

# Council Business Meeting

June 4, 2019

<b>Agenda Item</b>	Approval of a Construction Contract with LTM, Incorporated dba Knife River Materials for the Hersey Street Reconstruction (PW 2017-09) and the Laurel and Hersey Street Railroad Crossing Improvements (PW 2011-36); and Placing a Street Cut Moratorium	
<b>From</b>	Paula C. Brown, PE Karl Johnson, EIT	Public Works Director Project Manager
<b>Contact</b>	<a href="mailto:paula.brown@ashland.or.us">paula.brown@ashland.or.us</a> <a href="mailto:karl.johnson@ashland.or.us">karl.johnson@ashland.or.us</a>	541.552.2411 541.552.2415

## **SUMMARY**

Before Council, acting as the Local Contract Review Board, is approval of a construction contract with LTM, Incorporated, doing business as Knife River Materials, for the combined project including both the Hersey Street reconstruction and the railroad crossing improvements at Laurel Street and Hersey Street for a total contract amount not to exceed \$3,041,300 and to enact a five-year street cut moratorium to the affected street section.

## **POLICIES, PLANS & GOALS SUPPORTED**

City Council Goals (supported by this project):

- Goal 1: Develop current and long-term budgetary resilience -- Evaluate revenue streams
- Goal 2: Analyze City departments/programs to gain efficiencies, reduce costs and improve services
  - Evaluate and communicate street program timelines and funding security
- Goal 3: Enhance and improve transparency and communication
  - Develop a robust program to engage with Ashland citizens about City priorities and our progress on those priorities...

Maintain *Essential Services*

Continue to leverage resources to develop and/or enhance *Value Services*

Multi-modal Transportation

All-Age Friendly Community

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

## **PREVIOUS COUNCIL ACTION**

Council approved the Capital Improvements Program (CIP) on [April 2, 2019](#). The CIP includes the construction of both the Hersey Street Reconstruction and the Railroad Crossing Improvements at Laurel and Hersey in the 2019-21 biennium.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The City of Ashland released the Invitation to Bid (ITB) documents resulting in a public improvement contract with the City of Ashland for supplying all labor, equipment, and materials necessary to construct the Hersey Street Reconstruction Project No. 2017-09, and the Laurel and Hersey Street Railroad Crossing,

Project No 2011-36. Both projects include, but are not limited to, the following major work items: earthwork and drainage, full depth reclamation, asphalt concrete paving, miscellaneous concrete structures, and electrical. The ITB was posted on the Oregon Procurement Information Network (ORPIN) on April 16, 2019, and documents were also on file at the City in the Community Development Building at 51 Winburn Way. Bids were received and opened on May 14, 2019. Two bids received, from Knife River Materials and Pilot Rock Excavation, both deemed responsive. Knife River Materials provided the lowest bid.

As this is a full rebuild of the street and as all utilities have been informed of the proposed work and had the ability to complete underground utility work prior to the project award, staff is requesting that Council add to their approval a proposed street cut moratorium. Once the construction project is fully complete and accepted by the City, a five-year moratorium would be placed on any asphalt cuts within the improved area of Hersey Street. Should an emergent requirement arise during this five-year period that required a utility, business or homeowner to make a cut into this new asphalt, the City, in addition to all requirements set forth in the Ashland Municipal Code section 13.12, would also require a full half street overlay of the affected area to maintain the integrity of the investment the City has made to Hersey Street.

### **FISCAL IMPACTS**

The 2017-19 Street Division Biennium Budget (BN) includes funds for contracted services (capital improvement program) in the amount of \$4,400,000 for this project. Funds in the amount of \$450,000 are included in the 2019-21 BN revenues for this project come directly from the re-apportionment of food and beverage tax monies into the street fund and approximately \$274,000 will be allocated from previously collected systems development charges. This project coincides with the construction engineering services personal services contract with OBEC Engineering, Inc., for the Hersey Street Reconstruction and Laurel and Hersey Railroad Crossing Improvements. The construction estimates for the Hersey Street Reconstruction was \$3,007,756 and \$395,717 for the railroad crossing improvements. The bid amount is \$362,173 below the engineer's estimate and well within the budgeted amount.

### **STAFF RECOMMENDATION**

Staff recommends approval of a construction contract with Knife River Materials for the Hersey Street Reconstruction and Laurel and Hersey Railroad Crossing Improvements for a contract amount not to exceed \$3,041,300. Staff further recommends Council enact a five-year street cut moratorium to this section of Hersey Street.

### **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

Council, acting as the Local Contract Review Board, has the option to approve this contract or refer action back to staff to rebid the project or request that the project not be constructed. Potential motions include:

1. I move to approve the construction contract with LTM, Incorporated dba Knife River Materials for the Hersey Street Reconstruction and Laurel and Hersey Railroad Crossing Improvements for a contract amount not to exceed \$3,041,300; and further move to enact a five-year street cut moratorium to the affected street section.
2. I move to direct staff develop a new solicitation and construction bid for this project.
3. I move that the street cut moratorium not be included in the approval of the construction contract.
4. I move that Council remove this priority project from the current Capital Improvements Project list and not make the improvements to Hersey Street or the railroad crossing at Laurel and Hersey Streets.

### **REFERENCES & ATTACHMENTS**

Attachment 1: Public Improvement Contract between the City and LTM, Incorporated dba Knife River Materials

[April 2, 2019 Council Packet Materials](#)



## **PUBLIC IMPROVEMENT CONTRACT**

### **FOR**

## **HERSEY STREET RECONSTRUCTION AND LAUREL & HERSEY RAILROAD CROSSING**

### **PROJECT NO. 2017-09 & 2011-36**

This Public Improvement Contract (hereinafter "Contract") is entered into by and between the CITY OF ASHLAND, an Oregon municipal corporation (hereinafter "City"), and LTM, Incorporated dba Knife River Materials (hereinafter "Contractor").

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties mutually covenant and agree as follows:

#### **1. PROJECT MANAGER:**

The City's Project Manager for this Contract is:

*Karl Johnson, Associate Engineer, City of Ashland Public Works Engineering Department.*

#### **2. WORK:**

**2.1.** The Work under this Contract is for the HERSEY STREET RECONSTRUCTION AND LAUREL & HERSEY RAILROAD CROSSING Project No. 2017-09 & 2011-36 as more fully described in the Contract Documents listed in Section 5 of EXHIBIT A, STANDARD TERMS AND CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS. Contractor shall complete all Work as specified in the Contract Documents. The Work is generally described as follows: The installation of approximately 800 linear feet of 8-inch ductile iron waterline and approximately 75 linear feet of 6-inch ductile iron waterline along with related fittings and appurtenances. The Statement of Work, including the delivery schedule for the Work, is contained in the Contract Documents.

**2.2.** **Contractor** shall, at its own risk and expense, perform the Work described in the Contract Documents and furnish all permits, labor, tools, machinery, materials, transportation, equipment and services of all kinds required for, necessary for, or reasonable incidental to, performance of the Work, that is, the construction of the HERSEY STREET RECONSTRUCTION AND LAUREL & HERSEY RAILROAD CROSSING No. 2017-09 &

2011-36. Contractor shall secure all municipal, County, State, or Federal Permits or licenses including payment of permit fees, license fees, and royalties necessary for or incidental to the performance of the Work. The risk of loss for such Work shall not shift to the City until written acceptance of the Work by the City.

### **3. EFFECTIVE DATE AND DURATION:**

This Contract is effective as of the date of execution by the City (the "Effective Date"). All Work under this Contract shall, unless otherwise terminated or extended, be completed on or before 60 calendar days following Contractor's receipt of the written Notice to Proceed.

### **4. CONSIDERATION**

- 4.1.** City agrees to pay Contractor, at the times and in the manner provided in the Contract Documents, the sum of \$3,041,300.00 (three million forty one thousand three hundred dollars and zero cents) for performing the Work required by this Contract, including allowable expenses. This sum cannot be modified except by Change Order approved in writing by the City. Any progress payments to Contractor shall be made only in accordance with the schedule and the requirements as set forth in the Standard Terms and Conditions.
- 4.2.** City certifies that sufficient funds have been appropriated to make payments required by this Contract during the current fiscal year. Contractor understands and agrees that City's payment of amounts under this Contract attributable to Work performed after the last day of the current fiscal year is contingent upon City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable discretion, to continue to make payments under this Contract. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Contract without penalty or liability to City, effective upon the delivery of written notice to Contractor, with no further liability to Contractor.

### **5. CONTRACTOR'S REPRESENTATIONS**

In order to induce City to enter into this Contract, Contractor makes the following representations:

- 5.1.** Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- 5.2.** Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- 5.3.** Contractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Work.
- 5.4.** Contractor has carefully studied all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- 5.5. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- 5.6. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- 5.7. Contractor is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.
- 5.8. Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.
- 5.9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **6. Governing Law**

The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Jackson County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon. Contractor, by the signature herein of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts. In no event shall this section be construed as a waiver of the City of any form of defense or immunity.

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**CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE**

Business Name (please print): LTM, Incorporated dba Knife River Materials

Contact Name: Phillip Graff Phone: 541-770-2960 Fax: 541-664-4567

Address PO Box 1145 Medford, OR 97501

*Do Not Write Federal and State Tax ID Numbers on this Agreement: One copy of W-9 is to be submitted with the signed contract to be kept on file in the City of Ashland Finance Department.*

Ashland Business License # \_\_\_\_\_ Construction Contractors Board # 56603

Citizenship: Nonresident alien \_\_\_\_\_ Yes  No

Business Designation (check one): \_\_\_\_\_ Individual \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_  
Partnership  Corporation \_\_\_\_\_ Government/Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions For Public Improvement Contracts (**Exhibit A**) together with **Exhibits B through J** together with all other Contract Documents as described in Standard Terms and Conditions Section 5 below, and the separately bound Oregon 2018 Standard Specifications for Construction, as amended by the City of Ashland’s most recent Addenda to the 2018 Standard Specifications are an integral part of this contract and agree to perform the work described in the Contract Documents, including **Exhibit A**, in accordance with the terms and conditions of this contract. I further understand the City is prohibited from entering into a contract when the contractor has neglected or refused to file any return, pay any tax, or properly contest a tax, pursuant to ORS 305.385; I hereby certify, under penalty of perjury and false swearing, that I/my business am/is not in violation of any Oregon tax laws; I further certify that the certification and representations in Standard Term and Condition # 16 [CCB Registration Requirements] are true and correct, and further I certify that I am an independent contractor as defined in ORS 670.600.

**CONTRACTOR:**

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Date

*NOTICE TO CONTRACTOR: This contract does not bind the City of Ashland unless and until it has been executed by the Public Contracting Officer or designee.*

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**CITY OF ASHLAND SIGNATURE**

**CITY:**

\_\_\_\_\_  
City Administrator, City of Ashland

\_\_\_\_\_  
Date

**ATTACHMENTS:**      Certificate of Representation  
                                 Standard Terms & Conditions  
                                 Bid Schedule  
                                 Insurance Requirements

**CERTIFICATE OF REPRESENTATION**

Contractor, under penalty of perjury, certifies that:

- (a) The number shown on this form is its correct taxpayer ID (or is waiting for the number to be issued to it; and
- (b) Contractor is not subject to backup withholding because
  - (i) it is exempt from backup withholding or
  - (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or
  - (iii) the IRS has notified it that it is no longer subject to backup withholding. Contractor further represents and warrants to City that
    - (a) it has the power and authority to enter into and perform the work,
    - (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, and
- (c) The work under the Contract shall be performed in accordance with the highest professional standards, and
- (d) Contractor is qualified, professionally competent and duly licensed to perform the work. Contractor also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, and it is a corporation authorized to act on behalf of the entity designated above and authorized to do business in Oregon or is an independent contractor as defined in the contract documents, and has checked four or more of the following criteria:
  - \_\_\_\_\_ (1) I carry out the labor or services at a location separate from my residence or is in a specific portion of my residence, set aside as the location of the business.
  - \_\_\_\_\_ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
  - \_\_\_\_\_ (3) Telephone listing is used for the business separate from the personal residence listing.
  - \_\_\_\_\_ (4) Labor or services are performed only pursuant to written contracts.
  - \_\_\_\_\_ (5) Labor or services are performed for two or more different persons within a period of one year.
  - \_\_\_\_\_ (6) I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date



# STANDARD TERMS AND CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS (EXHIBIT A)

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## 1. Contractor is Independent Contractor

- a. Contractor shall perform the work required by this Contract as an independent contractor.
- b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as **Exhibit D**.
- c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.
- d. Contractor is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Contractor under this contract.

## 2. Subcontracts and Assignment

Contractor shall not subcontract any of the work required by this contract, or assign, sell, dispose of, or transfer any of its interest in this contract, nor delegate duties under the contract, either in whole or in part, without the prior written consent of the City. Such consent if provided shall not relieve the Contractor of any of the obligations under the contract. Any assignee or transferee shall be considered the agent of the contractor and be bound to abide by all provisions of the contract. If the City consents in writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its Surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in writing. [OAR 137-049-0200(2)]

Use of Subcontractors, material suppliers or equipment suppliers shall in no way release Contractor from any obligations of contract with City. Contractor will provide in all subcontract agreements that the Subcontractor, material supplier and equipment supplier will be bound by the terms and conditions of this Contract to the extent that they relate to the Subcontractor's work, material or equipment. All Subcontracts are assignable to the City at City's option, in the event this agreement is terminated for default of Contractor.

Contractor covenants and agrees to bind any and all subcontractors for performance of work under this Contract in the same manner Contractor is bound to City. Contractor further agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.

## 3. No Third-Party Beneficiaries

City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

#### 4. **Successors in Interest**

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

#### 5. **Contract Documents**

The Contract Documents, which comprise the entire Contract between the City and Contractor, include all sections or parts of the bid package however denominated, including all documents and plans attached or referenced therein, the Notice to Contractors - Invitation to Bid, Offer, First-Tier Subcontractors Disclosure Form, Surety Bond, Public Improvement Contract, Contract Standard Terms and Conditions and Exhibits thereto, Performance Bond, Payment Bond, Special Provisions, Plans entitled “**HERSEY STREET RECONSTRUCTION AND LAUREL & HERSEY RAILROAD CROSSING No. 2017-09 & 2011-36**”, Construction Drawings, Standard Drawings, and Contract Addendums, all attached hereto, and incorporated herein by this reference, together with the *Prevailing Wage (BOLI) if applicable AND any other separately bound reference*, Oregon 2018 Standard Specifications for Construction, and City of Ashland Addenda, incorporated herein by this reference. All exhibits, schedules and lists attached to the Contract Documents, or delivered pursuant to the Contract Documents, shall be deemed a part of the Contract Documents and incorporated herein, where applicable, as if fully set forth herein.

#### 6. **Contractor’s Representations**

By executing this contract, the Contractor hereby certifies that the representations made by the Contractor in the Contract Documents, including specifically the Offer, are true and correct and are incorporated herein by this reference. Contractor further certifies that Contractor has given the City written notice of conflicts, errors, ambiguities, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by the City is acceptable to the Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing the project work.

#### 7. **Drug Testing [ORS 279C.505(2)]**

- a. Contractor shall certify to the City that it has a drug-testing program in place for all its employees that includes, at a minimum, the following:
  - i. A written employee drug-testing policy,
  - ii. Required drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
  - iii. Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.
- b. A drug-testing program that meets the above requirements will be deemed a “Qualifying Employee Drug-testing Program.” For the purposes of this section, an employee is a “Subject Employee” only if that employee will be working on the Public Improvement project job site.
- c. By executing and returning this contract the Contractor certifies, represents and warrants to the City that a Qualifying Employee Drug-testing Program is in place at the time of execution, will continue in full force and effect for the duration of this contract, and that Contractor will comply with the provisions of subsection (d) below. Further, the City’s performance obligation (which includes,

without limitation, the City's obligation to make payment) is contingent on Contractors compliance with this representation and warranty.

- d. Contractor will require each subcontractor providing labor for the project to:
  - i. Demonstrate to the Contractor that it has a Qualifying Employee Drug-testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
  - ii. Require that the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract.

## **8. Notice to Proceed**

Written Notice to Proceed will be given by the City after the Contract has been executed and the Performance Bond, Payment Bond, and all required insurance documents approved. Notice To Proceed shall not be unreasonably delayed and shall generally occur within thirty (30) days of the contract date. Reasonable delay may be occasioned by the need to obtain necessary permits or easements or utility relocation. The Contractor shall commence the project work within ten (10) days of the date of the written Notice To Proceed. Contractor is not to commence work under the Contract prior to such written notice.

## **9. Suspension of the Work**

The City, and its authorized representatives, may suspend portions or all of the project work due to causes including, but not limited to:

- a. Failure of the Contractor to correct unsafe conditions;
- b. Failure of the Contractor to carry out any provision of the Contract;
- c. Failure of the Contractor to carry out orders;
- d. Conditions, in the opinion of the City, which are unsuitable for performing the project work;
- e. Allowance of time required to investigate differing site conditions;
- f. Any reason considered to be in the public interest.

The contract time will not be extended, nor will the Contractor be entitled to any additional compensation if the work is suspended pursuant to subsections (a), (b) or (c). If the project work is suspended pursuant to subsection (f), the Contractor is entitled to a reasonable extension of the contract time and reasonable compensation for all verified costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. The foregoing provision concerning compensation in the event of a suspension of Work of this contract shall not apply if such suspension occurs as a result of the Contractor's violation of any Federal, State, or Local statutes, ordinances, rules or regulations, or as a result of any violation by the Contractor of the terms of this contract, including a determination by the City that the Contractor has not progressed satisfactorily with the Work in accordance with specifications.

## **10. Early Termination**

- a. The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.
- b. The City, on 30 days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.
- c. The City may terminate this contract, in whole or in part, at any time for any reason considered by the City, in the exercise of its sole discretion, to be in the public interest. The City will provide the Contractor, and the Contractor's surety, seven (7) days prior written notice of a termination for public convenience.
- d. Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

#### **11. Payment on Early Termination**

- a. If this contract is terminated under 10(a),(b), or (c), the City shall pay the Contractor for work performed in accordance with the Contract prior to the termination date.
- b. If this contract is terminated under 10(d), by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.
- c. If this contract is terminated under 10(d), by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 12, Remedies.

#### **12. Remedies**

In the event of termination under 10(d), by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess. After notice of termination under paragraph 10(c), the Contractor and the Contractor's surety shall provide the City with immediate and peaceful possession of the Project site and premises, and materials located on and off the Project site and premises for which the Contractor received progress payment. In no circumstances shall Contractor be entitled to lost profits due to termination.

The remedies provided to the City under section 10 through 12 for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

In the event of breach of this Contract by the City, then the Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 11(b).

#### **13. Access to Records**

Contractor shall maintain, and the City and its authorized representatives shall have access to all books, documents, papers and records of Contractor which relate to this contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

#### **14. Ownership of Work**

All work products of the Contractor that result from this contract, including but not limited to background data, documentation and staff work that is preliminary to final reports, are the property of City. Draft documents and preliminary work submitted to the City for review and comment shall not be considered as owned, used or retained by the City until the final document is submitted.

The City shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents and all other intellectual or other property rights in and to such work products. Pre-existing trade secrets of the Contractor shall be noted as such and shall not be considered as a work product of this contract. All such work products shall be considered “works made for hire” under the provisions of the United States Copyright Act and all other equivalent laws.

Use of any work product of the Contractor by the City for any purpose other than the use intended by this contract is at the risk of the City. Use of any work product by Contractor is prohibited without the written consent of the City. All documents or other materials submitted to City by Contractor shall become the sole and exclusive property of City. Such materials are subject to Oregon Public Records laws.

#### **15. Compliance with Applicable Law**

Contractor certifies and shall comply and require all Subcontractors to comply with all federal, state, and local laws and ordinances, including specifically City of Ashland and State of Oregon Public contracting laws and rules applicable to the work under this Contract, including without limitation ORS Chapter 279A, ORS Chapter 279B, ORS Chapter 279C, ORS 279C.500 through 279C.670, and specifically ORS 279A.120(3), ORS 279C.515, ORS 279C.520, ORS 279C.530, ORS 279C.830 and ORS 279C.580 as set forth on **Exhibit B, attached hereto and made a part hereof by this reference** In addition, the provisions of ORS 279C.360, ORS 279C.365(4), and ORS 279C.370 (Bid Documents and Disclosure); ORS 279A.010(p), 279A.120, 279C.375, and 279C.380(4), (Award of Contract and Bond); ORS 279A.110 (Prohibition on Discrimination in Subcontracting); ORS 279C.585 (Substitution first-tier Subcontractor); ORS 279C.650 to 279C.670 (Termination); ORS 279C.520, ORS 279C.540, 279C.545 (Hours); ORS 279C.800 to 279C.870 (Oregon Prevailing Wage Law), if applicable; ORS 279C.550 to 279C.565 (Retainage); ORS 279C.4570 (Payments); and ORS 279C.600 to 279C.625 (Bonds) ORS 279A.125 (Recyclable Products) are all incorporated into this contract by this reference as though set forth in full. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) any requirements of the DAVIS BACON ACT (40 U.S.C. 3142 and applicable Davis- Bacon Related Acts; (ii) Title VI of the Civil Rights Act of 1964; (iii) Section V of the Rehabilitation Act of 1973; (iv) the Americans with Disabilities Act of 1990, (v) ORS 659A.142, (vi) all regulations and administrative rules established pursuant to those laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. In addition, Contractor expressly agrees to comply with all federal and state tax laws. A condition or clause required by law to be in this contract shall be considered included and incorporated into the Contract and made a part hereof by these references.

#### **16. Registration with Construction Contractor’s Board**

The Contractor, hereby certifies that the Contractor is licensed with the Construction Contractors Board or licensed by the State Landscape Contractor’s Board in accordance with ORS 701.035 to 701.055 and, further, that all subcontractors performing work as described in ORS 701.005(2) (i.e., construction work) will be licensed with the Construction Contractors Board or licensed by the State Landscape Contractor’s

Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

**17. Prevailing Wages/ BOLI Fee**

- a. Contractor shall certify in the Contract and it shall be a condition of the bond, as provided in ORS 279C.800 through 279C.870, that in performing this Contract, Contractor will pay and cause to be paid not less than the prevailing rate of wages as of the date of the Public Notice, per hour, per day, and per week for and to each and every worker who may be employed in and about the performance of the Contract. In accordance with ORS 279C.838, each worker in each trade or occupation employed in the performance of the Contract either by Contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the Contract shall be paid not less than the applicable state or federal prevailing rate of wage, whichever is higher. Copies of the current BOLI prevailing wage schedule and federal wage rate schedule, if applicable, can be found at the following website: [https://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](https://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx). When both federal and state prevailing wages are required to be included in the contract specifications, the City shall also include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815 (2)(c).
- b. Contractor shall be bound by and shall fully comply with ORS 279C.800 to 279C.870, Oregon's Prevailing Wage Law. CONTRACTOR AGREES TO BE BOUND BY AND WILL COMPLY WITH PROVISIONS OF ORS 279C.840. Pursuant to ORS 279C.830(1), the existing prevailing rate of wage that may be paid to workers in each trade or occupation required, in the form of a BOLI document, is included in the contract and bid documents and made a part hereof by this reference. For public works for which the contract price is \$50,000 or more, all workers shall be paid not less than such specified minimum hourly rate of wage. [ORS 279C.830(1)]
- c. The City of Ashland shall pay the fee to the Commissioner of the Bureau of Labor and Industries pursuant to the administrative rule of the commissioner and as provided in ORS 279C.825(1). The fee shall be paid on or before the first progress payment or 60 days from the date work first begins on the Contract, or as otherwise provided by administrative rule, whichever is the earliest date. The fee is payable to the Bureau of Labor and Industries Wage and Hour Division Prevailing Wage Unit 800 N.E. Oregon Street #32 Portland Oregon 97232.
- d. Contractor and some subcontractors shall also file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000 as required by ORS 279C.836 and shall cause all subcontractors to do the same prior to starting work on the project. [ORS 279C.830(2)] The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under this section, unless the surety sooner cancels the bond. Contractor shall verify that subcontractors have complied with this requirement prior to permitting the subcontractor to start work on the project.
- e. If the Contract is for a public work and the Contract price is \$50,000 or more, Contractor shall supply and file, and require every Subcontractor to supply and file, with the City and with the Wage and Hour Division, Bureau of Labor and Industries (BOLI), 800 NE Oregon #32, Portland, Oregon 97232 a certified statement in writing that conforms to the requirements of ORS 279C.845.

**18. Hours of Labor /Overtime limitation [ORS 279C.520] [ORS 279C.540] [ORS 279C.545]**

Pursuant to ORS 279C.520, no person may be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services, the employee shall be paid at least time and a half pay:

- (a)
  - (1) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - (2) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- (b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- (c) Collective bargaining and negotiated labor agreements may provide exceptions to the requirements of this section and from ORS 279C.520 and ORS 279C.540.
- (d) When labor is employed by the City through another as a contractor, any worker employed by the contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the contractor within 90 days from the completion of the contract, providing the contractor has:
  - (1) Caused a circular clearly printed in boldfaced 12-point type font 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 that is readily available and freely visible to workers employed on the work.
  - (2) Maintained the circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.
- (e) At or before the commencement of work, the Contractor shall give notice in writing to employees or by posting, of the number of hours and days per week the employees may be required to work. [279C.520(2)(5)]

**19. Medical Care and Workers Compensation [ORS 279C.530]**

- (1) Pursuant to ORS 279C.530(1), Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (2) Pursuant to ORS 279C.530(2), All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers Compensation coverage unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

**20. Retainage**

The withholding of retainage by a contractor or subcontractor on public improvement contracts shall be in accordance with ORS 701.420. [ORS 279C.555] "Retainage" means the difference between the amount earned by a contractor on a public improvement contract and the amount paid on the contract by the City. [ORS 279C.550] Moneys retained by a contracting agency under ORS 279C.570(7) shall either

be: (a) retained in a fund by the City and paid to the contractor in accordance with ORS 279C.570; or  
(b) At the election of the contractor, paid to the contractor in accordance with the two options below:

- The contractor may deposit bonds, securities, or other instruments with the City or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the contracting agency. In such event the City shall reduce the retainage in an amount equal to the value of the bonds, securities or instruments. and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Interest on the bonds or securities shall accrue to the contractor. {or}
- If the contractor elects, the City shall deposit the retainage, as accumulated, in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the City. Earnings on the account shall accrue to the contractor.

If the contracting agency incurs additional costs as a result of the exercise of the options in ORS 279C.560(1) or (5), the City may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the contracting agency shall, upon demand, inform the contractor of all accrued costs. Bonds and securities deposited or acquired in lieu of retainage, as permitted above, shall be of a character approved by the City Attorney and City Finance Director, including but not limited to:

- a. Bills, certificates, notes or bonds of the United States.
- b. Other obligations of the United States or its agencies.
- c. Obligations of any corporation wholly owned by the federal government.
- d. Indebtedness of the Federal National Mortgage Association.
- e. General obligation Bond of the State of Oregon or a political subdivision thereof.

Unless the City finds that accepting a bond or instrument poses an extraordinary risk that is not typically associated with such bond or instrument, the contractor may deposit a surety bond for all or any portion of the amount of funds retained, or to be retained, by the City in a form acceptable to the City. The bond and any proceeds there from shall be made subject to all claims and liens and in the same manner and priority as set forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The City shall reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Whenever a City accepts a surety bond from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor or supplier from which the contractor has retainage. The contractor shall then reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier. [279C.560]

## **21. Progress Payments**

- a. Payment for all work under the Contract will be made promptly by the City at the price or prices bid, and those prices shall include full compensation for all approved incidental work.
- b. Contractor shall make progress estimates of work performed in any calendar month and submit to the City for approval, before the fifth of the following month, or as mutually agreed between the Contractor and City. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed. The City may include in payments eighty five percent (85%) of the cost to Contractor



of materials or equipment not yet incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing. Such a payment shall be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to the City Attorney to establish the City's title to such materials or equipment or otherwise protect the City's interest including applicable insurance and transportation to the site, and a statement from Contractor explaining why it is necessary to procure said equipment and/or materials. When such payments are made, the Contractor warrants and guarantees that the title to all materials and equipment covered by a progress payment, whether incorporated in the project or not, will pass to the City upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances. Notwithstanding the above, when the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1,000), no progress payment will be made for that estimate period, unless approved by the City.

- c. If the Contract price is determined, in whole or in part, on a Lump Sum basis, Contractor shall prepare an itemized cost breakdown relating thereto and have the City approve same before commencing work; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the City, Contractor shall provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.
- d. If the Contract price is determined wholly on a unit basis, City may use unit prices bid in making progress estimates on the work. In case said unit prices do not, in the opinion of the City, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.
- e. If the City receives written notice of any unsettled claims for damage or other costs due to Contractor's operations including, without limitation, claims from any City Department or other governmental agency, an amount equal to the claim may be withheld from the progress payments, final payments or retainage until such claim has been resolved to the satisfaction of City.
- f. Progress payments will be made by City on a monthly basis within thirty (30) days from sign off by the Contractor of the progress payment or fifteen (15) days after the payment is approved by City of work performed, whichever is the earlier date. Failure to pay progress payments within the timeframe set forth above will result in the imposition of interest as required by ORS 279C.570(2)(3). Defective or improper invoices will be addressed as set forth in ORS 279C.570(4)(5)(6).
- g. Payment will be issued by City for the amount of the approved estimate, less five percent (5%) retainage. Except as provided in paragraph 19 above and the applicable ORS Sections noted herein, such amount of retainage shall be withheld and retained by City until it is included in and paid to Contractor as part of the final payment of the Contract amount. Upon Substantial Completion of the work under the Contract which shall be understood to be not less than ninety-seven and one-half percent (97.5%) of the work, the City may, at its discretion, reduce the retained amount equivalent to not less than one hundred percent (100%) of the contract value or estimated value or estimated cost, whichever is greater, of the work remaining to be done. [279C.570(7)]
- h. The City may decline to approve an application for payment and may withhold such approval if, in the City's opinion, and in good faith, the work has not progressed to the point indicated by the Contractor's submittal. The City may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, City may nullify the whole or any part of any payment previously made to such extent as may be necessary in their opinion to protect the City from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the work can be completed for the unpaid balance of the Contract sum, (4) damage to another contractor's work, (5) reasonable indication that the work will not be completed within the Contract

time, (6) unsatisfactory prosecution of the work by the Contractor, (7) claims against the Contractor by the City, (8) failure to submit a construction schedule or failure to keep said construction schedule updated, or (9) exceeding work limits. When any or all of the criteria set forth above have been remedied satisfactorily to the City, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the Contractor to interest on such withheld payments or partial payments, except as provided in ORS 279C.570(9).

- i. If Contractor fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted, or progress or other payments allowed until the Project is completed, unless approved otherwise by City. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. A progress payment is not considered acceptance or approval of any work or materials or waiver of any defects therein. [ORS 279.570(2)].

## 22. Final Estimate and Final Payment

- a. **SUBSTANTIAL COMPLETION.** Contractor shall notify the City in writing when all or a portion of the work is considered substantially complete. If it appears to the City that the work is not substantially complete, the City shall not make an inspection. The City may make a general list of major work components remaining. If it appears that the work is substantially complete, the City shall, within fifteen (15) days after receiving notice, make an inspection and either accept the work or notify Contractor of work yet to be performed. If accepted, City shall prepare a Certificate of Substantial Completion, **Exhibit F**. Upon acceptance of the Certificate of Substantial Completion by both parties, the City shall be responsible for operation and maintenance of that part of the work described in the Certificate of Substantial Completion, subject to the warranty requirements and protection of the work and all other applicable terms of the contract documents. The date of substantial completion of all the work shall stop the accrual of liquidated damages, if applicable.
- b. **FINAL COMPLETION.** Contractor shall notify the City in writing when work is 100% complete. If it appears to the City that the work is not 100% complete, the City shall not make a final inspection. The City may make a general list of major work components remaining. If it appears that the work is 100% complete, the City shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify Contractor of work yet to be performed on the Contract. A Certificate of Final Completion shall not be prepared until all provisions of the Contract have been met, including but not limited to, the submission by the Contractor of a signed Certificate of Compliance, **Exhibit G** and executed "Release of Liens and Claims" (**Exhibit H**).

When the work is 100% complete, the City shall prepare a final pay estimate and Certificate of Final Completion accepting the work as of a certain date. The Contractor shall execute and return the final pay estimate and Certificate of Final Completion within five (5) working days of receipt. Unless otherwise provided as a Special Provision, when City accepts the Certificate of Final Completion, the date the Contractor signs the Certificate of Final Completion shall be the date the City accepts Ownership of the work and the start date of the warranty period. The contractor may substitute a Warranty Bond in replacement of the Performance and Payment Bonds in accordance with Section 29. The City shall include in the final pay estimate an addition to the contract amount for any contract deduction from the contract amount for any liquidated damages and a deduction from the contract price in a fair and equitable amount for any damages to the City or for any costs incurred or likely to be incurred by the City due to Contractor's failure to meet any contract provision or specification other than timely completion.

If the Contractor believes the quantities and amounts specified in the final pay estimate prepared by the City to be incorrect, Contractor shall submit to the City within five (5) working days of receipt of the City's final pay estimate, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said period is expressly waived and the City shall not be obligated to pay the same.

The Contractor shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from errors of computation in the final estimate within a period of one (1) year following the original mailing of the City's final estimate and Certificate of Final Completion to the Contractor's last known address as shown in the records of City. The City's issuance of a revised final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Final Completion or revised final estimate and Certificate of Final Completion, if revisions are made, shall be conclusive with respect to the amount earned by the Contractor, and the Contractor expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that Contractor might have had.

Upon return of the fully executed Certificate of Final Completion from the Contractor, the City will submit the Certificate of Final Completion and final estimate to the City for approval. Upon approval and acceptance by the City, Contractor will be paid a total payment equal to the amount due under the Contract including retainage within thirty (30) days in accordance with ORS 279C.570. Failure to pay within 30 days shall implicate the interest on final payment/ retainage requirements of ORS 279C.570(8).

Monies earned by the Contractor are not due and payable until the procedures set forth in the contract documents for inspection, approval and acceptance of the work; for determination of the work done and the amount due therefore; for the preparation of the final estimate and Certificate of Final Completion and processing the same for payment; for consideration of the Contractor's claim, or claims, if any; and for the preparing of a revised final estimate and Certificate of Final Completion and processing same for payment all have been carried out.

As a prerequisite to final payment, if Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor will provide City with evidence that the requirement of ORS 279A.120(3) has been satisfied.

If City declares a default of the Contract, and Surety completes said Contract, all payments made after declaration of default and all retainage held by City shall be paid to Surety and not to Contractor in accordance with the terms of the Contract.

Acceptance by Contractor of final payment shall release City from any and all claims by Contractor whether known or unknown, arising out of and relating to the work. No payment, however, final or otherwise, shall operate to release Contractor or its Sureties from warranties or other obligations required in the performance of the Contract.

Disputes as to compensation resolved in favor of the contractor implicate the interest provisions of ORS 279.570(9).

### **23. Change Orders / Extra Work**

The Contractor agrees to complete this Contract in accordance with the attached specifications and

requirements, including any change orders. A change order submitted by the City must be agreed upon by the Contractor and the City, and in the event of failure to so agree, the City may then proceed with any additional work in any manner the City may choose. A decision by the City to proceed to have work done by another party shall in no way relieve either the Contractor or City of this Contract and neither will such action be cause for collection of damages by either party to the contract, one from the other. Only the City designated Contracting Officer or individual with delegated contracting authority can authorize extra (and/or changed) work and compensation. Such authorization must be in writing. The parties expressly recognize that, except when such order is in writing by an individual with delegated authority, City personnel are not authorized to order extra (and/or) changed work or to waive contract requirements or authorize additional compensation. Failure of the Contractor to secure City authorization for extra work shall constitute a waiver of any and all claims or rights to adjustment in the contract price or contract time due to such unauthorized extra work and thereafter Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and *quantum meruit* for any and all extra work performed by Contractor without express and prior authorization of the City.

#### **24. Contractor/Subcontractor Payment Obligations**

- a. The Contractor is required to include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing this contract:
  - i. A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the City under such contract; [279C.580(3)(a)] and
  - ii. An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a)(i) above. A contractor or first-tier subcontractor shall not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or contractor when payment was due. The interest penalty shall be:
    - A. For the period beginning on the day after the required payment date and ending on the date on which payment of the amount is due made; and
    - B. Computed at the rate specified in ORS 279C.515(2). [279C.580(3)(b)]
- b. The Contractor is further required to include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of section a. above in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier. [279C.580(4)]
- c. The Contractor shall not request payment of any amount withheld or retained in accordance with ORS 279C.580(5) until such time as the Contractor has determined and certified to the City that the subcontractor is entitled to the payment of such amount. [279C.570(1)].
- d. A dispute between the Contractor and a subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsections (3) and (4) of ORS 279C.580 does not constitute a dispute to which the City is a party. The City shall not be included as a party in any administrative or judicial proceeding involving such a dispute. [279C.580(2)]

- e. The Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the contract. [ORS 279C.505(1)(a)] The Contractor shall pay all contributions or amounts due the Industrial Accident Fund and the State Unemployment Compensation Fund from the Contractor or Subcontractor incurred in the performance of the contract. [ORS 279C.505(1)(b)] The Contractor shall not permit any claim or lien to be filed or prosecuted against the City and shall be fully responsible for any lien or claim filed against the City on account of any labor or material furnished. [ORS 279C.505(1)(c)] The Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279C.505(1)(d)]
- f. Pursuant to ORS 279C.515(1), if 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 the Contract as such claim becomes due, the proper officer(s) representing the City may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract.
- g. Pursuant to ORS 279C.515(2), if the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- h. Pursuant to ORS 279C.515(3), if the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- i. Pursuant to ORS 279C.515(4), the payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- j. Living Wage Rates: If the amount of this contract is \$18,703 or more, and Contractor is not paying prevailing wage for the work, Contractor must comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in this chapter, to all employees performing work under this contract and to any subcontractor who performs 50% or more of the work under this contract. Contractor must post the attached Living Wage Notice predominantly in areas where it will be seen by all employees.

## **25. Inspection and Acceptance**

Inspection and acceptance of all work required under this contract shall be performed by the City. The Contractor shall be advised of the acceptance or of any deficiencies in the deliverable items.

## **26. Liquidated Damages**

City and Contractor recognize that time is of the essence of this Contract and that City will suffer substantial financial loss if the project work is not completed within the timeframe specified in Section

(1) of the Public Improvement Contract. City and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or other dispute resolution preceding the actual loss suffered by City if the project work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City a dollar amount per day based on calculations set forth in the Oregon Standard Specifications for Construction and the Special Provisions for this project, for each and every day that elapses in excess of the contract time or the final adjusted contract time. This amount is a genuine pre-estimation of the damages expected because of a delay in the completion of this project.

Any sums due as liquidated damages shall be deducted from any money due or which may become due to the Contractor under this Contract. Payment of liquidated damages shall not release the Contractor from obligations in respect to the fulfillment of the entire contract, nor shall the payment of such liquidated damages constitute a waiver of the City's right to collect any additional damages which may be sustained by failure of the Contractor to complete the work on time. Permitting the Contractor to continue and finish the project work or any part thereof after the contract time, or adjusted contract time, has expired shall in no way operate as a waiver on the part of the City or any of its rights under this contract. The City may in its discretion grant the Contractor an extension of time upon a showing made by the Contractor that the work has been unavoidably delayed by conditions beyond the control of the parties.

## **27. Liability, Indemnity and Hold Harmless**

Contractor warrants that all its work will be performed in accordance with generally accepted practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by City shall not operate as a waiver or release. The Contractor shall hold harmless, indemnify, and defend City, its officers, agents, and employees from any and all liability, actions, claims, losses, damages or other costs of whatsoever nature, including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during or in connection with the performance of the work, actions or failure to perform actions, and other activities of Contractor or its officers, employees, subcontractors or agents, under this contract, including the professional negligent acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents except liability arising out of the sole gross negligence of the City and its employees. The Contractor shall assume all responsibility for the work and shall bear all losses and damages directly or indirectly resulting to the Contractor, to the City, and to their officers, agents, and employees on account of (a) the character or performance of the work, (b) unforeseen difficulties, (c) accidents, or (d) any other cause whatsoever. The Contractor shall assume this responsibility even if (a) fault is the basis of the claim, and (b) any act, omission or conduct of the City connected with the Contract is a condition or contributory cause of the claim, loss, damage or injury. Contractor waives any and all statutory or common law rights of defense and indemnification by the City. Such indemnification shall also cover claims brought against City under state or federal workers compensation laws. Contractor shall also defend and indemnify City from all loss or damage that may result from Contractor's wrongful or unauthorized use of any patented article or process. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification. Any specific duty or liability imposed or assumed by the Contractor as may be otherwise set forth in the Contract documents shall not be construed as a limitation or restriction of the general liability or duty imposed upon the Contractor by this section. In the event any such action or claim is brought against the City, the Contractor shall, if the City so elects and upon tender by the City, defend the same at the Contractor's sole cost and expense, promptly satisfy any judgment adverse to the City or to the City and the Contractor jointly, and reimburse the City for any loss, cost, damage, or expense, including attorney fees, suffered or incurred by the City.

**28. Insurance**

The Contractor shall provide and maintain during the life of this Contract the insurance coverage as described in **Exhibit C**. All costs for such insurance shall be borne by the Contractor and shall be included in the contract price. In case of the breach of any provision of this section, the City may elect to take out and maintain at the expense of the Contractor such insurance as the City may deem proper. The City may deduct the cost of such insurance from any monies that may be due or become due the Contractor under this Contract. Failure to maintain insurance as provided is also cause for immediate termination of the Contract. Contractor shall furnish City certificates of insurance acceptable to City prior to execution by the City and before Contractor or any subcontractor commences work under this Contract. The certificate shall show the name of the insurance carrier, coverage, type, amount (or limits), policy numbers, effective and expiration dates and a description of operations covered. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City's acceptance. If requested, copies of insurance policies shall be provided to the City. Contractor shall be responsible for all deductibles, self-insured retention's, and/or self-insurance. Approval of the insurance shall not relieve or decrease the liability of the Contractor hereunder.

**29. Performance, Payment and Warranty Bonds / Notice of Bond Claims**

At the time of execution of the Contract, the Contractor shall furnish: (1) Performance Bond and (2) Payment Bond written by a corporate surety or other financial assurance in an amount equal to the amount of the Contract based upon the estimate of quantities or lump sum as set forth in the Contract and in accordance with ORS 279.380. The bonds shall be continuous in effect and shall remain in full force and effect until compliance with and fulfillment of all terms and provisions of the Contract, including the obligations of Sections 27 and 30, all applicable laws and the prompt payment of all persons supplying labor and/or material for prosecution of the work. The bond(s) or other financial assurance is subject to approval by the City.

Contractor shall furnish a separate warranty bond written by a corporate surety or other financial assurance, in an amount equal to 10% of the final amount of the contract. The City may permit the warranty amount to be included in the initial performance and payment bonds. The warranty bond or other financial assurance shall be in effect for a period of one year from the date of Final Completion. The City may require a separate warranty bond or financial assurance for any repairs done pursuant to the warranty obligation. Such separate warranty bond or financial assurance shall be for a period of one year from the date of completion of such repairs.

The notice of claim on a bond required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials or 120 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the contractor at any place the contractor maintains an office or conducts business or at the residence of the contractor. Notwithstanding the above, if the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 150 days after the employee last provided labor or materials.

The notice of claim must be in writing substantially as set forth in ORS 279C.605(3)-(5).

**30. One-Year Warranty**

In addition to and not in lieu of any other warranties required under the Contract, Contractor shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City and at no cost to the City, any and all defects, breaks, or failures of the work occurring within one year following the date of completion due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing its duties and obligations under this Contract when such defects or damage occur within the warranty period. The one-year warranty period shall, with relation to such required repair, be extended one year from the date of completion of such repair.

If Contractor, after written notice, fails within ten days to proceed to comply with the terms of this section, City may have the defects corrected, and the Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the City to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.

**31. Nondiscrimination in Labor**

No person shall be subject to discrimination in the receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, sexual orientation or national origin. Contractor shall comply with provisions of Owner's Equal Opportunity Policy and comply with ORS Chapter 659 and ORS Chapter 659A relating to unlawful employment practices and discrimination by employers against any employee or applicant for employment because of race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older. Particular reference is made to ORS 659A.030, which states that it is unlawful employment practice for any employer, because of the race, religion, color, sex, national origin, marital status or age if the individual is 18 years or older or because of the race, religion, color, sex, national origin or age of any other person with whom the individual associates, or because of a juvenile record that has been expunged pursuant to ORS 419A.260 and ORS 419A.262 of any individual, or to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. Any violation of this provision shall be considered a material violation of the Agreement and shall be grounds for cancellation, termination, or suspension in whole or in part (q).

**32. Construction Debris and Yard Waste**

Contractor shall salvage or recycle construction and demolition debris, if feasible and cost effective. If the contract includes lawn and landscaping maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost effective. [ORS 279C.510(1) & (2)]

**33. Environmental Regulations**

Pursuant to ORS 279C.525(1), the following is a list of federal, state and local agencies which have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract.

**Federal Agencies:**

Agriculture, Department of  
Forest Service  
Soil Conservation Service



Commerce Department of  
National Oceanic and Atmospheric Administration (NOAA)  
National Marine Fisheries Service (NMFS)  
Defense, Department of  
Army Corps of Engineers  
Energy, Department of  
Federal Energy Regulatory Commission  
Environmental Protection Agency  
Health and Human Services Department of  
Housing and Urban Development,  
Solar Energy and Energy Conservation Bank  
Interior, Department of  
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  
Labor, Department of  
Mine Safety and Health Administration  
Occupational Safety and Health Administration  
Transportation, Department of  
Coast Guard  
Federal Highway Administration  
Water Resources Council

**State Agencies:**

Administrative Services, Department of  
Agriculture, Department of  
Consumer & Business Services, Department of  
Oregon Occupational Safety & Health Division  
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  
Land Conservation and Development Commission  
Parks and Recreation, Department of  
Soil and Water Conservation Commission  
State Engineer  
State Land Board (Lands, Division of State)  
Water Resources Department

**Local Agencies:**

CITY of ASHLAND  
City Council (Ashland Municipal Code)  
County Courts  
County Commissioners of Jackson County,  
County Service Districts

Sanitary Districts  
Water Districts  
Fire Protection Districts  
Historical Preservation Commissions  
Planning Commission

If the Contractor awarded the project is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited above or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the City may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use non-City forces already under contract with the City;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Solicit bids for a new contractor to provide the necessary services; or
- (f) Issue the contractor a change order setting forth the additional work that must be undertaken.

The solicitation documents make specific reference to known conditions at the construction site that may require the successful bidder to comply with the ordinances, rules or regulations identified above. If Contractor encounters a condition not referred to in the solicitation documents, not caused by the successful bidder and not discoverable by a reasonable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations enacted by the governmental entities identified above, the successful bidder shall immediately give notice of the condition to the contracting agency. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, the Contractor shall not commence work nor incur any additional job site costs in regard to the condition encountered and described in subsection (3) of this section without written direction from the contracting agency. Upon request by the City, the Contractor shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the contracting agency for resolution. Within a reasonable period of time following delivery of an estimate of this section, the City may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use non-City forces already under contract with the City;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Solicit bids for a new contractor to provide the necessary services; or
- (f) Issue the contractor a change order setting forth the additional work that must be undertaken.

If the City chooses to terminate the contract under either subsection (a) of this section, the Contractor shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The City shall have access to the contractor's bid documents when making the contracting agency's determination of the additional compensation due to the contractor. If the contracting agency causes work to be done by another contractor under either subsection (c) or (e) above, the initial contractor may not be held liable for actions

or omissions of the other contractor. The change order under either subsection (f) of this section shall include the appropriate extension of contract time and compensate the contractor for all additional costs, including overhead and reasonable profits, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The City shall have access to the contractor's bid documents when making the contracting agency's determination of the additional compensation due to the contractor.

Notwithstanding the above, the City has allocated all or a portion of the known environmental and natural resource risks to a Contractor by listing such environmental and natural resource risks in the solicitation documents.

**34. Waiver**

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision. City shall not be precluded or estopped by any measurement, estimate or certificate made either before or after completion and acceptance of work or payment therefore, from showing the true amount and character of 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 work or materials do not conform in fact to the Contract. City shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, or payment in accordance therewith, from recovering from the Contractor and their Sureties such damages as it may sustain by reason of their failure to comply with terms of the Contract, or from enforcing compliance with the Contract. Neither acceptance by City, or by any representative or agent of the City, of the whole or any part of the work, nor any extension of time, nor any possession taken by City, nor any payment for all or any part of the project, 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 a waiver of any other breach.

**35. Errors**

The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.

**36. Severability**

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

**37. Attorney's Fees**

If a suit or action is filed to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.

**38. Business License**

The Contractor shall obtain a City of Ashland business license as required by City ordinance prior to beginning work under this Contract. The Contractor shall provide a business license number in the space provided in this contract.

**39. Notices/Bills/Payments**

All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

City of Ashland  
Karl Johnson, Associate Engineer  
Public Works/Engineering Department  
20 E. Main Street  
Ashland, OR 97520

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

**40. Conflict of Interest**

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The Contractor further covenants that in the performance of this contract no person having any such interest shall be employed.

**41. Merger Clause**

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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**ATTACHMENTS: EXHIBITS B-K**

<b>EXHIBIT B</b>	<b>COMPLIANCE WITH APPLICABLE PUBLIC CONTRACT LAW</b>
<b>EXHIBIT C</b>	<b>INSURANCE REQUIREMENTS</b>
<b>EXHIBIT D</b>	<b>INDEPENDENT CONTRACTOR CERTIFICATION</b>
<b>EXHIBIT E</b>	<b>BONDS (BID, PAYMENT AND PERFORMANCE)</b>
<b>EXHIBIT F</b>	<b>CENTRAL OREGON &amp; PACIFIC RAILROAD PERMIT</b>
<b>EXHIBIT G</b>	<b>CERTIFICATE OF SUBSTANTIAL COMPLETION</b>
<b>EXHIBIT H</b>	<b>CERTIFICATE OF COMPLIANCE</b>
<b>EXHIBIT I</b>	<b>RELEASE OF LIENS AND CLAIMS</b>
<b>EXHIBIT J</b>	<b>CERTIFICATE OF FINAL COMPLETION</b>
<b>EXHIBIT K</b>	<b>INSTRUCTIONS TO BIDDERS</b>

**EXHIBIT B**  
**COMPLIANCE WITH APPLICABLE LAW**  
**PUBLIC IMPROVEMENT CONTRACT**

This exhibit contains the requirements for public contracting as set forth in ORS 279C.360 through and including ORS 279C.800 and is available through the city Engineering Office at 51 Winburn Way, Ashland, Oregon or online at [www.leg.state.or.us/ors](http://www.leg.state.or.us/ors)

**EXHIBIT C**  
**PUBLIC IMPROVEMENT CONTRACT INSURANCE REQUIREMENTS**

**To:** Insurance Agent. Please provide Certificates of Insurance to the Project Manager. During the term of the contract, please provide Certificates of Insurance prior to each renewal. Insurance shall be without prejudice to coverage otherwise existing. During the term of this contract, Contractor shall maintain in force at its own expense all insurance noted below:

**Workers Compensation** insurance in compliance with ORS 656.017. All employers, including Contractor and any subcontractors, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

**Commercial General Liability** insurance on an occurrence basis, with a combined single limit of not less than  \$1,000,000 or  \$2,000,000 for each occurrence of bodily injury, personal injury and property damage. It shall include coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards. Aggregate limits shall apply on a per-project basis.

Required by City     Not required by City

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent of not less than  \$1,000,000 or  \$2,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired and non-owned vehicles. "Symbol One" coverage shall be designated.

Required by City     Not required by City

Builders Risk (*Check here if required*) insurance during construction to the extent of 100 percent of the value of the work for the benefit of the parties to the Contract as their interest may appear. Coverage shall also include: (1) formwork in place; (2) form lumber on site; (3) temporary structures; (4) equipment; and (5) supplies related to the work while at the site.

**Notice of Cancellation or Change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the City. This notice provision shall be by endorsement physically attached to the certificate of insurance.

**Additional Insured.** For general liability insurance and automobile liability insurance the City, and its agents, officers, and employees will be Additional Insureds, but only with respect to Contractor's services to be provided under this contract. This coverage shall be by endorsement physically attached to the certificate of insurance.

The Contractor shall defend, indemnify, and hold harmless, the City and the City's officers, agents, and employees against any liability that may be imposed upon them by reason of the Contractor's or subcontractor's failure to provide workers' compensation and employers liability coverage.

**Certificates of Insurance.** Contractor shall furnish insurance certificates acceptable to City prior to commencing work. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City approval. If requested, copies of insurance policies shall be provided to the City. Contractor shall be responsible for all deductibles, self-insured retention's, and/or self-insurance.

**EXHIBIT D**  
**CERTIFICATION STATEMENT FOR CORPORATION**  
**OR INDEPENDENT CONTRACTOR**

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**A. CONTRACTOR IS A CORPORATION**

**CORPORATION CERTIFICATION:** I am authorized to act on behalf of the entity named below and certify under penalty of perjury that it is a corporation.

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Entity	Signature	Date
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**B. CONTRACTOR IS INDEPENDENT.**

**Independent Contractor Standards.** As used in various provisions of ORS Chapters including but not limited to 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an “independent contractor” if the standards of ORS 670.600 are met.

**Contractor and Project Manager certifies that the Contractor meets the following standards:**

1. Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.
6. Contractor is registered under ORS chapter 701, if the Contractor provides labor or services for which such registration is required.
7. Contractor has filed federal and state income tax returns in the name of the business or a business Schedule C as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
8. Contractor represent to the public that the labor or services are to be provided by an independently established business as four or more of the following circumstances exist.

(Check four or more of the following:)

- A. The labor or services are primarily carried out at a location that is separate from Contractors residence or is primarily carried out in a specific portion of Contractors residence, which is set aside as the location of the business.
- B. Commercial advertising or business cards are purchased for the business, or Contractor has a trade association membership.
- C. Telephone listing is used for the business that is separate from the personal residence listing.
- D. Labor or services are performed only pursuant to written contracts.
- E. Labor or services are performed for two or more different persons within a period of one year.
- F. Contractor assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

**If any action is taken by a person or enforcement agency relating to Contractor's independent contractor status in connection with this contract, Contractor shall defend, hold harmless and indemnify the CITY of ASHLAND, its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Contractor shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.**

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Contractor Signature

Date

---

Project Manager Signature

Date



**EXHIBIT E  
BONDS  
CITY OF ASHLAND  
STANDARD PUBLIC IMPROVEMENT CONTRACT**

**BID BOND**

We, \_\_\_\_\_, a corporation or partnership duly organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Oregon, as “**PRINCIPAL,**” and,

We, \_\_\_\_\_, a corporation or partnership duly organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Oregon, as “**SURETY,**”

hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the City of Ashland, Oregon, (**OBLIGEE**) the sum of (\$\_\_\_\_\_)

\_\_\_\_\_ Dollars.

The condition of the obligation of this bond, is that the PRINCIPAL herein has in response to City’s *Notice to Contractors and Invitation to Bid*, submitted its Offer for the HERSEY STREET RECONSTRUCTION AND LAUREL & HERSEY RAILROAD CROSSING No. 2017-09 & 2011-36, which Offer is incorporated herein and made a part hereof by this reference, and Principal is required to furnish bid security in an amount equal to ten (10%) percent of the total amount of the bid pursuant to ORS 279C.365 and the City’s public contracting rules and contract documents.

NOW THEREFORE, if the Offer, submitted by PRINCIPAL, is accepted, and if the Contract pursuant to the Offer is awarded to the PRINCIPAL, and if the PRINCIPAL executes such contract and furnishes such good and sufficient Performance and Payment Bonds as required by the Bidding and Contract documents within the time specified and fixed by the Documents, then this obligation shall be void; otherwise it shall remain in full force and effect. If the PRINCIPAL shall fail to execute the proposed Contract and to furnish the Performance and Payment Bonds, the SURETY hereby agrees to pay the OBLIGEE the surety bond sum as liquidated damages within ten (10) days of such failure.

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

_____	_____
Surety	Principal
_____	_____
Address	Address
By: _____	By: _____

Attorney -in-Fact  
[A certified copy of the Agent’s Power of Attorney must be attached hereto.]

**IMPORTANT** – Surety companies executing BONDS must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the State of Oregon.

**PERFORMANCE BOND**

The undersigned \_\_\_\_\_, as principal, further referred to in this bond as Contractor, and \_\_\_\_\_, as surety, further referred to in this bond as Surety, are jointly and severally bound unto City of Ashland, as obligee, further referred to in this bond as City, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

Contractor and City have entered into a written contract dated \_\_\_\_\_, for the following project: **HERSEY STREET RECONSTRUCTION AND LAUREL & HERSEY RAILROAD CROSSING No. 2017-09 & 2011-36.** This contract is further referred to in this bond as the Contract and is incorporated into this bond by this reference.

The conditions of this bond are:

1. If Contractor faithfully performs the Contract in accordance with the plans, specifications and conditions of the contract within the time prescribed by the Contract, as required by ORS 279C. 380 through 279C.385, then this obligation is null and void; otherwise it shall remain in full force and effect.
2. If Contractor is declared by City to be in default under the Contract, the Surety shall promptly remedy the default, perform all of Contractor’s obligations under the contract in accordance with its terms and conditions and pay to City all damages that are due under the Contract.
3. This bond is subject to claims under ORS 279C.380 through 279C.390.
4. This obligation jointly and severally binds Contractor and Surety and their respective heirs, executors, administrators, successors.
5. Surety waives notice of modification of the Contract or extension of the Contract time.
6. Nonpayment of the bond premium shall not invalidate this bond.
7. The bond number and the name, address, and telephone number of the agent authorized to receive notices concerning this bond are as follows.

Bond Number: \_\_\_\_\_

Bond Agent: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS:

(Corporate Seal)

CONTRACTOR: \_\_\_\_\_

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

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

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

Attest: \_\_\_\_\_

Corporate Secretary

WITNESS:

(Corporate Seal)

SURETY: \_\_\_\_\_

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

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

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

Attest: \_\_\_\_\_

Corporate Secretary

**PAYMENT BOND**

The undersigned \_\_\_\_\_, as principal, further referred to in this bond as Contractor, and \_\_\_\_\_, as surety, further referred to in this bond as Surety, are jointly and severally bound unto City of Ashland, as obligee, further referred to in this bond as City, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

Contractor and City have entered into a written contract dated \_\_\_\_\_, for the following project: **HERSEY STREET RECONSTRUCTION AND LAUREL & HERSEY RAILROAD CROSSING No. 2017-09 & 2011-36**. This contract is further referred to in this bond as the Contract and is incorporated into this bond by this reference.

The conditions of this bond are:

1. If Contractor faithfully performs the Contract within the time prescribed by the Contract, and promptly makes payment to all claimants, as defined in ORS 279C.600 through 279C.620, then this obligation is null and void; otherwise it shall remain in full force and effect.
2. If Contractor is declared by City to be in default under the Contract, the Surety shall promptly remedy the default, perform all of Contractor's obligations under the contract in accordance with its terms and conditions and pay to City all damages that are due under the Contract.
3. This bond is subject to claims under ORS 279C.600 through 279C.620.
4. This obligation jointly and severally binds Contractor and Surety and their respective heirs, executors, administrators, successors.
5. Surety waives notice of modification of the Contract or extension of the Contract time.
6. Nonpayment of the bond premium shall not invalidate this bond.
7. The bond number and the name, address, and telephone number of the agent authorized to receive notices concerning this bond are as follows:

Bond Number: \_\_\_\_\_

Bond Agent: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS:

(Corporate Seal)

CONTRACTOR:

By:

Title:

Legal Address:

Attest:

Corporate Secretary

WITNESS:

(Corporate Seal)

SURETY:

By:

Title:

Legal Address:

Attest:

Corporate Secretary

## **EXHIBIT F**

### **CENTRAL OREGON & PACIFIC RAILROAD**

#### *Application for Contractors Access/Occupancy on Railroad Property*

The following Central Oregon & Pacific Railroad agreement and exhibits are included in this Project for information and reference only. The actual Application for Contractors Access/Occupancy on Railroad Property will be provided and executed by the Central Oregon & Pacific Railroad.

The Contractor shall obtain all necessary permits and licenses and pay all fees and obtain a fully executed copy of the railway agreement according to 00170.01(e).

In addition, when Railroad flagger services are required, the Agency will pay for the services according to 00170.01(e).

This section to be completed by Genesee & Wyoming Railroad Services, Inc. Real Estate Dept.

Date App Packet Received \_\_\_\_\_  
Regional Manager Approval \_\_\_\_\_  
GIS Prefix \_\_\_\_\_  
Date Approved \_\_\_\_\_

Contract Number \_\_\_\_\_  
RR Code \_\_\_\_\_  
Lessee Code \_\_\_\_\_  
Engineering Approval \_\_\_\_\_  
Date Approved \_\_\_\_\_  
Fee Paid (initial) \_\_\_\_\_

### Genesee & Wyoming Railroad Services, Inc.

Real Estate Department, 13901 Sutton Park Dr., S, Suite 160, Jacksonville, FL 32224

#### Contractors Access/Occupancy on Railroad Property

Check box if Contractor unknown at this time (this form will need to be completed with contractor information and submitted prior to any work once bid process is complete)

Incomplete or Inaccurate Information will delay application request

#### Section 1 - Applicant Data

Complete Name of Contractor to appear on Legal Document: \_\_\_\_\_

Applicant Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Applicant Overnight Address: \_\_\_\_\_  
\_\_\_\_\_

Applicant FEIN or Social Security Number: \_\_\_\_\_

Applicant Contact Name & Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

Emergency Contact (in case of derailment or fallen/wire pole etc.):

Emergency Telephone Number: \_\_\_\_\_

- Applicant:  Corporation  Partnership  Sole Proprietor  Individual  
 Municipality  Developer  Other\*

\*If other please explain: \_\_\_\_\_

State of Incorporation or Partnership: \_\_\_\_\_

**Section 2 - Location Data**

Proposed date of Installation: \_\_\_\_\_

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

Nearest City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_

If Crossing Nearest Railroad  
Mile Post (required):

\_\_\_\_\_ Feet from Railroad Milepost \_\_\_\_\_ N S E W

Latitude/Longitude  
(Required in Digital Format)  
(ex 12.3456789/-64.101112):

\_\_\_\_\_  
US  
DOT/AAR  
Crossing  
Number  
(Required): \_\_\_\_\_

Railroad Subdivision  
(Required):

**Section 3 - Existing Agreement Data**

Is there an Existing Agreement at this Location which will be affected by this Request?

Yes  No If YES, List Agreement Number(s): \_\_\_\_\_

Will facility be exclusively used by Applicant?  Yes  No

If YES, List Name of Lessee: \_\_\_\_\_

Describe in detail the manner and method of installation on Railroad property (REQUIRED):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 4 - Department of Transportation (D.O.T.)**

Is this installation associated  
with a Department of  
Transportation project?  Yes  No

If Yes, complete the following:

D.O.T. Contract Number: \_\_\_\_\_ D.O.T. Project Number: \_\_\_\_\_ D.O.T. Project Name: \_\_\_\_\_

D.O.T. Contact  
Information:

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_



Prior to application submittal, it is recommended that any questions concerning this application should be submitted to the Real Estate Department of Genesee & Wyoming Railroad Services, Inc. All questions or requests for information submitted by email receive a rapid response. Other requests can be made by phone (904) 900-6286, or email [donna.killingsworth@gwrr.com](mailto:donna.killingsworth@gwrr.com). Questions can be answered and additional contact information obtained by visiting the website at [www.gwrr.com](http://www.gwrr.com).

**Plans for proposed installations shall be submitted to and approved by the Railroad, on behalf of itself, its subsidiaries, and affiliates, and designated engineer before work can begin! Applications submitted not meeting current specifications as outlined in the General Specifications for Sub-grade and Above grade Utility Crossings of Railway's Right-of-Way will be returned and may incur additional engineering review fees. For your convenience a copy of these specifications can be found on the website along with a checklist to ensure plans meet all requirements.**

Materials and installations are to be in strict accordance with specifications of National Electrical Safety Code, AREMA, current edition, and requirements of the Railroad.

Upon application approval, applicant agrees to reimburse Railroad for any cost incurred by Railroad incident to the installation, maintenance and/or supervision necessitated by the installation. Applicant further agrees to assume all liability for accidents or injuries that arise as a result of this installation.

**Insurance Requirements prior to any construction project**

**Facility Owner and/or their Contractor:**

**U.S. Roads**

Current certificate of Commercial General Liability Insurance naming the Railroad and Genesee & Wyoming Inc. as additional insured in limits no less than \$2 million dollars per occurrence and \$6 million dollars in the aggregate. The policy or policies, where applicable and available, shall contain Insurance Services Office Standard Endorsement CG 2417 or its equivalent. A waiver of subrogation in favor of the railroad must also be shown as an endorsement to the policy.

A policy of Railroad Protective Liability Insurance, with minimum limits of liability of \$2 million dollars per occurrence and \$6 million aggregate shall be in place through either the applicant or their contractor. The Railroad and Genesee & Wyoming Inc. must be shown as named insured. This coverage may be purchased through the railroad for an additional fee and for your convenience an application can be found on the website at [www.gwrr.com](http://www.gwrr.com)

**Canadian Roads**

**Facility Owner and/or their Contractor:**

A policy of public liability insurance in the amount no less than \$5 million dollars per occurrence and naming Railroad and Genesee & Wyoming Inc. as additional insured.

The policy or policies, where applicable and available, shall contain Insurance Services Office Standard Endorsement CG 2417. A waiver of subrogation in favor of the railroad must also be an endorsement on the policy.

**This section must be completed in full, signed and dated prior to submittal to the Real Estate Department for processing, incomplete or inaccurate information will delay application request and may incur additional fees. Unsigned applications will be returned to the applicant for signature.**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Printed

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

Fax Number: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Email Address: \_\_\_\_\_

**Please make check payable to the Railroad in question. W-9 Information available upon request.**

**Mail the application for proposed project, in duplicate along with the applicable non-refundable fee(s) in U.S. Funds (Canadian Applicants please pay in Canadian Funds plus HST) to:**

Genesee & Wyoming Railroad Services, Inc.  
Real Estate Department  
13901 Sutton Park Dr., S., Suite 160  
Jacksonville, FL 32224

In order for the application to be complete ALL required details pertinent to the proposed installation must be completed in full and submitted along with the following fees:

	# of Copies	Amount Due	Description
<input type="checkbox"/>	2	\$1,500	Engineer review fee, plans/drawings, no larger than 11 x 17. Larger drawings may incur additional engineering fees.
<input type="checkbox"/>	2	\$1,500	Completed Contractor's Access/Occupancy Application and Fee required will ALL application submittals.

**\$3,000**  
**All applicable fees must be submitted with application.**  
**Applications submitted not signed, dated and without proper fees will be returned.**

Standard Application processing takes approximately 6-8 weeks. "Expedited processing" is available and will reduce the processing time to between 1-2 weeks at an additional cost of \$1,750, plans must meet engineering specifications. Incomplete application and plans not meeting engineering specifications will cause a delay in the processing of expedited applications. Current utility specifications and checklist can be found in the Real Estate section of the website at [www.gwrr.com](http://www.gwrr.com)

Entering or working on the railroad right of way or any other railroad property without the permission of the railroad is trespassing and illegal. Violators risk the possibility of serious, even fatal injury and will be prosecuted.

**EXHIBIT G**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

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CITY'S Project No. \_\_\_\_\_ Project No.       N/A        
Project: \_\_\_\_\_

---

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CONTRACTOR \_\_\_\_\_

Contract For \_\_\_\_\_ Contract Date \_\_\_\_\_

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This Certificate of Substantial Completion applies to:

- All Work under the Contract Documents, or
- To the following specified parts thereof:

The Work to which this Certificate applies has been inspected by authorized representatives of CITY, CONTRACTOR and CITY, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

\_\_\_\_\_  
DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ Days of the above date of Substantial Completion.

The following documents are attached to and made a part of this Certificate:

\_\_\_\_\_  
\_\_\_\_\_

---

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Effective as of the last date set forth below, the responsibilities between CITY and CONTRACTOR shall be as follows:

- |             |                               |                                     |
|-------------|-------------------------------|-------------------------------------|
| Security    | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |
| Operation   | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |
| Safety      | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |
| Maintenance | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |
| Heat        | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |
| Utilities   | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |
| Insurance   | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |
| Warranties  | <input type="checkbox"/> City | <input type="checkbox"/> Contractor |

Other Responsibilities:

City		Contractor

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

---

CONTRACTOR accepts this Certificate of Substantial Completion on: \_\_\_\_\_, \_\_\_\_\_.

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

CITY accepts this Certificate of Substantial Completion on: \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
CITY of ASHLAND

File:

**EXHIBIT H**

**CERTIFICATE OF COMPLIANCE**

\_\_\_\_\_

CIP Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I, (We) hereby certify that all work has been performed and materials supplied in accordance with the plans, specifications and contract documents for the above work, and that:

1. If required by law, not less than the prevailing rates of wages have been paid to laborers, workmen and mechanics employed on this work.
2. There have been no unauthorized substitutions of materials; substitutions or assignment of subcontractors; nor have any subcontracts been entered into without the names of the subcontractors having been submitted to the City prior to the start of such subcontracted work.
3. All claims and indebtedness for material and labor and other service performed in connection with these specifications have been paid.
4. All moneys due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Department of Revenue (ORS 316.162 to 316.212) hospital associations and/or others (ORS 279C.530) have been paid.
5. All private property and easement areas have been satisfactorily restored in accordance with the contract.
6. If Contractor is not domiciled in or registered to business in the State of Oregon, Contractor has reported to the Oregon Department of Revenue such information and in the manner as required by ORS 279A.120(3).

**Contractor:** \_\_\_\_\_

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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





## **EXHIBIT K**

\*\*\*\*\*  
**INSTRUCTIONS TO BIDDERS**  
\*\*\*\*\*

The provisions of Oregon Administrative Rules Chapter 137, Divisions 46 and 49, apply to all bids and contracts concerning Public Improvements and Public Works in the City of Ashland. The OAR provisions control over any conflicting language in the City Standard Terms and Conditions, Special Provisions, including Technical Provisions and the OAR provisions are incorporated herein by this reference.

### ***1. SCOPE OF WORK***

The work contemplated under this contract includes all permits, labor, tools, machinery, materials, transportation, equipment and services of all kinds required for, necessary for, or reasonable incidental to, the completion of all the work in connection with the project described in the contract documents, including the general conditions, all applicable special conditions, plans, specifications, or any supplemental documents.

### ***2. EEO AFFIRMATIVE ACTION***

Bidders must comply with the City of Ashland Equal Opportunity Policy for Contractors. The policy is included in and made a part of these Contract Documents and is attached hereto and made a part hereof as Attachment A. Contractor shall not discriminate against minorities, women or emerging small business enterprises in the awarding of subcontracts.

### ***3. BID PROVISIONS***

- a. Each bid must contain a completed Bid including the following:
  - A. A Bid and Schedule of Prices.
  - B. Acknowledgement that the bidder has received and reviewed all Addenda for the bid.
  - C. A statement that all applicable provisions of ORS Chapters 279A-C, including ORS 279C.800 to 279C.870 (Contracting and Prevailing Wages) shall be complied with.
  - D. A statement by the bidder, as part of their bid, that the bidder agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.
  - E. A statement as to whether the bidder is a resident bidder as defined in ORS 279A.120.
  - F. A statement as to whether or not the bidder is licensed under ORS 468A.720 for asbestos removal.
  - G. A statement that the bidder has a current and valid registration with the Construction Contractor's Board and/or the State Landscape Contractors Board as required by ORS 671.530.
  - H. A statement confirming that the bidder has a Qualified Drug-testing Program for employees in place. [OAR 137-049-0200(1)(c)(B)].
  - I. First Tier Subcontractor form for the project on the City form (physically received in accordance with ORS 279C.370 within 2 working hours of the bid opening).
  - J. A Surety Bond, Cashier's check or Certified check in the amount of 10 percent of the submitted bid.
  - K. Certification: Non-discrimination (in bid)
  - L. Certification: No Conflict of Interest (in bid)



M. Certification: Not ineligible for Public Works Contracts [OAR 137-049-0230] (in bid)

- b. The City will publish notice of any addenda on Oregon Procurement Information Network (ORPIN) <https://orpin.oregon.gov/open.dll/welcome>. The addenda may be downloaded or picked up at the City Engineering Office located at 51 Winburn Way, Ashland Oregon, 97520. Check the website frequently until closing.
- c. No bid will be received or considered by the City of Ashland unless the bid contains a statement by the bidder as a part of its bid that the Contractor shall be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148. The statement shall be included in the Bid form. The existing prevailing rate of wage is available at:  
  
[https://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](https://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx)
- d. Each Bidder must identify in the Bid whether the Bidder is a “resident bidder” as defined in ORS 279A.120.
- e. Unless specified in the ITB, and Contract Special Provisions, the bidder or subcontractor need not be licensed under ORS 468A.720 relating to asbestos abatement.
- f. No bid for a construction contract shall be received or considered by the City of Ashland unless the bidder is licensed with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.
- g. Each Bidder must demonstrate that its firm has a Qualified Drug Testing Program for employees in place and demonstrate compliance prior to award.
- h. Instructions for First-Tier Subcontractors Disclosure. Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370; OAR 137-049-0360).

Specifically, when the contact amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to (i) 5% of the project bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the bidder must disclose the following information about that subcontract in its bid submission or within two (2) working hours after bid closing:

- (1) The subcontractor’s name,
- (2) The dollar value of the subcontract, and
- (3) The category of work that the subcontractor would be performing.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate “NONE” on the accompanying form. Disclosure forms will be available for public inspection after the opening of the bids.

**THE CITY OF ASHLAND MUST REJECT A BID AS NON-RESPONSIVE IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THE REQUIRED INFORMATION BY THE STATED DEADLINE (see OAR 137-049-0360).**

- i. Bid Security. [OAR 137-049-0290]

No bid will be received or considered unless the Bid is accompanied by a certified check, cashier's check, (payable to the City of Ashland), surety bond (in approved form)(f/k/a/ bid bond), or irrevocable letter of credit issued by an insured institution [ORS 706.008] (in an approved form) in an amount equal to ten percent (10%) of the total amount bid. The successful bidder will be required to furnish a faithful performance bond and a labor and material payment bond each in the amount of one hundred percent (100%) of the amount of the contract. Said security shall be irrevocable for 60 days, unless specified otherwise. The bid security shall be forfeited, at the City's option, as fixed and liquidated damages, if the bidder fails or neglects to furnish the required performance bond, the insurance, or to execute the contract within 10 working days after receiving the contract from the City for execution. When a bond is used for bid security, the bond shall be executed by a surety company authorized to transact business in the State of Oregon. **THE BIDDER SHALL HAVE THE SURETY USE THE BID BOND FORM PROVIDED HEREIN. IF THIS FORM IS NOT USED, THE BID WILL BE DEEMED NON-RESPONSIVE AND SHALL BE REJECTED.**

All such certified checks or surety bonds will be returned to the respective bidders within 10 working days after the bids are opened, except those of the two low bidders. The bid security of the two low bidders will be held by the City until the selected bidder has accomplished the following:

- A. Executed a formal contract;
- B. Executed and delivered to the City a Performance Bond and Payment Bond, both in the amount equal to 100% of the Contract Price;
- C. Furnish proof of public works bond filed with BOLI; and
- D. Furnish the required Certificates of Insurance.

Upon the execution and delivery to the City of Ashland of the Contract and Performance Bond and Payment Bond and furnishing proof of a Public Works Bond filed with BOLI by the successful bidder, the bid security shall be returned to the bidder. The bidder who has been awarded a contract and who fails or neglects to promptly and properly execute the contract or bonds shall forfeit the bid security that accompanied the bid. It is hereby specifically provided that a forfeiture of said bid security be declared by the Council if the contract and performance bond and payment bond are not executed and delivered to the City within ten (10) working days of the day of the receipt by the successful bidder of the prepared contract. The Council, at its option, may determine that the bidder has abandoned the submitted accepted bid, in which case the bid security shall become the sole property of the City and shall be considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bond. The security of unsuccessful bidders shall be returned to them after the contract has been awarded and duly signed.

- j. A Bidder submitting a bid thereby certifies that no officer, agent, or employee of the City who has a pecuniary interest in this bid has participated in the contract negotiations on the part of the City, that the Bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same call for bids, and that the Bidder is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.
- k. The Bidder, in submitting the bid, certifies that the Bidder has not been disqualified and is eligible to receive a contract for a public work pursuant to ORS 279C.860 as well as the disqualification provisions of ORS 279C.440 and OAR 137-049-0370. Bidder agrees, if awarded a contract, that every subcontractor will not be ineligible to receive a contract for a public work pursuant to ORS 279C.860 and will otherwise not be disqualified under ORS 279C.440 and OAR 137-049-0370.

#### **4. PRE-BID CONFERENCE AND PREQUALIFICATION OF BIDDERS**

If a pre-bid conference is scheduled, notice will be provided in accordance with OAR 137-049-0200(1)(a)(B). If prequalification will be required it will be specifically stated in the Notice to Contractors and Invitation to Bid, including the date prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be pre-qualified. [OAR 137-049-0200(1)(a)(C).] [ORS 279C.365(1)(c)] For example, the requirement for ODOT Prequalification reads as follows:

Bidders must be pre-qualified with the Oregon Department of Transportation or General Service per ORS 279C.435 to perform the type and size of work contemplated herein and shall submit, to the City upon request. The City will investigate and determine the qualifications for the apparent low bidder prior to awarding the contract. [OAR 137-049-0220].

Applications submitted without being designated for a project advertised for bid by the City will be considered as a general prequalification application and processed pursuant to ORS 279C.430 to 279C.450 and notice of prequalification status will be given within thirty (30) days of the receipt of the application. A notice of disqualification can be given orally. An oral disqualification notice will be followed by written notice and bear the date of the oral notice. (NOTE: No person may engage in any business within the City without first obtaining a City Business License and paying the fee prescribed pursuant to City of Ashland Ordinance and accompanying Fee Resolution)

## **5. FORM OF BID**

A. Bids shall be submitted in sealed envelopes to:

**Street Address:**

Karl Johnson  
Associate Engineer  
City of Ashland  
51 Winburn Way  
Ashland, Oregon 97520

**Mailing Address:**

Karl Johnson  
Associate Engineer  
City of Ashland  
20 E. Main Street  
Ashland, Oregon 97520

The outside of the transmittal envelope shall bear the following information:

Name of Bidder  
Address and telephone number of Bidder  
Title of Project  
Date of opening  
The words "Sealed Bid"

If the sealed bid is forwarded by mail or messenger service, the sealed envelope containing the bid, and marked as above, must be enclosed in another envelope addressed as noted above. Facsimile and Electronic Data Interchange bids shall not be accepted unless otherwise specified in the Special Provisions. No bid will be received or considered by the City unless the bid contains all the Required Bid Documents and Certifications.

B. All bids must be clearly and distinctly typed or written with ink or indelible pencil and be on the Bid form furnished by Owner. The bid must be signed by the Contractor or a duly authorized agent. If erasures or other changes appear on the form, they shall be initialed in ink by the person who signs the bid. The bidder shall not alter, modify or change the Bid forms except as directed by addendum. All applicable blanks giving general information must be completed, in addition

to necessary unit price items and total prices in the column of totals to make a complete bid. The Bid is the bidder's offer to enter into a contract which, if the Bid is accepted for award, binds the bidder to a contract and the terms and conditions contained in the Bid, as well as the Solicitation Documents. A bidder shall not make the Bid contingent upon the City's acceptance of specifications or contract terms which conflict with or are in addition to those advertised in the Notice to Contractors and Invitation to Bid. Any statement accompanying and tending to qualify a bid may cause rejection of such bid, unless such statement is required in a bid embracing alternative bids

- C. Unless otherwise specified, Bidders shall bid on all bid items included in the bid and the low Bidder shall be determined. Except as provided herein, bids which are incomplete, or fail to reply to all items required in the bid may be rejected.
- D. Bidders shall state whether business is being done as an individual, a co-partnership, a corporation, or a combination thereof, and if incorporated, in what state, and if a co-partnership, state names of all partners. The person signing on behalf of a corporation, a co-partnership or combination thereof shall state their position with the firm or corporation, and state whether the corporation is licensed to do business in the State of Oregon.

## **6. LATE BIDS**

Bids received after the scheduled closing time for submission of bids as set forth in the invitation for bids will be rejected. Bids will be time and date stamped by Community Development Department / Public Works Counter personnel upon receipt. Such time and date stamps will govern the determination of on-time submission of bids. Bids received after the time so fixed are late bids. Late bids will be time and date stamped at the time of receipt by City personnel, marked as "Rejected as Late Bid" and will be returned, unopened, to the submitted.

## **7. INTERPRETATION OF CONTRACT AND ADDENDA**

If a bidder finds error, discrepancies in, or omissions from the plans, specifications or contract documents, or has doubt as to their interpretation or meaning, the bidder shall at once notify the City Contact Person/ Project Manager. The City will investigate and determine if an addendum will be issued.

If it should appear to a Bidder that the work to be done or matters relative thereto are not sufficiently described or explained in the Contract Documents or that Contract Documents are not definite and clear, or the Bidder needs additional information or an interpretation of the contract, the Bidder may make written inquiry regarding same to the Project Manager at least ten (10) days, unless otherwise specified, before the scheduled closing time for submission of bids.

If, in the opinion of the Project Manager, additional information or interpretation is required, an addendum will be issued to all known specification holders.

Any addendum or addenda issued by the City which may include changes, corrections, additions, interpretations or information, and issued seventy-two (72) hours or more before the scheduled closing time for submission of bids, Saturday, Sunday and legal holidays not included, shall be binding upon the Bidder. City shall supply copies of such Addenda will not be mailed but will be posted on the website and available at Community Development Department Counter; failure of the Contractor to receive or obtain such addenda shall not excuse them from compliance therewith if they are awarded the contract.

ORAL INSTRUCTIONS OR INFORMATION CONCERNING THE CONTRACT, OR THE PROJECT GIVEN OUT BY OFFICERS, EMPLOYEES OR AGENTS OF THE CITY TO PROSPECTIVE BIDDERS SHALL NOT BIND THE CITY.

**8. EXAMINATION OF CONTRACT, SITE OF WORK AND SUBSURFACE DATA**

- A. Prior to submitting a bid, it is the responsibility of each Bidder to:
- (1) Examine the plans, specifications and contract documents thoroughly.
  - (2) Become fully informed as to the quality and quantity of materials and the character of the work required.
  - (3) Visit the site to become familiar with local conditions that may affect cost, progress, or performance of the work and sources and supply of materials.
  - (4) Consider all federal, state and local laws, ordinances, rules and regulations that may affect cost, progress, or performance of the work, including environmental and natural resource ordinance and regulations
  - (5) Consider identified site conditions and conduct pre-bid inspection to address environmental and natural resource laws implicated by the project.
  - (6) Study and correlate the Bidder's observations, especially as regards site conditions with the Contract Documents.
  - (7) Notify the Contact Person of all conflicts, errors, ambiguities or discrepancies discovered in the Contract Documents.
- B. Bidders shall determine for themselves all the conditions and circumstances affecting the project or the cost of the proposed work, including without limitation utility interferences, by personal examination of the site, careful review of the Contract and by such other means as the Bidder feels may be necessary. It is understood and agreed that information regarding subsurface or other conditions, or obstructions indicated in the Contract Documents, is provided by Owner only for the convenience of Bidders and may not be complete or accurate and such information is not expressly or tacitly warranted to accurately represent actual conditions. Bidder's use of such information shall be at Bidder's sole risk, and Bidder is responsible to confirm any information provided from such independent sources as Bidder feels may be necessary.
- C. Logs of test holes, test pits, soils reports, ground-water levels and other supplementary subsurface information are offered as information of underlying materials and conditions at the locations actually tested. Owner will not be liable for any loss sustained by the Bidder as a result of any variance between conditions contained in or interpretations of test reports and the actual conditions encountered during progress of the work.
- D. The submission of a Bid shall be conclusive evidence that the Bidder has investigated and is satisfied as to the site subsurface conditions to be encountered, as to the character, quality and quantities of work to be performed and materials to be furnished, and as to the requirements of the Contract.
- E. The City will not pay any costs incurred by any Bidder in the submission of a Bid, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the Invitation to Bid. When submitting a bid, the Bidder agrees that consideration has been given to the requirements and conditions contained throughout these Bid Documents.

- F. Notice: It is further understood that a Bid awarded hereunder is subject to the City being able to comply with all zoning and land development ordinances or obtain rezoning of the property where necessary, and comply with local building code restrictions and conditions for structures contemplated in the project, any or all of which conditions may be contained in the Contract or Contract Special Provisions and if such conditions are not satisfied may result in termination of the Contract.

## **9. FAMILIARITY WITH LAWS AND ORDINANCES**

- A. The Bidder is presumed to be familiar with all Federal, State, and Local laws, ordinances, and regulations which in any manner affect those engaged or employed in the work or the materials or equipment used in the proposed construction, or which in any way affect the conduct of the work. If the Bidder, or Contractor, shall discover any provision in the Contract which is contrary to or inconsistent with any law, ordinance or regulation, it shall immediately be reported to the Owner in writing.
- B. No person may engage in any business within the City without first obtaining a City Business License and paying the fee prescribed pursuant to City of Ashland Ordinance. The Contractor and their subcontractors shall obtain a City of Ashland Business License prior to beginning any work within the City of Ashland.

## **10. UNIT BIDS**

- A. The estimate of quantities of work to be done under unit price bids is approximate and is given only as a basis of calculation for comparison of bids and award of the Contract. The City does not warrant that the actual amount of work will correspond to the amount 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 that were necessary to complete the work.
- B. Bidders 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 the City, the prices in any bid are obviously unbalanced, such bid may be rejected.
- C. The unit contract prices for the various bid items of the contract shall be full compensation for all labor, materials, supplies, equipment, tools and all things of whatsoever nature are required for the complete incorporation of the item into the work the same as though the item were to read "In Place."

## **11. WITHDRAWAL, MODIFICATION OR ALTERATION OF BID**

- A. Bids may be withdrawn on written request received from the bidders prior to the time fixed for opening. The request shall be executed by the bidder or a duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new Bid. Negligence on the part of the Bidder in preparing the Bid confers no right for the withdrawal of the bid after it has been opened. The Bid will be irrevocable until such time as the City:
- Specifically rejects the Bid, and
  - Awards the contract to another bidder and said contract is properly executed.

All bids shall remain subject to acceptance by the City for sixty (60) days after the date of the bid opening.

- B. Prior to Bid Opening, changes may be made provided the change is initialed by the Bidder or the Bidder's agent. If the intent of the Bidder is not clearly identifiable, the interpretation most advantageous to Owner will prevail.
- C. No Bidder may withdraw a bid after bid opening unless sixty (60) days have elapsed and the City has not awarded a contract.

## ***12. MISTAKES IN BIDS***

- A. To protect the integrity of the competitive solicitation process and to assure fair treatment of Bidders, City will carefully consider whether to permit waiver, correction or withdrawal for certain mistakes.
- B. Treatment of Mistakes. City shall not allow a Bidder to correct or withdraw a Bid for an error in judgment. If the City discovers certain mistakes in a Bid after Opening, but before Award of the Contract, the City may take the following action:
  - (a) City may waive, or permit a Bidder to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Bid, or an insignificant mistake that can be waived or corrected without prejudice to other Bidders. Examples of minor informalities include a Bidder's failure to:
    - (i) Return the correct number of Signed Bids or the correct number of other documents required by the Solicitation Document;
    - (ii) Sign the Bid in the designated block, provided a Signature appears elsewhere in the Bid, evidencing an intent to be bound; and
    - (iii) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Bid that the Bidder received the Addendum and intended to be bound by its terms; and the Addendum involved did not affect price, quantity or delivery.
  - (b) City may correct a clerical error if the error is evident on the face of the Bid, or other documents submitted with the Bid, and the Bidder confirms the City's correction in writing. A clerical error is a Bidder's error in transcribing its Bid. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Bid). In the event of a discrepancy, unit prices shall prevail over extended prices.
  - (c) City may permit a Bidder to withdraw a Bid based on one or more clerical errors in the Bid only if the Bidder shows with objective proof and by clear and convincing evidence:
    - (i) The nature of the error;
    - (ii) That the error is not a minor informality under this subsection or an error in judgment;

- (iii) That the error cannot be corrected or waived under subparagraph (b) of this subsection;
  - (iv) That the Bidder acted in good faith in submitting a Bid that contained the claimed error and in claiming that the alleged error in the Bid exists;
  - (v) That the Bidder acted without gross negligence in submitting a Bid that contained a claimed error;
  - (vi) That the Bidder will suffer substantial detriment if the City does not grant it permission to withdraw the Bid;
  - (vii) That the City's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the City or the public it represents; and
  - (viii) That the Bidder promptly gave notice of the claimed error to the City.
- (d) The criteria in subsection (c) above shall determine whether a City will permit a Bidder to withdraw its Bid after Closing. These criteria also shall apply to the question whether an City will permit a Bidder to withdraw its Bid without forfeiture of its bid bond (or other bid security), or without liability to the City based on the difference between the amount of the Bidder's Bid and the amount of the Contract actually awarded by the City, whether by award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

C. Rejection for Mistakes. The City shall reject any Bid in which a mistake is evident on the face of the Bid and the intended correct Bid is not evident or cannot be substantiated from documents accompanying the Bid (i.e., documents submitted with the Bid).

### ***13. REJECTION OF BIDS***

- a. The City may reject any Bid upon a finding that the Bid meets the criteria specified in OAR 137-049-0440(1)(a) or (b) or has not provided the certification required under OAR 137-049-0440(3). The City shall reject a Bid from a Bidder who meets the criteria specified in OAR 137-049-0440(1)(c). The City may, for good cause, reject any or all bids upon a finding it is in the public interest to do so. In any case where competitive bids are required and all bids are rejected, and the proposed contract is not abandoned, new bids may be called for as in the first instance. The City may, at its own discretion, waive minor informalities.
- b. This Invitation to Bid does not commit the City to pay any costs incurred by any Bidder in the submission of a Bid, or in making necessary studies, subsurface investigations or designs for the preparation of a Bid, or for procuring or contracting for the items to be furnished pursuant to the Contract Documents.

The City reserves the right to reject any or all bids when such rejection is in the best interest of the City of Ashland. Bids may be rejected if they show any alteration of form, additions not called for, conditional Bids, incomplete Bids, erasures, or irregularities of any kind.

When Bids are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a "Power of Attorney" must be submitted with the Bid or on file with the City Administrator prior to opening of bids; otherwise, the Bid will be rejected as irregular.



More than one Bid from an individual, firm, partnership, corporation, or combination thereof with an interest in more than one bid, for the items bid, will be cause for the rejection of all Bids in which such individual, firm, partnership, corporation, or combination thereof, is interested.

If there is reason to believe that collusion exists among bidders, none of the bids of the participants in such collusion will be considered, and all involved bids shall be rejected. Bids in which prices are obviously unbalanced may be rejected.

***14. BID PROTEST. [OAR 137-049-0260].***

Bidders may, in writing protest or request changes of any specifications or contract terms in accordance with adopted City contracting rules. The written protest or request for changes must be received by the City no later than ten (10) calendar days prior to the Bid Closing Date. The written protest or request shall include the reasons for the protest or request, and any proposed changes to the bid specifications or contract terms and a description of the prejudice to the bidder. Envelopes containing bid protests shall be marked "Contract Provision Protects or Request" with the Bid Number and Closing Date. No protest against award, owing to the content of the bid specifications or contract terms shall be considered after the deadline established for submitting protests of bid specifications or contract terms.

***15. ORS 654.150 SANITARY FACILITIES AT CONSTRUCTION PROJECTS STANDARDS, EXEMPTIONS***

If the contract price is estimated (itemized bid) or bid (lump sum) by Contractor at \$1,000,000 or more, Contractor shall be responsible for all costs (which costs shall be included in the bid whether or not a specific bid item is provided therefore) that may be incurred in complying with or securing exemption or partial exemption from the requirements of ORS 654.150 (Sanitary facilities at construction projects; standards, exemptions) and the rules adopted pursuant thereto. Determination of applicability of ORS 654.150 to the project is the sole responsibility of the Contractor.

***16. PREVAILING WAGE RATE***

The Contractor shall be required to follow standard billing format as set forth from State or Federal Funding sources. The Siskiyou Boulevard Waterline Replacement shall follow the current State of Oregon BOLI Wage Rates. The rates utilized will be noted at the date of the bid shown at the following location: [http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx).