have been made and the materials found equal to the requirements of the Specifications or to approved samples. The Contractor in all cases shall furnish the required samples without charge.

In the absence of any definite Specification or reference to a Specification in the technical Specifications or in the special provisions for the particular project involved, it shall be understood that such materials and tests shall meet the specifications and requirements of ASTM. Unless otherwise specified, all tests of materials shall be made in accordance with the methods prescribed by ASTM. Wherever in the Specifications a particular specification of ASTM is referred to by number, it shall be understood that such reference shall include all amendments and additions thereto adopted by ASTM prior to the award of the Contract.

Upon completion of laboratory testing of materials as specified above, the results of the tests made therein shall be used as a basis for acceptance or rejection, in accordance with the Specifications for the particular material.

## 6.3 STORAGE OF MATERIALS:

Materials shall be stored in such manner as to insure the preservation of their quality and fitness for use. When considered necessary to protect materials against dampness, or to keep them clean and free from dust, dirt or other detrimental matter, suitable sheds, platforms and covers shall be provided. Materials shall be stored in such a manner as to facilitate inspection.

## 6.4 [RESERVED.]

## 6.5 ORDERING MATERIALS:

The Contractor is cautioned against placing orders for full quantities of materials until the Work has advanced to a state permitting the determination of the exact quantities required. Estimates of quantities of materials furnished by the Engineer are understood to be approximate only, and, unless otherwise specified, the Owner will in no way be responsible for any materials in excess of actual requirements. Neither will the Owner be responsible for any increased costs of extra expense the Contractor may have to bear on account of materials or Work not being ordered at some earlier date.

## 6.6 MATERIALS FURNISHED BY THE OWNER:

Materials specifically indicated shall be furnished by the Owner. The fact that the Owner is to furnish material is conclusive evidence of its acceptability for the purpose intended and the Contractor may continue to use it until otherwise directed. If the Contractor discovers any defect in material furnished by the Owner, the Contractor shall notify the Engineer. Unless otherwise noted or specifically stated, materials furnished by the Owner, which are not of local occurrence, are considered to be f.o.b. the nearest freight station. The Contractor shall be prepared to unload and properly protect all such material from damage or loss. The Contractor shall be responsible for material loss damage after receipt of material at the point of delivery.

## 6.7 MANUFACTURER'S DIRECTIONS:

Manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

## 6.8 EQUIPMENT APPROVAL DATA:

The Contractor shall furnish 3 copies of complete catalog data for the manufactured items of equipment and all components to be used in the Work, including specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number and general type as requested by the Engineer.

This submission shall be compiled by the Contractor and approved by the Engineer before any of the equipment is ordered. Each data sheet or catalog in the submission shall be indexed according to Specifications section and paragraph for easy reference.

After written approval, this submission shall become a part of the contract, and may not be deviated from except upon written approval of the Engineer.

Catalog data for equipment approved by the Engineer shall not in any case supersede the Contract Documents. The approval of the Engineer shall not relieve the Contractor from responsibility for deviations from drawings or Specifications, unless the Contractor has in writing called the Engineer's attention to such deviations at the time of submission and secured the Engineer's written approval, nor shall it relieve the Contractor from responsibility for errors of any sort in the items submitted. The Contractor shall check and approve the Work described by the catalog data with the Contract Documents for deviations and errors prior to submission to the Engineer for approval. It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available. The Contractor shall make necessary field measurements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the drawings and Specifications. Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment to operate properly, and in harmony with the Work required by the different arrangement of connections.

Upon approval of the equipment by the Engineer, the Contractor shall furnish 6 copies of catalog data of all process equipment or components thereof together with operating and maintenance instructions.

## **GC-7 LEGAL RELATIONS AND RESPONSIBILITIES**

### 7.1 LAWS AND REGULATIONS:

The Contractor at all times shall observe and comply with all applicable federal, state, and local laws, ordinances, and regulations, and all such orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the Work. All provisions of ORS 279C.500 – 279C.530 (construction contracts) are incorporated herein.

7.1.01 Working Conditions – Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, the Contractor shall not employ and shall require that its Contractors not employ any person to perform construction work 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, except in cases of Contracts for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

- For all overtime in excess of 8 hours a day or 40 hours in any one week when the Work week is 5 consecutive days, Monday through Friday; and
- For all overtime 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 Work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or in ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

The Contractor shall, and shall require its Contractors, to give notice in writing to their employees who perform Work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

7.1.02 Environmental and Natural Resources Laws – Solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

1. Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
2. State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
3. Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.
4. Tribal Governments.

7.1.03 Sanitary Provisions – The Contractor shall observe all rules and regulations of the State of Oregon and local health officials, and shall take such precautions as are necessary to avoid creating conditions which are not sanitary. The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for use of the Contractor's employees as may be necessary to comply with the requirements of public health officials. The Contractor shall permit no public nuisance at any place over which the Contractor has control.

7.1.04 Prevailing Wage Rate Law – This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker that the Contractor, any Subcontractor, or other person who is party to the Contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries (BOLI) in the applicable publication entitled "Definitions of Covered Occupations for Public Works Contracts in Oregon." The prevailing wage rates for Public Works Contracts in Oregon are contained in the following publications: The Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any

amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at [http://www.boli.state.or.us/BOLI/WHDPWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHDPWR/pwr_state.shtml) and are hereby incorporated as part of the Contract Documents.

This Contract may also be subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding subsection j(i) of this section, if this Contract is subject to payment of prevailing wages under the Davis-Bacon Act, the Contractor and any Subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in subsection j(i) of this section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Multnomah County, Building Construction Type) and are hereby incorporated by reference as part of the Contract Documents. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.

The Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.

If the Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

The Contractor and every Subcontractor shall file certified statements with the Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Contractor's Surety or Subcontractor or Subcontractor's Surety that the Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to the Contractor or Contractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.

The certified statement shall be delivered or mailed by the Contractor or Subcontractor to the Owner. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

The Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

**7.1.05 Public Works Bond** – The Contractor shall file a Public Works Bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting Work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9). Additionally, the Contractor shall include in every subcontract a provision requiring the Subcontractor to file a Public Works Bond with the Construction Contractors

Board pursuant to ORS 279C.836 before starting Work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

7.1.06 Medical Care Payment Law – In accordance with ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident 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 collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

7.1.07 Drug Testing Program – In accordance with ORS 279C.505 (2), the Contractor shall demonstrate to the satisfaction of the Owner, that an employee drug-testing program is in place. The Contractor may attach hereto a written description of the Contractor's drug testing program, or a copy of the adopted drug-testing program, to comply with this condition.

7.1.08 Salvage or Recycle of Construction and Demolition Debris – In accordance with ORS 279C.510 (1), the Contractor shall salvage or recycle construction and demolition debris, if feasible or cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

7.1.09 Compliance with Pay Equity Provisions; Employee Pay Discussion – The Contractor shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause. The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

7.1.10 Time Limitations on Claims for Overtime – Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, provided the Contractor or Subcontractor has:

- Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
- Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

## 7.2 PERMITS AND LICENSES:

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work. Such fees shall be included in the Contract Price.

## 7.3 PATENTED DEVICES, MATERIALS, AND PROCESSES:

The Contractor assumes the responsibility of defending any and all suits or actions brought for the infringement of any patent claimed to be infringed by any material, device, plan, method or process to be incorporated in the Work and/or required to be used in connection with the Work to be done under the contract, including all attorney's fees and court costs, and the Contractor shall indemnify and save

harmless the Owner, its officers, employees, and agents (including the Engineer) from all claims of and suits or Sections for infringements of patents.

#### 7.4 USE OF PREMISES:

The Contractor shall confine the Contractor's apparatus, the storage of materials and the operations of the Contractor's workers to limits indicated by the Contract Documents, ordinances, permits, or directions of the Engineer and shall not unreasonably encumber the premises with the Contractor's materials.

The Contractor shall not load or permit any part of a structure which the Contractor is constructing under this Contract to be loaded with a weight that will endanger its safety, nor shall the Contractor use any such structure for any purpose without the approval of the Engineer.

#### 7.5 COOPERATION WITH OTHER CONTRACTORS:

The Contractor shall conduct the Contractor's operations so as to interfere as little as possible with those of other contractors on or near the Work. It is expressly understood that the Owner has the right and may award other contracts in connection with the Work so long as it does not interfere with the work under this Contract.

Where one Contractor's operations are within the limits or adjoin the operations of another contractor, each shall be responsible to the other for any damage, injury, loss, or expense which may be suffered on account of interference of operations, neglect or failure to finish Work at the proper time, or of any other cause.

#### 7.6 LABOR AND EQUIPMENT:

The Contractor shall employ only competent and efficient laborers, mechanics, or artisans; and whenever, in the opinion of the Engineer, any employee is or becomes unsatisfactory for the Work assigned to the employee the Contractor shall, upon request of the Engineer, remove that employee from performing Work under this Contract.

The methods, equipment and appliances used and the quantity and quality of the personnel employed on the Work shall be such as will produce a satisfactory quality of Work and shall be adequate to complete the Contract within the time limit specified.

Only efficient and competent laborers and foremen shall be employed on force account Work, and only tools and equipment in good condition and suitable for the Work shall be used. The Engineer shall have authority to dismiss from force account Work any laborer or foreman whose efficiency is, in the opinion of the Engineer, below that of the average of the Contractor's forces, and to refuse to allow the use of tools and equipment which, in the opinion of the Engineer, are not suitable for the Work. Laborers and foremen dismissed and/or tools and equipment rejected shall be replaced by the Contractor to the satisfaction of the Engineer.

The Contractor acknowledges that for all purposes, the Contractor is and shall be deemed to be an independent contractor and not an employee of the Owner, shall not be entitled to benefits of any kind to which an employee of the Owner is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that the Contractor is found by a court of law or an administrative agency to be an entitled employee of the Owner for any purposes, the Owner shall be entitled to repayment of any amounts from the Contractor under the terms of the Contract; to the full extent of any benefits or other remuneration the Contractor receives (from the Owner or third party) as a result of said finding and to the full extent of any payments that the Owner is required to make (to the Contractor or to the third party) as a result of said finding.



## 7.7 PUBLIC SAFETY AND CONVENIENCE:

The Contractor shall conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, the Contractor shall provide Flaggers when directed and install and maintain means of free access to all fire hydrants, warehouses, and other property. Private roadways shall be closed only with approval of the Engineer or specific permission of the tenant. The Contractor shall not interfere with normal operation of vehicles unless otherwise authorized.

The Contractor shall not obstruct or interfere with travel over any public street without approval. Where detours are necessary, they shall be maintained with good surface and shall be clearly marked. The Contractor shall provide open trenches and excavations with adequate barricades of an approved type which can be seen from a reasonable distance. At night, the Contractor shall mark all open Work and obstructions by lights. The Contractor shall install and maintain all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges and facilities. The Contractor shall observe all safety instructions received from the Engineer or governmental authorities, but following of such instructions shall not relieve the Contractor from the responsibility or liability for accidents to workers or damage or injury to person or property. The Contractor shall not work before 7:00 a.m. or after 6:00 p.m. without written permission of the Engineer.

Emergency traffic such as police, fire and disaster units shall be provided reasonable access to the Work Area at all times. The Contractor shall be liable for any damages which may result from failure to provide such reasonable access or failure to notify the appropriate authority.

## 7.8 BARRICADES, WARNING SIGNS, AND FLAGGERS:

The Contractor shall at the Contractor's expense and without further or other order provide, erect and maintain at all times during the progress or temporary suspension of the Work suitable barricades, fences, signs, or other adequate warnings or protection, and shall provide, keep and maintain such danger lights, signals, and Flaggers as may be necessary or as may be ordered by the Engineer to insure the safety of the public as well as those engaged in connection with the Work. All barricades and obstructions shall be protected at night by signal lights which shall be suitably distributed across the roadway and which shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and shall be suitably painted to increase their visibility at night.

Failure of the Engineer to notify the Contractor to maintain barriers, lights, signals, or Flaggers shall not relieve the Contractor from this responsibility.

If Flaggers are necessary for the purpose of protection and safety to traffic, such Flaggers shall be furnished at the Contractor's expense.

The signs to be furnished and used by the Contractor in directing, controlling and safeguarding traffic shall conform with the standard sign designs in use by the ODOT.

The Contractor's responsibility for the safeguarding of traffic as specified above shall cease when the Work included in the Contract is accepted as complete.

## 7.9 SAFEGUARDING OF EXCAVATIONS:

The Contractor shall provide such safeguards and protections around and in the vicinity of the excavations the Contractor makes as may be necessary to prevent and avoid the occurrence of damage, loss, injury and death to property and persons because of such excavations. Liability for any such damage, loss, injury or death shall rest with the Contractor. The Contractor's responsibility for safeguarding and protecting and the Contractor's liability for damage, loss, injury or death shall cease when all Work to be done under the Contract is completed and accepted by the Owner.

#### 7.10 USE OF EXPLOSIVES:

In the use and storage of explosives, the Contractor shall use every precaution to prevent injury to persons and damage to property. Secure storage places shall be provided and all such places shall be clearly marked with warning signs. Only persons experienced in the handling of explosives shall be allowed to use them on the Work, and no shot shall be put off until warning has been sounded and all persons within the radius of danger removed. In the handling and storage of explosives, the Owner and the Engineer will in no way be responsible for any noncompliance therewith or for damages to property or injury to persons resulting from accidental or premature explosions.

When explosives are used, particularly in proximity to buildings or other structures, care shall be taken to protect the surroundings from injury by the explosion, the resultant concussion or by flying rocks or debris. The quantities of explosives and the manner of their use shall be such that adjacent property shall not be damaged. In case the vicinity of the Work is accessible to the general public, the Contractor shall, before any shots are fired, post workers about the Work in various directions to warn all persons of the danger existing and to prevent the public from approaching closer than safety will permit.

#### 7.11 PERSONAL SAFETY:

The Contractor shall be responsible for conditions of the job site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to the applicable federal, state, county and local laws, ordinances and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

The Contractor shall maintain at the office or other well-known place at the job site, all articles necessary for giving first aid to the injured and establish the procedure for the immediate removal to a hospital or a doctor's care of employees and other persons who may be injured on the job site.

The duty of the Engineer to conduct construction reviews of the Contractor's performance is not intended to include a review of the adequacy of the Contractor's safety measures in, on or near the construction site.

All accidents causing death or serious injuries or damages shall be reported immediately by telephone or messenger to both the Engineer and the Owner. In addition, the Contractor shall promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or adjacent to the site, giving full details and statements of witnesses.

If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

#### 7.12 PROTECTION OF WORK AND PROPERTIES:

The Contractor shall continuously maintain adequate protection of all the Contractor's Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. The Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property as provided by law and these Contract Documents.

At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water, gas, other pipeline and power companies, or are adjacent to other property, damage to which might result in material expense, loss, or inconvenience, Work shall not be commenced until all arrangements necessary for the protection of the interests of the Owner, as well as any interest that a third party may have therein, have been made.

In an emergency affecting the safety of life or of the Work or of adjoining property the Contractor, without special instruction or authorization from the Engineer or the Owner, is hereby permitted to act, at the Contractor's discretion, to prevent such threatened loss or injury, and the Contractor shall so act, without appeal, if so instructed and authorized. Any compensation, claimed by the Contractor on account of emergency Work, shall be determined by agreement.

#### 7.13 RESTORATION OF DAMAGED PROPERTY:

All damage and injury to property that may be caused by or that may result from the carrying out of the Work to be done under the contract, or from any act, omission or neglect of the Contractor, the Contractor's Subcontractors, or their employees, shall promptly be made good by the Contractor either by the repairing, rebuilding, or replacing of the property damaged, or in some other manner satisfactory to the Owner of such property. In case of failure on the part of the Contractor to promptly and satisfactorily make good such damage or injury, the Owner may, without notice to the Contractor, proceed to repair, rebuild, or replace such property as may be deemed necessary, and the cost thereof will be deducted from any monies due or which may become due the Contractor under the Contract.

In applying the provisions above stated, the repairing, rebuilding or replacing of damaged property shall be understood to include the providing of any temporary facilities that may be needed to maintain normal service until the required repairing, rebuilding or replacing is accomplished.

#### 7.14 RESPONSIBILITY FOR DAMAGES:

The Contractor shall be responsible for all damages to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by or that may result from any act, omission, or neglect of the Contractor, the Contractor's Subcontractors, or their employees in the performance of the Work to be done under this Contract.

#### 7.15 TRESPASS:

The Contractor will be solely responsible for any trespass upon adjacent property or injury thereto, resulting from or in connection with the Contractor's operations. The Contractor will be liable for any claims that may be made on account of trespass or the deposit of debris of any kind upon private property.

#### 7.16 CONTRACTOR'S RESPONSIBILITY FOR WORK:

Until final acceptance of the contract, the Contractor shall be held responsible for any injury or damage to the Work or to any part thereof by the action of the elements, or from any cause whatsoever, and the Contractor shall make good at the Contractor's own expense all injuries or damages to any portion of the Work before its completion and final acceptance.

#### 7.17 NO WAIVER OF LEGAL RIGHTS:

The Owner shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The Owner shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, and payment in accordance therewith, from recovering from the Contractor and the Contractor's Sureties such damages as the Owner may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Owner, or by any representative or agent of the Owner, nor any payment for nor acceptance of the whole of any part of the Work, nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any portion of the Contract or of any power herein reserved, or

any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be waiver of any other subsequent breach.

## 7.18 INSURANCE:

7.18.01 General – The Contractor shall purchase and maintain the types and limits of insurance described in this Section 7.18 from an insurance company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. All of the Contractor's insurance carriers shall be rated A- or better by Best's Insurance Rating. The Contractor shall not commence Work until the Contractor has obtained all insurance required under this Section or until the Contractor has satisfied the Owner in this respect; nor shall the Contractor allow any Subcontractor to commence Work until the Subcontractor also has obtained similar insurance which is applicable to the Subcontractor's Work. The Contractor shall maintain such insurance throughout the life of this Contract and for at least 6 years after Substantial Completion.

7.18.02 Commercial General Liability – The Contractor shall purchase and maintain Commercial General Liability (CGL) insurance on an occurrence basis, written on ISO Form CG 00 01 (12 04 or later) or an equivalent form approved in advance by the Owner. The policy limits for CGL coverage must be no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including:

- a. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- b. personal injury and advertising injury;
- c. damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- d. bodily injury or property damage arising out of completed operations; and
- e. the Contractor's indemnity obligations under these General Conditions.

The Contractor's CGL policy shall not contain an exclusion or restriction of coverage for the following:

- a. Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- b. Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- c. Claims for bodily injury other than to employees of the insured.
- d. Claims for indemnity under these General Conditions arising out of injury to employees of the insured.
- e. Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- f. Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- g. Claims related to earth subsidence or movement, where the Work involves such hazards.
- h. Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

7.18.03 Automobile Liability – The Contractor shall purchase and maintain Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$1,000,000) per accident, for bodily injury, death of any person,

and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. Contractor must provide coverage using ISO Form CA 00 01 or an equivalent form approved in advance by the Owner.

7.18.04 Umbrella/Excess – The Contractor shall purchase and maintain commercial umbrella or excess liability insurance with policy limits of not less than Three Million Dollars (\$3,000,000) for each occurrence and in the aggregate. Commercial umbrella/excess liability coverage must include: (1) “Pay on behalf of” wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The third-party liability insurance shall be scheduled to the umbrella/excess coverage. The umbrella or excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

7.18.05 Workers’ Compensation and Employers Liability – The Contractor shall purchase and maintain Workers’ Compensation coverage in compliance with ORS 656.017. The Contractor shall purchase and maintain Employers’ Liability with policy limits not less than Three Million Dollars (\$3,000,000) each accident, Three Million Dollars (\$3,000,000) each employee, and Three Million Dollars (\$3,000,000) policy limit. Contractor may achieve coverage under this Section 7.18.05 through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverage required under this Section 7.18.05, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

7.18.06 Pollution Liability – If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.

7.18.07 Property Insurance – The Contractor shall purchase “All Risk” type Builder’s Risk Insurance for Work to be performed sufficient to cover the total value of the entire Project on a replacement cost basis. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the Contract Price totaled in the Bid, plus the value of subsequent modifications and labor performed and materials or equipment supplied by others. The policy shall cover not less than the losses due to fire and extended coverage, earthquake, flood, explosion, hail, lightening, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke the results of faulty workmanship, during the Contract Time, and until the Work is accepted by the Owner. The policy shall name as the insured the Contractor and the Owner. The property insurance shall be maintained until Substantial Completion

7.18.08 Certificates of Insurance – The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 7.18 at the following times: (1) prior to commencement of the Work (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. The Owner may, but is not obligated to, prohibit the Contractor from entering the Work Area until the certificates of insurance and all required attachments have been received and approved by the Owner. The Contractor may not enter the Work Area or commence the Work until the Contractor places for the Work all coverages required under this Section 7.18. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Sections 7.18.01 and 7.18.07. The certificates will show the Owner as an additional insured on the Contractor’s Commercial General Liability and excess or umbrella liability policy or policies.

7.18.09 Additional Insured Obligations – To the fullest extent permitted by the law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Engineer, and their

respective consultants, officers, employees, agents, and contractors as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner, the Engineer, and their respective consultants, officers, employees, agents, and contractors as an additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Engineer and the Engineer's consultants, CG 20 32 07 04.

7.18.10 Deductibles and Self-Insured Retentions – Satisfaction of all self-insured retentions or deductibles is the sole responsibility of the Contractor.

#### 7.19 PAYMENT OF OBLIGATIONS:

The Contractor shall promptly make full payment for labor, material, supplies and provisions, at such times as they become due and payable, to all persons supplying said Contractor or the Contractor's Subcontractor with labor, services, materials, supplies or provisions for the prosecution of the Work provided for in the Contract. The Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner for or on account of any labor, services, material, supplies or provisions furnished.

The Contractor and Subcontractor shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractors incurred in the performance of the Contract. The Contractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

In accordance with ORS 279C.515 (1), in the event that said 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 in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's Surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if the Contractor or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by the Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is 9% per annum. The amount of interest may not be waived.

### **GC-8 PROSECUTION AND PROGRESS**

#### 8.1 PROSECUTION OF WORK:

Performance of the Work to be done under the Contract shall be commenced within the stipulated time limit, unless later commencement of the Work is authorized by the Engineer. From the time of commencement of the Work to the time of completion, the Work shall be prosecuted vigorously and always in accordance with a schedule which will insure completion within the specified time limit. The Contractor is responsible for ensuring that the schedule includes due allowances for possible unfavorable conditions, interference, breakdowns, and other causes of delay. There shall be no voluntary shutdown or slowing of operations without prior approval of the Engineer.

If it appears to the Engineer that the rate of progress being made is not such as it will insure the Substantial Completion of the Work within the Contract Time, it shall be within the authority of the Owner, upon notification by the Engineer, to require the Contractor to provide additional equipment and labor and to take such other steps as may be necessary to insure completion as specified.

## 8.2 LIMITATIONS OF OPERATIONS:

Operations on the various units or portions of the Work shall be begun at the times and locations approved by the Engineer and shall be prosecuted between such limits as the Engineer may establish. No part of the Work shall be undertaken without the approval of the Engineer, and no Work shall be carried on contrary to the Engineer's instructions.

In case of a dispute arising between two or more Contractors engaged on the same Work as to the respective rights of each under the Specifications, the Engineer shall determine the matters at issue and shall define the respective rights of the various interests involved, in order to secure the completion of all parts of the Work in general harmony and with satisfactory results, and the Engineer's decision shall be final and binding on all parties concerned.

## 8.3 CONTRACTOR TO HAVE REPRESENTATIVE ON WORK:

The Contractor shall designate in writing before starting Work an authorized representative, who shall have complete authority to represent and to act for the Contractor in the Contractor's absence from the Work site, in all directions given to the authorized representative by the Engineer. The Contractor or the authorized representative shall give efficient supervision to the Work, using the best skill and personal attention to the prosecution of the Work, and shall be present on the site continually during its progress. The authorized representative shall have full authority to execute the orders or directions of the Engineer without delay and to supply promptly such materials, tools, plant, equipment, and labor as may be required, regardless of whether or not the Work is to be performed by the Contractor's own forces or those of a Subcontractor. The fact that an approved Subcontractor is performing any portion of the Work shall not relieve the Contractor of this requirement.

## 8.4 TEMPORARY SUSPENSION OF THE WORK:

The Engineer shall have authority to suspend the Work wholly or in part for such period or periods as the Engineer may deem necessary, due to unsuitable weather or such other conditions as are considered unfavorable for the prosecution of the Work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or to perform any or all provisions of the Contract.

If it should become necessary to stop Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the traveling public unnecessarily nor become damaged in any way, and the Contractor shall take every precaution to prevent damage or deterioration of the Work performed, provide suitable drainage, et cetera, and erect temporary structures where necessary. The Contractor shall not suspend the Work without written approval from the Engineer. In all cases of suspension of construction operations, the Work shall not again be resumed until permitted by order of the Engineer.

The Contractor will be responsible for all damage to the Work that may occur during suspensions of Work the same as though the damage had occurred while the Work was in progress.

## 8.5 PROTECTION OF WORK DURING SUSPENSION:

If it should become necessary, because of the lateness of the season or any other reason, to stop the Work, then the Contractor shall open proper drainage ditches, erect temporary structures where necessary; prepare the Work so there will be minimum interference with traffic, if the Work is on a public

right-of-way; and take every precaution to prevent any damage or unreasonable deterioration of the Work during the time the Work is closed. If upon reopening the Work, it is found that any such damages or deterioration has occurred, due to the lack of said precautions, then, and in that event, the Contractor shall correct all such conditions at the Contractor's own expense in a manner acceptable to the Engineer.

#### 8.6 TIME OF COMPLETION OF WORK AND EXTENSION OF TIME LIMIT:

Time is of the essence of the Contract. Except as otherwise provided in the Contract Documents, the Contractor may obtain an extension of the Contract Time if the Contractor is delayed at any time in the commencement or progress of the Work (1) by an act or neglect of the Owner, the Owner's employees, a separate contractor retained by the Owner, or the Engineer; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with this Section and Section 8.12, or other causes beyond the control and without the fault or negligence of the Contractor or its Subcontractors and that by the exercise of reasonable diligence the Contractor is unable to prevent or provide against; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time may be extended for such reasonable time as the Engineer may determine. The adjustment to Contract Time must be recorded in a Change Order. All extensions of Contract Time must be net of (a) any delays caused by the fault or negligence of the Contractor and (b) any contingency or "float" time allowance included in the Contractor's project schedule. No extension of Contract Time may exceed the actual amount of delay directly caused by the unforeseen occurrence identified in this paragraph. The Contractor must comply with Section 8.12 of these General Conditions to receive any extension in Contract Time, regardless of whether the requirements of this paragraph are satisfied. The Contract Time is set with reference to and knowledge of weather conditions usual to the area of the Project. If adverse weather conditions are the basis for a claim for an extension of the Contract Time, then the Contractor shall document its claim using data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled Work. Except as expressly provided under this paragraph, the Contractor may not recover delay damages, wage escalation, material escalation, extended overhead, or additional compensation of any kind resulting from the Contractor's delay in completion of the Work.

#### 8.7 TERMINATION FOR CONVENIENCE:

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall: cease operations as directed in the notice; take actions necessary, or that the Owner or the Engineer may direct, for the preservation and protection of the Work; and except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and reasonable overhead and profit on the Work performed. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

#### 8.8 TERMINATION FOR CAUSE:

The Owner may terminate the Contract if the Contractor: refuses or fails to supply enough properly skilled workers or proper materials; fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers; disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; fails to observe the training, safety, and other precautions required by the Contract or the Contractor's own safety policies for the Project; or substantially breaches a provision of the Contract Documents. When any reasons for termination under this Section 8.8 exist, the Owner may, without prejudice to any



other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety 7 days' notice, terminate the Contract and may, subject to any prior rights of the Surety: exclude the Contractor from the Work Area and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; accept assignment of subcontracts; and finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work. When the Owner terminates the Contract for one of the reasons stated in this Section 8.8, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds costs of finishing the Work, including compensation for the Owner's and the Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation shall survive termination of the Contract.

If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

It is understood and agreed that the Owner may, at its discretion, avail itself of any or all of the above rights or remedies and that the invoking of any one of the above rights or remedies will not prejudice or preclude the Owner from subsequently invoking any other right or remedy set forth above or elsewhere in the Contract.

#### 8.9 USE OF COMPLETED OR UNCOMPLETED PORTIONS:

The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired, but such taking possession and use shall not be deemed as acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted Work or causes refinishing of completed Work, the Contractor shall be entitled to such extra compensation; or extension of time or both, as the Engineer may determine.

#### 8.10 RIGHT OF OWNER TO DO WORK:

If the Contractor should default or neglect to prosecute the Work properly or fail to perform any provision of the contract, the Owner after 3 days' Written Notice to the Contractor, may, without prejudice to any other remedy it may have, commence and continue to carry out the Work, including without limitation the correction of any deficiencies. The Owner may deduct the cost thereof from the payment then or thereafter due the Contractor, including the Owner's expenses, attorney fees, and compensation for the Engineer's additional services made necessary by the default, neglect, or failure. If current and future payments are not sufficient to cover these amounts, the Contractor shall pay the difference to the Owner.

The Owner's right to commence and carry out the Work in this Section 8.10 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

#### 8.11 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:

If the Work should be stopped under an order of any court, or other public authority, for a period of three consecutive months, through no act or fault of the Contractor or of anyone employed by the Contractor, or if the Engineer should fail to issue any certificate for payment within ten days after it is due, or if the Owner should fail to pay to the Contractor within 30 days of its presentation, any sum certified by the Engineer and approved by the Owner, then the Contractor may, upon 7 days' Written Notice to the Owner and the Engineer, stop Work or terminate this Contract and recover from the Owner payment for all Work executed.

### 8.12 LEGAL ACTIONS CONCERNING THE WORK:

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method set forth below and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

Claims by the Contractor (including but not limited to claims for an increase in the Contract Time or the Contract Price), where the condition giving rise to the claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 3.5, shall be initiated by notice to the Owner and the Engineer. Additionally, claims by the Contractor shall be initiated within 21 days after occurrence of the event giving rise to such claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. The Contractor must identify known bases for each claim and the nature and amount of relief sought. Failure to provide timely notice in accordance with this Section constitutes waiver of the Claim.

Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 3.5, shall be initiated by notice to the other party.

Any dispute under this Contract or related to this Contract will be governed by Oregon law, and any litigation arising out of this Contract will be conducted in Tillamook County Circuit Court. If a claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

### 8.13 CERTIFICATE OF COMPLIANCE:

After completion of all items of Work specified in the contract, and completion of the final inspection as set forth in Section 5.16, the Contractor shall submit to the Owner a Certificate of Compliance in form substantially as follows: "I (we) hereby certify that:

1. All Work has been performed and materials supplied in accordance with the Plans, Specifications, and Contract Documents for the above Work;
2. There have been no unauthorized substitutions of Subcontractors; nor have any subcontracts been entered into without the names of the Subcontractors having been submitted to the Owner prior to the start of such subcontracted Work;
3. No subcontract was assigned or transferred or performed by any Subcontractor other than the original Subcontractor, without prior notice having been submitted to the Owner together with the names of all Subcontractors;
4. All Subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) were registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.026 to 701.035 before the Subcontractors commenced Work under the contract;
5. All claims for material and labor and other service performed in connection with these Specifications have been paid;
6. All monies due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Tax Commission (in accordance with ORS 305.385 and ORS 279C.530), hospital associations and/or others have been paid."

#### 8.14 COMPLETION AND ACCEPTANCE:

After completion of all items of Work specified in the contract, and completion of the final inspection as set forth in Section 5.16, and acceptance of all public portions of utility construction by the respective public utility regulatory agency, and completion of the Certificate of Compliance as set forth in Section 8.13, the Engineer will recommend to the Owner that the Work be accepted and payment made as provided for in Section 9.11.

It is mutually agreed between the parties to the Contract that a certificate of completion of the project, submitted by the Engineer or other agent of the Owner and approved by the governing body of the Owner, shall constitute final acceptance of the Work and materials included in the Contract on the date of such approval. It is provided further that such approval shall not constitute an acceptance of any authorized Work, that no payment made under the Contract except the final payment shall be evidence of the performance of the contract, either wholly or in part, and that no payment shall constitute an acceptance of unauthorized or defective Work or improper material.

The acceptance of the Contract Work shall not prevent the Owner from making claim against the Contractor for any defective Work.

### **GC-9 MEASUREMENT AND PAYMENT**

#### 9.1 MEASUREMENT OF QUANTITIES:

All Work completed under the Contract shall be measured by the Engineer according to United States standard measure. The methods of measurement and computation to be used in the determination of the quantities of materials furnished and the quantities of Work performed under the Contract shall be the methods outlined in these Specifications or by those methods generally recognized as good engineering practice, which, in the opinion of the Engineer, give the greatest accuracy consistent with practicable application.

#### 9.2 SCOPE OF PAYMENT:

The Contractor shall accept the compensation as herein provided, in full payment for furnishing all materials, labor, tools and equipment, and for performing all Work under the contract, also for all loss, damage, or liability arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered delaying the prosecution of the Work until its final acceptance by the Owner.

#### 9.3 ALTERATION IN DETAILS OF CONSTRUCTION:

The Owner reserves the right to make, at any time during the progress of the Work, such increases or decreases in quantities and such alterations in the details of construction as may be found to be necessary or desirable.

Such increases and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to accept the Work as altered, the same as if it had been a part of the original Contract.

Unless such alterations and increases or decreases materially change the character of the Work to be performed or the cost thereof, the altered Work shall be paid for at the same unit prices as other parts of the Work. If, however, the character of the Work or the unit costs thereof are materially changed, an allowance shall be made on such basis as may have been agreed to in advance of the performance of the work, or in case no such basis has been previously agreed upon, then an allowance shall be made, either for or against the Contractor, in such amount as the Engineer may determine to be fair and equitable.

## 9.4 QUANTITIES AND LUMP SUM PRICES:

9.4.01 Lump Sum – The Contractor shall include in the Contract Price all allowances named in the Contract Documents for items (or for the entire Work) which are to be paid for under a lump sum price(s) and shall cause the Work so covered to be done for such sums. Should the Engineer direct that additional Work be required or Work deleted under a lump sum price(s) item, the Contract Price will be adjusted therewith by negotiation or by deletion or addition of other Work of equivalent value at the option of the Owner. The Contractor declares that the lump sum price(s) includes such sums for all expenses and profit as the Contractor deems proper. No demand for expense or profit other than those included in the lump sum price(s) will be allowed.

## 9.5 PAYMENT FOR FORCE ACCOUNT (EXTRA) WORK:

When Extra Work is ordered by the Engineer to be done on a force account basis (either by the Contractor or an approved Subcontractor), such Work will be paid for on the basis of the actual cost to the Contractor or Subcontractor for labor cost, material cost and equipment cost plus an allowance of 15% thereof. This allowance is to cover the costs of administration, general superintendence, other overhead, bonds, anticipated profit, and the use of small tools and equipment for which no rental is allowed. Where said Work is performed by an approved Subcontractor, an additional 5% will be allowed the Contractor for administration and supervision of the Subcontractor's Work.

The items of cost to which the above percentage will be added and to which reimbursement will be made are as follows:

9.5.01 Labor – The wages of supervisors, equipment operators, and skilled, semiskilled and common laborers assigned to the specific operation will be reimbursed at Contract or actual payroll rate of wages per hour and actual fringe benefits paid, for each hour that the employees are actually engaged in the performance of the force account Work. Reimbursement for hourly wage rates and benefits shall not exceed prevailing wage rates and benefits for the class or classes of Work performed under force account.

In addition to wages and fringe benefits, reimbursement will be allowed for indirect labor costs as follows:

- a) Social Security Tax and Unemployment Tax at the percentage legally required;
- b) Industrial Accident or Worker's Compensation Insurance at the policy percentage rate; and
- c) Contractor's Public Liability Insurance and Contractor's Property Damage Liability Insurance at the policy percentage rate.

9.5.02 Materials – Purchased materials and supplies used on force account Work will be reimbursed at the prices billed to the Contractor or Subcontractor by the supplier, less all discounts. It will be assumed that the Contractor or the Contractor's Subcontractor has taken advantage of all possible discounts on bills for materials and supplies, and such discounts will be subtracted from the total amounts of bills regardless of any failure of the Contractor to take advantage of same. Freight and express on material and supplies will be considered to be a part of the cost and will be reimbursed as materials and supplies.

9.5.03 Equipment – Equipment, either owned or rented by the Contractor, that is mutually considered necessary, will be reimbursed at equipment rental rates. The hourly rental rate will be determined using the monthly rental rates taken from the current edition of the *Rental Rate Blue Book for Construction Equipment* and dividing by 176. The daily rental rate for equipment used on a 24-hour basis will be determined by dividing the monthly rate by 22. To the above rates, add the predominant area adjustment percentage for the state as shown on the area adjustment map in the *Rental Rate Blue Book*. In the case of equipment not listed in the *Rental Rate Blue Book*, a monthly rate will be computed on the basis of 6% of the manufacturer's list price for sale of new equipment. The hourly rate in this case will be determined by dividing the monthly rate by 176. For equipment used on a 24-hour basis and having no rate listed in the *Rental Rate Blue Book*, the daily rate will be 6% of the manufacturer's list price for the sale of new equipment, divided by 22.

The rental rates reimbursed for equipment will in all cases be understood to cover all fuel, supplies, maintenance, repairs and renewals, and no further allowances will be made for those items unless specific agreement to that effect is made in writing before the Work is commenced. Individual pieces of equipment having a value of \$100.00 dollars or less will be considered to be tools or small equipment, and no rental will be reimbursed on such.

The percentage allowances made to the Contractor in accordance with the terms outlined above will be understood to be reimbursement and compensation for all superintendence, use of tools and small equipment, overhead expenses, bond cost, insurance premiums, profits, indirect costs and losses of all kinds, and all other items of cost not specifically designated herein as items involved are furnished or incurred by the Contractor or by the Subcontractor. No other reimbursement, compensation or payment will be made for any such services, costs or other items.

Should any percentage allowance or other corresponding allowance be made by the Contractor to a Subcontractor (other than specified herein), in connection with force account Work, such allowance shall be at the sole expense of the Contractor and the Contractor will not be reimbursed or otherwise compensated for the same by the Owner.

#### 9.6 FORCE ACCOUNT BILLS:

The Contractor and the Engineer will review the record of Extra Work quantities done on a force account basis at the end of each day.

Bills for force account Work shall show in payroll form the dates, names, hours worked each day, rates of pay, and amounts paid to each individual employed on such Work, and shall give in detail the nature of the Work done by each. Bills for materials shall be fully itemized, showing dates of delivery, quantities, unit prices, amounts, and discounts, and shall be accompanied by receipted invoices covering every item.

All bills, payrolls, and other forms of claims for payment on force account Work shall be submitted in triplicate, shall state the number of force account Work or Change Order applicable and the name or number of the Contract under which the Work was performed, and must be approved by the Engineer. Failure to present claims in proper form within 30 days after the close of the month in which the Work covered was performed shall constitute a waiver on the part of the Contractor of the Contractor's right to present such claim thereafter or to receive payment therefore.

#### 9.7 ELIMINATED ITEMS:

The Owner shall have the right to cancel the portions of the Contract relating to the construction of any item therein by payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation or suspension of the Work by order of the Engineer. Where practical, the Work completed before cancellation shall be paid for at unit prices, otherwise the Contractor shall be allowed a profit percentage as provided under Section 9.5, but no allowance will be made for anticipated profits. Acceptable materials ordered by the Contractor or delivered on the Work

prior to the date of cancellation or suspension of the Work by order of the Owner shall be purchased from the Contractor by the Owner at actual cost and thereupon becomes the property of the Owner.

#### 9.8 PROGRESS PAYMENTS:

As set forth in Article V of the Agreement, the Engineer shall make an estimate of the amount of Work completed and of the value of such completed Work. The Contractor shall also make an estimate of the amount and value of acceptable material to be incorporated in the completed Work which has been delivered and properly stored at or near the site or at a location acceptable to the Engineer. With these estimates as a base, a progress payment shall be made to the Contractor, which progress payment shall be equal to the value of completed Work as computed from the Engineer's estimate, plus the value of accepted materials which are in condition or state of fabrication ready to be incorporated in the completed structure and which are held in storage on or near the Work, the value of such materials computed in accordance with Section 9.9 of these Specifications, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the Owner for any cause, and less an amount to be retained in protection of the Owner's interests.

The Engineer may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment certificate to such extent as may be deemed necessary to protect the Owner from loss on account of:

- a. Defective Work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- d. A reasonable doubt in the opinion of the Engineer that the Contract can be completed for the balance then unpaid.
- e. Damage to another Contractor.
- f. Reasonable indication that the Work will not be completed within Contract Time.
- g. Unsatisfactory prosecution of the Work by the Contractor.

Should the amount due the Contractor under the estimate for any given month be less than \$500.00 dollars, at the option of the Engineer, no payment shall be made for that month.

Progress payments shall not be construed as an acceptance or approval of any part of the Work covered thereby, and they shall in no manner relieve the Contractor of responsibility for defective workmanship or material.

The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown therein are subject to correction in the final estimate. If the Contractor uses such estimates as a basis for making payment to Subcontractors, the Contractor does so at the Contractor's own risk, and the Contractor shall bear all loss that may result.

The making of progress payments under the Contract, either before or after the date set for completion of the Work, shall not operate to invalidate any of the provisions of the Contract or to release the Surety.

At the time payment is made for any materials which have been stored at or near the site, the Ownership of such materials shall be vested in the Owner, and they shall remain in storage until used on the Work. Such materials shall not be used on other Work.

#### 9.9 ADVANCES ON MATERIALS:

For materials delivered and held in storage upon the Work (or near the site of the Work if approved by the Engineer), allowances will be made in the progress payments to the Contractor. These allowances shall be in amounts not exceeding 90% of the net cost to the Contractor of the material f.o.b. the Work, and from such allowances there shall be retained the percentage regularly provided for in connection with progress payments. In cases where there is a Bid price on a given material in place the allowance shall be further limited not to exceed 90% of the difference between the Bid price and the cost of placing as estimated by the Engineer.

At the option of the Engineer, no allowance for materials shall be made on any progress estimate unless the total allowable value for all materials on hand is at least \$1,000.00 and no allowance shall be made upon any single class of material the value of which is not at least \$500.00. The inventory of materials for which advances are requested shall be kept to a reasonable size as approved by the Engineer. No allowance shall be made upon fuels, supplies, form lumber, falsework, or other materials, or on temporary structures of any kind, which will not become an integral part of the finished construction. As a basis for determining the amount of advances on material, the Contractor shall make available to the Engineer such invoices, freight bills, and other information concerning the materials in question, as the Engineer may request. Should there be reasonable evidence, in the opinion of the Engineer, that the Contractor is not making prompt payments for material on hand, allowances for material on hand will be omitted from progress payment.

#### 9.10 ALLOWANCE FOR MATERIALS LEFT ON HAND:

Materials delivered to the Work site or acceptably stored at approved sites at the order of the Engineer but left unused due to changes in Plans or variations in quantities will, if the materials are not practically returned for credit, be purchased from the Contractor by the Owner at actual cost (without percentage allowance for profit) and shall thereupon become the property of the Owner.

#### 9.11 FINAL PAYMENT:

The Engineer will make a final estimate and recommend acceptance of the Work as of a certain date. Upon approval and acceptance by the Owner, the Contractor will be paid a total payment equal to the amount due under the Contract including all retainage as set forth in Article V of the Agreement.

Prior to final payment, the Contractor shall deliver to the Owner, a receipt for all amounts paid or payable to the Contractor and a release and waiver of all claims against the Owner arising from or connected with the Contract and shall furnish satisfactory evidence that all amounts due for labor, materials and all other obligations have been fully and finally settled, or are fully covered by insurance.

#### 9.12 SUSPENSION OF PAYMENTS:

No partial or final payment shall be made as long as any order made by the Engineer to the Contractor in accordance with the Specifications remains uncomplished with. Neither shall any progress or final payment be made as long as any claim or lien filed or prosecuted against the Owner, the Owner's officers or employees contrary to the provisions of the Contract remains unsatisfied.

#### 9.13 PAYMENTS:

Payments under the Contract shall be paid in cash by the Owner unless otherwise provided by the Special Provisions of these Specifications.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first written above.

**CITY OF MANZANITA**

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

Name: \_\_\_\_\_

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

ATTEST: \_\_\_\_\_

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

**CONTRACTOR:**

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

ATTEST: \_\_\_\_\_

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