

**CONTRACT DOCUMENTS  
FOR THE  
CONSTRUCTION OF**

**2019 Myrtle Creek Street Maintenance  
PROJECT NO. PW-19-01**



**CITY OF MYRTLE CREEK  
PUBLIC WORKS DEPARTMENT  
DOUGLAS COUNTY, OREGON**

**PREPARED BY:  
Quinn Pickering  
Public Works Director  
City of Myrtle Creek  
(541) 863-3171**

## TABLE OF CONTENTS

INTRODUCTION FOR BID .....	2
SCHEDULE .....	3
INFORMATION TO BIDDERS.....	5
BIDDER'S CHECK LIST .....	13
BID FORM.....	15
STANDARD BID BOND .....	20
FIRST TIER SUBCONTRACTOR DISCLOSURE FORM INSTRUCTIONS.....	21
FIRST TIER SUBCONTRACTOR DISCLOSURE FORM .....	22
EMPLOYEE DRUG TESTING PROGRAM .....	23
PUBLIC WORKS BOND - PRE-BID NOTICE AND CERTIFICATION .....	24
CONSTRUCTION CONTRACT .....	25
STANDARD CONTRACT PROVISIONS.....	27
PUBLIC WORKS BOND FILING CERTIFICATION .....	34
STANDARD PERFORMANCE BOND.....	35
PAYMENT BOND.....	37
LOWEST BIDDER RESPONSIBILITY DETERMINATION FORM.....	39
PREVAILING WAGE RATES FOR PUBLIC WORKS CONTRACTS .....	41
GENERAL CONDITIONS.....	42
TECHNICAL PROVISIONS.....	67

## CITY OF MYRTLE CREEK

### INTRODUCTION FOR BID

Project Name: 2019 Street Maintenance

Project Number: PW-19-01

Project Description:

#### Scope of Work

The project will consist of the widening and paving of a portion of Simpson Street, and the reconstruction of the sub grade. It's approximately 300 feet long, and 35 feet wide. 260 feet of curb and gutters will be installed on the south side of the street with an 80 feet extruded curb at the top of the project. There are 2 catch basins, 1 manhole, and 3 valve cans that need adjusting.

Survey stakes have been set for right of way boundaries, and the project will be marked out in white survey paint. There is a portion of the project that the contractor will have to work with city staff on setting grade for finished sub grade. APWA Oregon Standard Specifications for Construction shall be used as a guide and reference for all public works construction.

Bids are due by 2:00 p.m. on April 5, 2019

All bids will be opened at 2:00 p.m.

Additional forms disclosing first tier subcontractors are due by 4:00 p.m.

No bids shall be received after this date and time.

Contact – Submit bids to:  
City of Myrtle Creek City Recorder  
207 NW Pleasant St.  
Myrtle Creek OR 97457  
(541) 863-3171  
jnorton@ci.myrtle-creek.or.us

Address Technical Questions to:  
City of Myrtle Creek Public Works Director  
P.O. Box 940  
Myrtle Creek, OR 97457  
(541) 863-3171  
qpickering@ci.myrtle-creek.or.us

SOLICITATION DOCUMENTS: Solicitation documents, including contract terms, conditions, specifications, all attachments and/or addenda for the Invitation to Bid are available for review at the above contact address. Bid documents will not be mailed or emailed to prospective bidders, There is no charge for the bid documents.

Bidders must be pre-qualified in accordance with the laws of Oregon and the Information to Bidders at least ten days prior to the date of bid opening. Bidders must be licensed with the Oregon Construction Contractors Board and comply with City of Myrtle Creek Municipal Code.

The resulting public works contract is subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148). No bid will be considered unless the bid contains a statement that the bidder will comply with the provisions of ORS 279C.840 (Prevailing Wage Rates).

## **SCHEDULE**

Approval of RFP & Design .....	March 19, 2019
Publication of RFP .....	March 20, 2019
Lock into BOLI Rate .....	March 20, 2019
Bid Deadline .....	April 5, 2019; 2:00 PM
Bid Review .....	April 5-10, 2019
Award Bid .....	April 11, 2019
Appeal Period .....	April 11-17, 2019
Notice to Proceed .....	April 18, 2019
Completion Deadline.....	June 30, 2019

## INVITATION TO BID

The City of Myrtle Creek will receive sealed bids marked "**2019 Myrtle Creek Street Maintenance Project**" until the hour of **2:00 p.m.** on **Friday, April 5, 2019**, at which time they will be publicly opened and read. When required by ORS 279C.370, bidders must submit a list of their first-tier subcontractors providing labor, or labor and materials, no later than 4:00 p.m. that same day. Bids shall be addressed and delivered to Joshua Norton, City Recorder, City Hall, 207 NW Pleasant St., P.O. Box 940, Myrtle Creek, Oregon 97457. Any and all bids received after the 2:00 p.m. deadline for submission, or for which the list of first-tier subcontractors has not been submitted by 4:00 p.m. that same day, shall be considered nonresponsive and returned to the bidder. All bids must be identified with the bidder's "Construction Contractors Board" or the "State Landscape Contractors Board" license number as required by ORS 701.021 or 671.530 on the outside of the sealed bid envelope.

The proposed work generally consists of furnishing all labor, equipment, materials and supervision for the construction of:

The project will consist of the widening and paving of a portion of Simpson Street, and the reconstruction of the sub grade. It's approximately 300 feet long, and 35 feet wide. 260 feet of curb and gutters will be installed on the south side of the street with an 80 feet extruded curb at the top of the project. There are 2 catch basins, 1 manhole, and 3 valve cans that need adjusting.

Survey stakes have been set for right of way boundaries, and the project will be marked out in white survey paint. There is a portion of the project that the contractor will have to work with city staff on setting grade for finished sub grade. APWA Oregon Standard Specifications for Construction shall be used as a guide and reference for all public works construction.

The bids will be evaluated as: ***lump sum without additive or deductive alternates pursuant to OAR 137-049-0380(2)(a) OR unit price pursuant to OAR 137-049-0380(2)(b)***. The proposed work will require the bidder to meet the highest standards prevalent in the industry or business related to the work to be performed. Failure to meet such standards may result in a reduction or withholding of payment; require bidder to provide, at bidder's own expense, additional work required to meet such standards; or termination of the contract, with damages being sought. Technical questions regarding the work to be performed should be addressed to: Myrtle Creek Public Works Director Quinn Pickering, 207 NW Pleasant St., P.O. Box 940, Myrtle Creek, OR 97457.

Bids must be accompanied by a certified check, cashier's check, irrevocable letter of credit or Bid Bond in an amount equal to not less than ten percent (10%) of the total amount of the bid. Bidders shall state as part of the bid that the provisions of ORS 279C.800 to 279C.870 (Prevailing Wage Rates) shall be complied with; provided however, if the project is subject to the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) or if the project is subject to both the state and federal prevailing rates of wage, the bid must contain a statement by the bidder that contractor and every subcontractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers on the project. Bidders must also certify as part of the bid that the requirements of ORS 279C.505(2) (Employee Drug Testing

Page 4 – Revised 3/19/19 (Prevailing Wage Projects)

Program) shall be complied with. Bidders must be pre-qualified in accordance with the laws of Oregon and the Information to Bidders, **(March 18, 2019)**. Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279A.120. Bidders are not required to be licensed under ORS 468A.720 (Asbestos Abatement). However, the successful bidder shall at all times during the project provide qualified staff on site that is able to identify asbestos containing material. Bidders are hereby notified there are underground pipelines and structures containing asbestos within the City of Myrtle Creek. If any such material is encountered during the project, the bidder shall thereupon be required to notify the City and comply with all requirements of applicable laws and regulations. Unless exempt under ORS 279C.800 to 279C.870, the successful bidder must file a \$30,000 Public Works Bond with the Construction Contractors Board prior to beginning work on the project, and certify that all sub-contractors have also filed such bond. Bidders must agree to use recyclable products to the maximum extent financially feasible.

The City of Myrtle Creek may reject any bid not in compliance with all public bidding procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b), may waive any irregularities, and may reject for good cause any or all bids upon a finding of the City it is the public interest to do so. The City may also cancel this invitation in accordance with OAR 137-049-0270.

Dated this 18<sup>th</sup> day of March, 2019.

**CITY OF MYRTLE CREEK, DOUGLAS COUNTY, OREGON**  
**/s/ Joshua Norton, City Recorder**

## **INFORMATION TO BIDDERS**

### **1. FORM OF BID**

All bids must be made upon the blank Bid Form attached hereto and must give a price for each item and an aggregate amount or a lump sum price as required in the Bid Form.

The City reserves the right to reject any or all bids or to accept the bid deemed in the best interest of the City. Without limiting the generality of the foregoing, the City may reject any bid which is incomplete, obscure or irregular; which omits any one or more items in the price sheet; in which unit prices are obviously unbalanced; or which is accompanied by an insufficient or irregular Bid Bond.

The bidder shall sign the Bid Form in the blank space provided therefore. All bids must contain the bidder's tax identification number. Bids made by a corporation, general or limited partnership, or L.L.C., shall contain the name and address of such organization, together with names and addresses of officers, partners or managing members. If the bid is made by a corporation, it must be signed by one of the corporate officers with the authority to sign for the corporation; if made by a partnership, by one of the partners.

All bids must be submitted at the time and place, and in the manner prescribed in the Invitation to Bid.

### **2. BID PROTEST; REQUEST FOR CHANGE OR CLARIFICATION**

A bidder may protest, or request a change in items in the bid documents, including contract terms and conditions or specifications, by filing a written protest with the City not less than 10 days prior to the bid submission deadline. Such written protest or request for change must include a detailed statement of the grounds for the protest and a statement of the desired changes to the contract terms and conditions or specifications.

The City shall not consider a bidder's protest or request for change after the deadline for submitting such protest or request. The City shall provide notice to the bidder if it entirely rejects the bidder's protest or request for change. If the City agrees with the bidder's protest or request, in whole or in part, the City shall issue a written Addendum to the bid documents or specifications.

Prior to the deadline for submitting a written protest or request for change, a bidder may request that the City clarify any provision of the bid documents. The City's clarification to a bidder, whether orally or in writing, shall not change the bid documents and is not

binding on the City unless the City amends the bid documents by issuing a written addendum.

If a written addendum is issued by the City, all bidders must provide written acknowledgement, with their bids, of receipt of all issued addenda.

**3. CONTRACT DOCUMENTS**

The Contract Documents for this Project consist of, but are not necessarily limited to, the Invitation to Bid, Information to Bidders, Bid Form, Construction Contract including Exhibit "A" Standard City Contract Provisions, First-Tier Subcontractor Disclosure Form, Drug Testing Program Certification Form, Bidder's Responsibility Form, Performance Bond, Payment Bond, Public Works Bond Filing Certification form (when required), General Conditions, Technical Provisions, Special Conditions, Standard Drawings, Specifications and Plans, Supplemental Specifications and other Supplemental Agreements, all as required for the full execution and satisfactory completion of the Project. Any person contemplating the submission of a bid and being in doubt as to the meaning or intent of said Contract Documents should request of the City, in writing, an interpretation thereof. Any interpretation of said Contract Documents shall be made only in writing by the City.

**4. ESTIMATE OF QUANTITIES**

The estimate of quantities of work to be done as stated in the Bid Form, although stated with as much accuracy as possible, is approximate only and is assumed solely for the purpose of comparing bids. The quantities on which payments will be made to the Contractor are to be determined by measurement of the work actually performed and paid at the unit price bid, regardless of the amount of increase or decrease in the estimated quantities as specified in the Contract Documents. The City reserves the right to increase or diminish the amount of any class of work as may be deemed necessary.

**5. CONSTRUCTION CONTRACTORS' BOARD - STATE LANDSCAPE CONTRACTORS' BOARD**

All contractors bidding on public contracts must be licensed with the Construction Contractors' Board or the State Landscape Contractors Board as required by ORS 701.021 or 671.530. Bids must be identified with the Contractors' Board license number on the outside of the bid envelope and as required within. No bids will be considered without this information.

**6. DISCLOSURE OF FIRST-TIER SUBCONTRACTORS**

When a public improvement contract value is greater than \$100,000, all bidders are required to disclose information about first-tier subcontractors, providing labor or labor and materials, when the contract amount of such first-tier subcontractor is equal to or greater than:

- 1) 5% of the project bid, or \$15,000.00, whichever is greater; or
- 2) \$350,000 regardless of the percentage of the total bid.

Bidders must disclose the following information about such subcontracts, on the First-Tier Subcontractor Disclosure Form provided by the City and included herein, within two hours of the bid submission deadline:

- 1) The subcontractor's name;

- 2) The subcontract dollar value; and
- 3) The category of work to be performed by the subcontractor.

Any bidder not using subcontractors subject to the above disclosure form, must write "NONE" on the Disclosure Form and sign and submit the form. The City will reject a bid if the bidder fails to submit the Disclosure Form before the deadline.

## **7. DRUG TESTING PROGRAM**

ORS 279C.505(2) requires public improvement contracts to include a provision requiring contractors to demonstrate that they have an employee drug and alcohol testing program in place. All bidders are required to certify, on the Drug Testing Program Certification Form provided by the City and included herein, that they have such program in place. This certification will become part of the Contract if awarded and contractor will be required to maintain such program throughout the performance of the Contract. Failure to maintain a program shall constitute a material breach of the Contract.

## **8. PROMPT PAY POLICY - TIMELY PROGRESS PAYMENTS**

ORS 279C.570 and 279C.580 require prompt payment to contractors and subcontractors and provides for settlement of compensation disputes between the parties. The City is required to automatically calculate and pay interest on invoices from the contractor when payments become overdue. The interest commences 30 days after receipt of the invoice from the contractor, or 15 days after the payment is approved by the City, whichever is earlier. The rate of interest charged to the City on the amount due shall equal three times the discount rate on 90-day commercial paper, but shall not exceed 30 percent.

The City is also required to ensure that the contractor includes a clause in each subcontract that obligates the contractor to pay first-tier subcontractors for satisfactory performance under its contract. Contractors must pay subcontractors within 10 days of receiving payment from the City. Contracts between primary contractors and subcontractors must also contain an interest penalty clause that obligates the contractor, if payment is not made to the subcontractor within 30 days after receipt of payment from the City, to pay the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the subcontract payment clause. The contractor is also required to ensure that first-tier subcontractors include these requirements in each of its subcontracts with lower-tier subcontractors or suppliers.

If requested in writing by a first-tier subcontractor, within ten calendar days after receiving the request, the contractor must provide the first-tier subcontractor, a copy of that portion of any invoice or request for payment submitted to the City, or pay document provided by the City to the contractor, specifically related to any labor or materials supplied by the first-tier subcontractor.

## **9. PRE-QUALIFICATION OF BIDDERS**

When required, bidders shall pre-qualify under ORS 279C.430 and 279C.435. This information shall be submitted at least ten days prior to the date of bid opening. Bidder

qualifications are approved on a calendar year basis and must be renewed annually by filing a new pre-qualification application and obtaining approval after January 1 of each year. The City will accept the approval of qualifications granted from the Department of Transportation and the Department of Administrative Services, including the time periods used by those agencies.

**10. BID BOND, PUBLIC WORKS BOND, PAYMENT BOND AND PERFORMANCE BOND**

A Bid Bond, Public Works Bond Filing Certification, Payment Bond and Performance Bond shall be provided as specified in Paragraph 5.4 of the General Conditions. No waivers, special requirements or emergency provisions have been established for this Contract.

**11. HIGHEST STANDARDS OF WORK AND CONSEQUENCES FOR FAILURE**

The work to be performed must meet the highest standards prevalent in the industry or business most closely related to the work to be performed. Failure to meet such standards may result in consequences including, but not limited to a reduction or withholding of payment; a requirement that bidder perform, at bidder's own expense, additional work required to meet such standards; or termination of the contract, with damages being sought.

**12. CONDITIONS OF WORK**

Bidders must make their own determination of the nature of the work proposed under this Contract, the local conditions which can be encountered in this area, and all other matters which can in any way affect the work proposed under this Contract. It shall also be the bidder's responsibility to be thoroughly familiar with the Contract Documents. Failure to make the examination necessary for this determination or to examine any form, instrument or document of the Contract shall not release the bidder from the obligations of this Contract.

**13. REVIEW OF BIDS; BASIS FOR AWARD; NOTICE OF INTENT TO AWARD; AND RIGHT TO PROTEST AWARD**

In reviewing all bids received and determining the lowest responsible bidder, the City reserves the right to take into account and give reasonable weight to the extent of the bidder's experience on work of the nature involved, on the bidder's record as to dependability in carrying out of contracts, and evidence of present ability to perform the Contract in a satisfactory manner.

The City may make such investigations as deemed necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the Contract, to complete the work contemplated therein, and to do so in a timely manner. The City specifically reserves the right to reject a bid from a bidder who, at the time bids are

opened, has failed to complete work in a timely manner under a contract previously awarded to the bidder by the City. Conditional bids will not be accepted.

In accordance with ORS 279A.120(2)(b), in determining the lowest responsible bidder, the City shall, for the purpose of awarding the Contract, add a percentage increase on the bid of a non-resident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

Within 45 days after the bid opening, the City will accept one of the bids or reject all of the bids received. If the City intends to accept one of the bids, it shall issue a Notice of Intent to Award the Contract to all bidders. The City's award will not be final until 7 days after the date of the notice if no protest is filed; or if a protest is filed, until the City provides a written response to all timely-filed protests that denies the protest and affirms the award.

A bidder may submit a formal written protest to the City's Notice of Intent to Award the Contract within 7 calendar days of the date of the City's Notice of Intent. The written protest must specify the grounds upon which the protest is based and must show that the protesting party is an adversely affected or aggrieved bidder. A bidder is adversely affected or aggrieved only if the bidder is eligible for award of the Contract as the responsible bidder submitting the lowest responsible bid, is next in line for award and claims that all lower bidders are ineligible for award in accordance with law.

Such protest must be submitted to the City Recorder, 207 NW Pleasant St., PO Box 940, Myrtle Creek, OR 97457. Any protest received after the 7-day deadline will not be considered. The City Recorder shall forward such protest to the City Administrator who shall have the authority to settle or resolve the protest by written decision.

**14. EXECUTION OF CONTRACT, BONDS AND DAMAGES FOR FAILURE TO EXECUTE**

The bidder whose bid is accepted will be required to appear within ten days after notice that the Contract has been awarded to bidder and to execute the Contract with the City for the full and complete performance of all work specified, and as required by Paragraph 5.4 of the General Conditions, deliver the Public Works Bond Filing Certification form, the Payment Bond to assure payment of the obligations incurred in the performance of the Contract and the Performance Bond and to ensure performance of the Contract.

Should the successful bidder fail or refuse to execute the Contract and furnish the Public Works Bond Filing Certification form, Payment Bond and/or Performance Bond when required, then the Bid Bond deposited by said bidder shall be retained by the City as liquidated damages.

**15. COMMENCEMENT DATE AND EXPIRATION DATE OF CONTRACT**

This Contract shall be in effect from the time the Contract is signed until the Project is completed. The Contractor must be capable of commencing construction on the work contemplated in the Contract Documents within 10 days after the execution of the Contract and receipt of the City's notification to proceed and shall complete the same within the time specified in the bid.

**16. DURATION OF BIDS; RETURN OF BID BONDS**

All bids will be binding until the later of:

- 1) the day the contract is executed; or
- 2) 60 days after the date of bid opening.

Bid bonds will be returned to unsuccessful bidders not later than the date on which the bids are no longer binding.

**17. PUBLIC RECORDS**

These Contract Documents and each bid received in response to it, together with copies of documents pertaining to the award of a contract shall be kept on file as a public record by the City Recorder; provided however, such records shall not be disclosed until after the notice of intent to award the contract has been issued.

**18. RECORDS REVIEW; CONFIDENTIALITY**

After notice of intent to award the resulting contract has been issued, all bids shall be available for public inspection except for those portions of a bid that the bidder designates in its bid as trade secrets or as confidential proprietary data in accordance with applicable state law. If the City determines such designation is not in accordance with applicable law, the City shall make those portions available for public inspection. The bidder shall separate information designated as confidential from other non-confidential information at the time of submitting its proposal. Prices, makes, models or catalog numbers of items offered, scheduled delivery dates and terms of payment are not confidential, and shall be publicly available regardless of a bidder's designation to the contrary.

**19. MATERIALS CONTAINING ASBESTOS**

Materials containing asbestos may be present in underground pipe systems. All appropriate Federal, State, County and Municipal rules, regulations and guidelines must be followed when working with asbestos containing material. Non friable material must be handled, transported and disposed of in a way that prevents it from becoming friable and releasing asbestos fibers. If AC pipe is shattered, damaged or badly weathered, it is considered to be friable and will likely release asbestos fibers. A DEQ licensed asbestos abatement contractor using DEQ certified workers must remove all friable asbestos material. Any and all permits and fees that are required by the DEQ, Douglas County and any other regulatory agency must be obtained and paid for by the Contractor prior to disposing of the asbestos containing material. For information about asbestos rules, contact the DEQ Western Region office in Medford, Oregon.

## BIDDER'S CHECK LIST

**Bidder's attention is called to the following forms, which must be executed in full as required with the bid:**

- A. BID FORM(S):** Each bidder shall complete the bid form(s). Prices must be shown in the spaces provided and must be expressed in both words and figures. Where conflict occurs, written or typed words shall prevail.
- B. BID BOND:** This form is to be executed by bidder and bidder's Surety. The amount of cash, certified check, cashier's check, irrevocable letter of credit or Bid Bond shall not be less than 10% of the total Bid amount.
- C. FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM:** When required by law, this form must be submitted by the bid submission deadline, at which time bids will be opened and read, or within two (2) working hours of such submission deadline. If no subcontractors for labor or for labor and materials will be used, the bidder must write "NONE" on the disclosure form, sign and submit the form as required. Failure to submit this form within two hours of the bid submission deadline will result in the bid becoming non-responsive and such bid will be returned to the bidder.
- D. DRUG TESTING PROGRAM CERTIFICATION FORM:** This form must be submitted with the bid to demonstrate that bidder has an employee drug and alcohol testing program in place and will continue to keep the program in place throughout the duration of performing the Contract awarded.
- E. PUBLIC WORKS BOND PRE-BID NOTICE & CERTIFICATION FORM:** This form must be submitted with the bid to demonstrate contractor's awareness of and intended compliance with the requirement to file a Public Works Bond with the Construction Contractors Board prior to beginning work on the project if awarded the bid.

**The following forms are to be executed after the Contract is awarded, prior to beginning work on the project:**

- A. CONSTRUCTION CONTRACT:** This agreement is to be executed by the successful bidder.
- B. PERFORMANCE BOND AND PAYMENT BOND:** Both a Performance Bond and a Payment Bond are to be executed by the successful bidder and bidder's Surety Company and submitted at the time the Contract is executed.
- C. PUBLIC WORKS WAGE CERTIFICATION FORM:** This form is to be completed in accordance with state law and submitted with the first and last request for payment.
- D. CERTIFICATE OF INSURANCE:** This certificate is to be executed by the successful bidder and bidder's insurance company and submitted at the time the Contract is executed.

- E. **PUBLIC WORKS BOND FILING CERTIFICATION**: This form is to be executed by the successful bidder and submitted at the time the Contract is executed to certify if Contractor has filed the required Public Works Bond or elected not to file the Bond due to qualifying under ORS 200.055.

## BID FORM

**City of Myrtle Creek  
207 NW Pleasant St.  
Myrtle Creek, Oregon 97457**

The undersigned bidder has carefully examined the Contract Documents for the construction of the

**2019 Myrtle Creek Street Maintenance Project**  
**PW-19-01**

referred to in the Invitation to Bid dated March 20, inviting bids on such Project and also the site of the Project. Bidder will provide all necessary labor, equipment, tools, apparatus and other means of construction, do all the work and furnish all the materials called for by said Contract Documents in the manner prescribed therein to provide a complete Project.

The undersigned bidder understands that the quantities of work as shown herein are approximate only, unless noted otherwise, and are subject to increase or decrease. The bidder offers to perform the work, at the unit price stated in the following schedule, whether the quantities are increased or decreased.

### BASIC BID

No.	Item	Quantity	Unit	Unit Price	Total Price
1	Mobilization	1	LS		
2	Saw cut existing asphalt	70	LF		
3	Excavation and Prep of existing street	550	CY		
4	Clear and Grub	1	LS		
5	Shoulder rock and Excavation rock	200	TN		
6	3" Paving of new street	250	TN		
7	Extruded Curb	80	LF		
8	Curb and Gutter	300	LF		
9	New catch basin	1	EA		
10	Adjust catch basin's, manhole, and valve cans as needed	5	EA		
<b>TOTAL BASIC BID</b>				<b>\$</b>	

### The undersigned also declares and agrees as follows:

1. That the only persons or parties interested in this bid are those named herein, that the bid is in all respects fair and without fraud, and that it is made without any connection or collusion with any person making another bid on this Contract.
2. That the bidder, and any subcontractor upon which the bidder is relying, have carefully examined and had an opportunity to comment on, the Contract Documents for the

construction of the proposed improvements including a full set of the plans and specifications, including all addenda thereto; that bidder has personally inspected the contemplated construction area or areas; that bidder is satisfied as to the adequacy and completeness of the plans and specifications, the feasibility of the work described therein, quantities of materials, items of equipment and conditions of work involved, including the fact that the description of work and materials as included herein are approximate only; and that this bid is made according to the provisions and under the terms of the Specifications which are hereto attached and hereby made a part of this bid.

3. All of the Specifications and Plans which are listed herein have been examined by the undersigned bidder and the terms and conditions thereof are hereby accepted.
4. It is understood that the Plans may be supplemented by additional Drawings and Specifications in explanation and elaboration of the Plans and it is agreed that such Supplemental Drawings, when not in conflict with those referred to in Paragraph 3 above, will have the same force and effect as if completed and attached hereto, and that when received, will be considered a part of the Contract Documents.
5. It is understood that all work will be performed under the price schedule outlined herein and that all services, materials, labor and equipment and all work necessary to complete the Project in accordance with the Plans and Specifications shall be furnished for the prices named in the bid. If there is a change in the scope of work or work which cannot be properly classified under the price schedule then bidder agrees to do this work as "extra work". The undersigned bidder agrees to do any extra work and furnish materials, and to accept as full compensation therefore at such prices as may be agreed upon in writing by the City and the Contractor before extra work begins. Each party binds itself to agree to reasonable prices.
6. It is understood the work to be performed must meet the highest standards prevalent in the industry or business most closely related to the work to be performed. It is further understood that failure to meet such standards may result in consequences including, but not limited to, a reduction or withholding of payment; a requirement that bidder perform, at bidder's own expense, additional work required to meet such standards; or termination of the contract, with damages being sought.
7. The bidder agrees that if this bid is accepted, the bidder will, within ten calendar days after the notification of acceptance, execute the Construction Contract with the City in the form of Contract specified, and will, at the time of execution of the Contract, deliver to the City the Performance Bond, Payment Bond and Public Works Bond Filing Certification form as required herein, and will furnish all the materials necessary to complete the Project in the manner, in the time and according to methods as specified in the Specifications and required by the City.
8. The cash, certified check, cashier's check, irrevocable letter of credit or Bid Bond shall be payable to the City to the extent of 10% of the amount of the bid in case this bid is accepted by the City and the undersigned shall fail or refuse to execute the Contract and furnish a Payment Bond, a Performance Bond or the Public Works Bond Filing Certification form as required by the Specifications within the time limit named therein

after notification that said bid is accepted, all in accordance with the provisions of this bid and the Plans and Specifications which are a part hereof.

9. All items for the Contract for which forms are provided herein have been completed in full by the showing of prices for each and every item thereof, and for the showing of other information indicated by the Bid Form.
10. Bidder agrees to begin work within ten days after the execution of the Contract proposed herein and receipt of the City's notification to begin work and to complete work in all respects within forty-six (46) calendar days after "Notice to Proceed" has been issued by the City.
11. In the event the bidder is awarded the Contract and fails to complete the Project within the time limit or extended time agreed upon, as more specifically set forth in the General Conditions, liquidated damages shall be paid to or withheld by the City pursuant to Paragraph 4 of the Construction Contract (Time of Performance - Liquidated Damages) at the rate of Two-Hundred Dollars (\$200.00) per day, until the Project has been completed as provided in the General Conditions.
12. The undersigned bidder hereby states, as part of this bid, that the applicable provisions of Oregon's Prevailing Wage Law (ORS 279C.800 to 279C.870), shall be complied with. When the Project is subject to both the State and Federal Prevailing Wage Laws and rates, workers in each trade will be paid the higher of the two rates.
13. The undersigned bidder and bidder's subcontractors shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.
14. The undersigned bidder hereby states, as part of this bid, that bidder shall comply with ORS 279C.505(2) which requires bidder to have an employee drug testing program in place.
15. The undersigned bidder and bidders' subcontractors shall comply with ORS 279C.570 and 279C.580, which require timely progress payments for public improvement projects and provide interest penalties for late payment.
16. The undersigned bidder hereby states, as part of this bid, bidder and bidder's subcontractors shall comply with the provisions of Exhibit "A" - "Standard City Contract Provisions".
17. If the bidder is awarded the Contract for this work, the name and address of the Surety who will provide the Payment Bond, Performance Bond and Public Works Bond (if required) will be: \_\_\_\_\_.
18. The name and address of the bidder who is submitting this bid is: \_\_\_\_\_, which is the address to which all communications pertinent to this bid and the Contract shall be sent. The bidder's email address is: \_\_\_\_\_.

19. The names of the principal officers of the corporation submitting this bid or of the partnership, or of all parties interested in this bid as principals are as follows:  
\_\_\_\_\_.
20. The undersigned bidder acknowledges that Addenda No. \_\_\_\_\_ through \_\_\_\_\_ have been delivered to bidder and have been examined as part of the Contract Documents.
21. In the prosecution of this work, the bidder proposes to use the subcontractors listed on the First-Tier Subcontractor Disclosure Form presented within two working hours of the bid submission deadline as set forth in the Invitation to Bid. Any bidder not using subcontractors subject to the above referenced Disclosure Form shall indicate "NONE" on the Disclosure Form and sign and submit the form as required.
22. Declaration of Residency: I "am" or "am not" (circle one) a "resident bidder"\* as defined by ORS 279A.120, a contractor that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" pursuant to ORS 279A.120.
23. The bidder's Construction Contractors Board License Number or Landscape Contractors Board License Number is: \_\_\_\_\_.
24. Bidder's Tax Identification Number: \_\_\_\_\_. Email: \_\_\_\_\_.
25. Public Works Bond: If the bid is accepted, prior to beginning work on the project, the bidder will file with the Construction Contractors Board, a Public Works Bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon; and before permitting a subcontractor to begin work on the project, the bidder will verify that the subcontractor has also filed the aforementioned bond. If the bidder, as a certified disadvantaged, minority, women or emerging small business enterprise, elects not to file the Public Works Bond, bidder will file written verification of such certification with the Construction Contractors Board and provide the Board and the City of Myrtle Creek with notice of such election.

**If sole Proprietor or Partnership:**

In witness hereto, the undersigned as set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Printed name of bidder: \_\_\_\_\_

Signature of bidder: \_\_\_\_\_

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

**If Corporation:**

In witness whereof, the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Name of Corporation: \_\_\_\_\_

Printed name of person signing: \_\_\_\_\_

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

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

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

\_\_\_\_\_  
Secretary

**STANDARD BID BOND**

We, \_\_\_\_\_, "as Principal,"  
(Name of Principal)  
and \_\_\_\_\_, an \_\_\_\_\_ Corporation,  
(Name of Surety)

authorized to transact Surety business in Oregon, as "Surety," hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns to pay unto the City of Myrtle Creek ("Obligee") the sum of (\$ \_\_\_\_\_) \_\_\_\_\_ dollars.

WHEREAS, the condition of the obligation of this bond is that Principal has submitted its proposal or bid to an agency of the Obligee in response to Obligee's procurement document (No. \_\_\_\_\_) for the project identified as:

\_\_\_\_\_ which proposal or bid is made a part of this bond by reference, and Principal is required to furnish bid security in an amount equal to ten percent (10%) of the total amount of the bid pursuant to the procurement document and ORS 279C.365(5) for competitive bidding or 279C.400(5) for competitive proposals.

NOW, THEREFORE, if the proposal or bid submitted by Principal is accepted, and if a contract pursuant to the proposal or bid is awarded to Principal, and if Principal enters into and executes such contract within the time specified in the procurement document and executes and delivers to Obligee its good and sufficient performance bond, payment bond and public works bond as required by Obligee within the time fixed by Obligee, then this obligation shall be void; otherwise, it shall remain in full force and effect.

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

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

By \_\_\_\_\_ Signature BY ATTORNEY-IN-FACT:

\_\_\_\_\_  
Official Capacity Name

Attest: \_\_\_\_\_  
Corporation Secretary Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Email

## FIRST TIER SUBCONTRACTOR DISCLOSURE FORM INSTRUCTIONS

### **Instructions for First-Tier Subcontractor Disclosure:**

Bidders are required to disclose information about certain first-tier subcontracts (ORS 279C.370). Specifically, when the contract amount of a first-tier subcontract furnishing labor or labor and materials would be greater than or equal to: (1) 5% of the project bid, but at least \$15,000; or (2) \$350,000 regardless of the percentage, the bidder must disclose the following information about that subcontract either in its bid submission, or within two hours after bid closing:

- (A) The subcontractor's name;
- (B) The category of work that the subcontractor would be performing; and
- (C) The dollar value of the subcontract.

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.

**THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (OAR 137-049-0360).**

*\* The subject form is on the following page.*

**FIRST TIER SUBCONTRACTOR DISCLOSURE FORM**

**PROJECT NAME:** \_\_\_\_\_

**BID#:** \_\_\_\_\_

**BID CLOSING: DATE:** \_\_\_\_\_ **TIME:** \_\_\_\_\_

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below: the name of each subcontractor that will be furnishing labor or labor and materials and is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED)

<b>NAME OF SUBCONTRACTOR</b>	<b>DOLLAR VALUE</b>	<b>CATEGORY OF WORK</b>
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

**Form submitted by (bidder name):** \_\_\_\_\_

**Contact name:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

\*\*\*\*\*

**Form Received in the City Recorder's Office:**

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

**EMPLOYEE DRUG TESTING PROGRAM  
CERTIFICATION FORM**

**BIDDER'S NAME:** \_\_\_\_\_

**PROJECT NAME & NUMBER:** \_\_\_\_\_

ORS 279C.505 (2) provides that every public improvement contract contain a condition that the Contractor shall demonstrate that an employee drug testing program is in place. The City's award of the Contract for which this certificate is required is conditioned, in part, upon the Bidder's demonstration of compliance with the provisions of ORS 279C.505(2). If the Bidder named above is awarded the Contract, this certificate shall become a part of, and shall constitute a continuing representation and warranty under, the Contract.

To induce the City to award the Contract to the Bidder, the undersigned, as the duly authorized representative of the Bidder, hereby represents and warrants, on behalf of the above named Bidder:

1. That Bidder has and enforces, and at all times during the term of the Contract will have and enforce, a written employee drug testing policy that at a minimum, requires compliance with the Oregon Department of Transportation Commercial Drivers License drug testing regulations;
2. A copy of the Bidder's current written employee drug testing policy will be available for inspection by the City at any time upon the City's request; and
3. The Bidder understands and agrees that its representations and warranties herein will become a continuing part of the Contract and that breach of any of the foregoing will be sufficient grounds for disqualification under 279C.440(2)(d).

The City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Bidder/Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Bidder/Contractor to violate any legal, including constitutional rights of any employee, including but not limited to, selection of which employees to test and the manner of such testing. The City shall not be liable for Bidder/Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy, or for any damage or injury caused by Bidder/Contractor's employees acting under the influence of drugs while performing work covered by the Contract. These are Bidder/Contractor's sole responsibilities.

In Witness whereof, the Bidder has caused this document to be executed by its duly authorized representative on the date shown below.

**Signature:** \_\_\_\_\_

**Printed Name, Title:** \_\_\_\_\_

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

**CITY OF MYRTLE CREEK  
PUBLIC WORKS BOND - PRE-BID NOTICE AND CERTIFICATION**

I, the undersigned contractor, hereby certify that if awarded the contract for which I am submitting this bid, prior to beginning work on such Project, unless exempt under ORS 279C.800 to 279C.870, I will file with the Construction Contractors Board, a Public Works Bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon. I further certify that before permitting a subcontractor to start work on the Project upon which I am submitting this bid, I will verify that the subcontractor has also filed such Public Works Bond or has elected not to file such bond as allowed by state law. The Public Works Bond shall 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 shall be a continuing obligation and remain continuously in effect.

If, as a contractor, I qualify as a disadvantaged, minority, women, disable veteran or emerging small business enterprise certified under ORS 200.055 and I have elected not to file the aforementioned Public Works Bond, I hereby certify that I will file written verification of such certification with the Construction Contractors Board. I also certify that before beginning any work on the Project, I will provide the City of Myrtle Creek and the Construction Contractors Board written notice that I have elected not to file the Public Works Bond. If so certified under ORS 200.055, I understand that my election not to file the Public Works Bond will expire one year from the date it was filed and that a claim for unpaid wages may be filed against the payment bond I submitted on the Project.

I further certify that I understand the Public Works Bond described above is in addition to any other bond that I am required to provide, or that may be required of a subcontractor, for this Project.

**Project Name:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_

**Contractor's Printed Name:** \_\_\_\_\_

**Contractor's Signature:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

## CONSTRUCTION CONTRACT

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between \_\_\_\_\_, hereinafter called the "Contractor", and the City of Myrtle Creek, a municipal corporation of the State of Oregon, hereinafter called the "City".

### WITNESSETH

That the Contractor and City, for the consideration hereinafter described agree as follows:

- WORK TO BE PERFORMED.** The Contractor agrees to do all the work and furnish all necessary labor, materials, tools and equipment for the completion of the "2019 Myrtle Creek Street Maintenance," Project No. PW-19-01 in accordance with the bid made by the Contractor on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, all in full compliance with the Contract Documents referred to herein, and guarantees all materials and workmanship for one year after acceptance of the project.
- CONTRACT DOCUMENTS.** The Contract Documents include the City's Invitation to Bid, Information to Bidders, the Bid Form signed by the Contractor, this Construction Contract with Exhibit A, First-Tier Subcontractor Disclosure Form, Drug Testing Program Certification Form, Bidder's Responsibility Form, Performance Bond, Payment Bond, Public Works Bond Filing Certification form (when required), General Conditions, Technical Provisions, Special Conditions, Standard Drawings, Specifications and Plans, Supplemental Specifications and other Supplemental Agreements all as required for the full execution and satisfactory completion of the work. All of the Contract Documents are incorporated herein by this reference and made a part of this Contract.
- PAYMENT.** In consideration of the faithful performance of the work herein embraced, the City agrees to pay the Contractor the contracted amount within 7 days of completion date as payment in full per the provisions of the Contract Documents.
- TIME OF PERFORMANCE - LIQUIDATED DAMAGES.** The Contractor shall commence work under this Contract upon receiving notification to proceed from the City. The Contractor agrees that the work under this Contract shall be completed within 46 calendar days after notification to begin work. If the Contractor fails to complete the Project within the time hereinbefore mentioned, or in the extended time agreed upon, liquidated damages shall be paid to or withheld by the City at the rate of \$200.00 per day until the Project is completed. It has been agreed that the damages arising from a delay in completion would be difficult to ascertain with any degree of accuracy, even after the Project is completed. It has also been agreed that the amount of liquidated damages specified herein is a reasonable forecast of just compensation for the harm that will be caused by a delay in completion of the Project. Any such sum which the Contractor may be obligated to pay under the terms of this Paragraph is paid as liquidated damages, and not as a penalty.
- COMPLIANCE WITH LAW.** The Contractor shall comply with all local, state and federal laws, ordinances and regulations applicable to contracts covering municipal contracts, and shall make prompt payment of all amounts that may be due from said Contractor in the way of taxes, other governmental charges or lawful deductions, and shall make prompt payment of all labor

and materials and shall save the City harmless from any damages or claims whatsoever in the performance of the Contract. Contractor and all subcontractors agree to comply with the City's Standard Contract Provisions, attached as Exhibit A and incorporated herein by this reference, and Myrtle Creek Municipal Code Regulations relating to business registration.

**6. NOTICE.** Any notice required or permitted by this Contract must be delivered and served personally, or alternatively, deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the parties as shown below:

**CITY:**  
City of Myrtle Creek  
ATTN: City Administrator  
P.O. Box 940, 207 NW Pleasant St.  
Myrtle Creek OR 97457

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

Such notice, if mailed within the State of Oregon, shall be deemed delivered upon the second day following the date postmarked. If mailed outside the State of Oregon, notice shall be deemed delivered upon the fifth day following the date postmarked.

**7. GOVERNING LAW; VENUE LOCATION.** Oregon law shall be applied to all actions relating to the Contract, and the venue in any such action shall lie in the Circuit Court of Douglas County, Oregon.

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

**CITY**  
  
\_\_\_\_\_  
**Sean Negherbon**  
**City Administrator**  
  
Date: \_\_\_\_\_

**CONTRACTOR**  
  
\_\_\_\_\_  
**(Authorized Signature)**  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**ATTEST:**  
  
\_\_\_\_\_  
**Joshua Norton**  
**City Recorder**

\_\_\_\_\_  
**Tax Identification Number**  
  
Email: \_\_\_\_\_

**EXHIBIT "A"**  
**STANDARD CONTRACT PROVISIONS**  
**PREVAILING WAGE CONTRACT**  
**(ORS 279C.800 - 279C.870)**

The following provisions, if applicable, are hereby included in and made a part of the attached public contract which is subject to Prevailing Wage Laws and rates, between the City of Myrtle Creek and the Contractor named thereon as provided for in the Myrtle Creek Code, Oregon Revised Statutes, and Federal laws, rules, regulations, and guidelines. If a Contractor or Subcontractor violates the provisions below, the City may, at its option, terminate the contract or a subcontract and said Contractor or Subcontractor in such event shall forfeit all rights under the contract except to payment for actual labor and materials furnished to the City. The City may waive in whole or in part any forfeitures or sanctions provided in this Exhibit.

**1. PREFERENCE FOR OREGON GOODS AND SERVICES; NONRESIDENT CONTRACTOR REPORT TO DEPARTMENT OF REVENUE - ORS 279A.120:**

**1.1** For purposes of awarding the contract the City will:

**1.1.1** give preference to goods and services that have been manufactured or produced in Oregon if the price, fitness, availability and quality are otherwise equal; and

**1.1.2** add a percentage increase to the bid of a non-resident bidder equal to the percentage, if any, of the preference given to the contractor in the same state in which the contractor lives.

**1.2** As used in this Section:

**1.2.1** "nonresident contractor" means a contractor that is not a resident contractor;

**1.2.2** "resident contractor" means a contractor that has paid unemployment taxes or income taxes in the State of Oregon during the twelve (12) calendar months immediately preceding submission of the bid for the contract; has a business address in this state; and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120.

**1.3** If the Contractor is a nonresident contractor and the contract price exceeds \$10,000, the Contractor shall promptly report to the Department of Revenue on forms to be provided by the Department, the total contract price, terms of payment, length of contract and such other information as the Department may require before the Contractor may receive final payment on the public contract. The City shall satisfy itself that the requirement of this Subsection has been complied with before it issues a final payment on the contract.

**2. PAYMENT OF LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS, AND WITHHOLDING TAXES - ORS 279C.505(1):** The Contractor shall:

- 2.1 Make payment promptly, as due, to all persons supplying to such Contractor, labor or material for the performance of the work provided for in the contract.
- 2.2 Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract.
- 2.3 Not permit any lien or claim to be filed or prosecuted against the City of Myrtle Creek or any subdivision or agency or employee thereof on account of any labor or material furnished.
- 2.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

3. **PAYMENT OF CLAIMS BY PUBLIC OFFICERS - ORS 279C.515:**

- 3.1 If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public officer or officers representing the City of Myrtle Creek may pay such claims to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the contract. The payment of a claim in the manner authorized shall not relieve the Contractor or his/her surety from his or her obligations with respect to any unpaid claims.
- 3.2 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 contract within 30 days after receipt of payment from the City of Myrtle Creek or the 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 City of Myrtle Creek or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.
- 3.3 If the Contractor or Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the 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. The Contractor shall announce the foregoing in any Subcontract issued.

4. **HOURS OF LABOR - ORS 279C.520:** No person shall 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 the employee shall be paid at time and a half pay:

- 4.1 For all overtime worked in excess of 8 hours a day or 40 hours in any one week, when the work week is five consecutive days, Monday through Friday; or
- 4.2 For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- 4.3 For all work performed on Saturday and on any legal holiday specified in ORS 279C.540, or all holidays specified in a collective bargaining agreement.

The Contractor must give notice to employees who perform work on the contract, in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, the number of hours per day and days per week that the employees may be required to work.

**5. PAYMENT FOR MEDICAL CARE AND ATTENTION TO EMPLOYEES - ORS 279C.530:**

- 5.1 The Contractor shall promptly as due, make payment to any person, co-partnership or association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 5.2 The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage that complies with ORS 656.126 for their workers. Employer's Liability Insurance with coverage of not less than \$500,000 each accident shall be included.

**6. PAYMENT TO SUBCONTRACTORS - ORS 279C.580:**

- 6.1 The Contractor shall 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 the public contract:
  - 6.1.1 A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 days of payment by the City out of such amounts as are paid to the Contractor by the City of Myrtle Creek under the contract; and
  - 6.1.2 An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the City of Myrtle Creek, 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 6.1.1 of this Subsection. 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 of Myrtle Creek or Contractor when payment was due. The interest penalty shall be:

**6.1.2.1** For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

**6.1.2.2** Computed at the rate specified in ORS 279C.515(2).

**6.2** The Contractor shall 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 set forth in Subsections 6.1.1 and 6.1.2 and requiring each of its Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor or supplier.

**6.3** None of the provisions of this Section 6 are intended to prevent the Contractor or any Subcontractor from including in its contracts the provisions described in ORS 279C.580(5) and (6).

**7. DRUG TESTING - ORS 279C.505(2):**

**7.1** The Contractor shall demonstrate that an employee drug testing program is in place at the time of submitting its bid, and that such program will be maintained throughout the contract period, including any extensions. The failure of Contractor to have, or to maintain such a drug testing program is grounds for rejection of a bid or immediate termination of the contract.

**7.2** The City of Myrtle Creek shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights or any employee, including but not limited to, selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, failure to establish or implement a drug testing policy, or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing work covered by the contract. These are Contractor's sole responsibilities and nothing in this provision is intended to create any third party beneficiary rights against the City.

**8. PREVAILING WAGE PROVISIONS - ORS 279C.800 - 279C.870; 40 U.S.C. 3141 - 3148:**

**8.1** The hourly rate of wage to be paid by the Contractor and all Subcontractors to workers under the contract shall not be less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where the labor is performed as set forth in the specifications for the public contract; provided however, if the public contract is also subject to the Federal Prevailing Wage Rate pursuant to the Davis-Bacon Act (40 U.S.C. 3141 - 3148), then the higher of the two rates shall be paid. The Contractor will comply

with the provisions of ORS 279C.840 and all applicable provisions of ORS 279C.800 to 279C.870 and/or the Davis-Bacon Act, 40 U.S.C. 3141 - 3148.

- 8.2** The Contractor or the Contractor's surety and every Subcontractor or the Subcontractor's surety shall file certified statements with the City in writing using the form prescribed by the Commissioner of the Bureau of Labor and Industries certifying the hourly rate of wage paid each worker whom the Contractor or the Subcontractor has employed in the Work under the contract and further certifying that no worker employed under such public contract has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract. The certified statement shall be verified by the oath of the Contractor or the Contractor's surety or Subcontractor or the Subcontractor's surety that the Contractor or Subcontractor has read the certified statement and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
- 8.3** Each certified statement shall be delivered or mailed by the Contractor or Subcontractor to the City. A true copy of the certified statement shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements for each week during which the Contractor or Subcontractor employs a worker under the public contract shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. The City shall retain 25% of the amount earned by the Contractor if the certified statements are not submitted as required. The City shall pay the Contractor the amount retained within 14 days after the Contractor files the certified statements regardless of whether a Subcontractor has failed to file the required certified statements. The Contractor shall retain 25% of any amount earned by a first-tier Subcontractor until the Subcontractor has filed with the City, the required certified statements. The Contractor shall verify the first-tier Subcontractor has filed the certified statements before the Contractor may pay the Subcontractor any amount retained. The Contractor shall pay the first-tier Subcontractor the amount retained within 14 days after the Subcontractor files the required certified statements.

**9. PUBLIC WORKS BOND REQUIREMENTS – ORS 279C.836:**

- 9.1** If the public contract involves public works, unless exempt under ORS 279C.800 to 279C.870, prior to beginning work on the contract, the Contractor shall file with the Construction Contractors Board, a Public Works Bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon.
- 9.2** Before allowing a Subcontractor to begin work under a public contract involving public works, for which the Contractor has been awarded the contract, the Contractor shall verify that the Subcontractor has also filed a Public Works Bond with the Construction Contractors Board or elected not to file such bond as allowed by state law.

**9.3** The Public Works Bond shall provide that the Contractor or Subcontract will pay claims ordered by the Bureau of Labor and Industries to workers performing labor under the public contract involving public works. The bond shall be a continuing obligation and remain continuously in effect.

**9.4** If the Contractor or Subcontractor qualifies as a disadvantaged, minority, women, disabled veteran or emerging small business enterprise certified under ORS 200.055 and has elected not to file the Public Works Bond, the Contractor or Subcontractor will file written verification of such certification with the Construction Contractors Board. If the Contractor or Subcontractor elects not to file the Public Works Bond, before beginning any work on the public contract involving public works, the Contractor or Subcontractor shall provide the City and the Construction Contractors Board with written notification of such election.

**10. DEMOLITION CONTRACTS; LAND AND LANDSCAPE MAINTENANCE - ORS 279C.510:**

**10.1** If the public contract includes demolition, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost effective.

**10.2** If the public contract includes services for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site.

**11. DISCRIMINATION IN SUBCONTRACTING PROHIBITED; REMEDIES - ORS 279A.110:**

**11.1** The Contractor may not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, women, disabled veteran or emerging small business enterprise certified under ORS 200.055.

**11.2** By entering into the contract, the Contractor certified it has not discriminated and will not discriminate, in violation of Subsection 11.1, against any minority, women, disabled veteran or emerging small business enterprise in obtaining any required subcontract.

**11.3** If the Contractor violates the nondiscrimination certification made under Subsection 11.2, the City may regard the violation as a breach of contract that permits the City to terminate the contract or exercise any remedies for breach permitted under the contract.

**12. HIGHEST STANDARDS; CONSEQUENCES FOR FAILURE – ORS 279B.060:**

**12.1** By entering into the Contract, Contractor agrees to perform the work to the highest standards prevalent in the industry or business most closely related to the work to be provided;

**12.2** Contractor understands that failure to meet the highest standards in the industry may result in consequences including, but not limited to:

**12.2.1** reducing or withholding of payment;

**12.2.2** requiring Contractor to perform, at Contractor's own expense, additional work required to meet such standards; or

**12.2.3** declaring a default, terminating the Contract and seeking damages and other relief available under the terms of the Contract or other applicable law.

**13. COMPLIANCE WITH LAWS:** The Contractor and Subcontractor shall comply with all federal, state and local laws, rules, ordinances and regulations at all times and in the performance of the contract.

**CITY OF MYRTLE CREEK  
PUBLIC WORKS BOND FILING CERTIFICATION**

Pursuant to ORS 279C.800 to 279C.870, I, undersigned contractor, do hereby certify that, prior to beginning work on the Project for which I have been awarded the bid by the City of Myrtle Creek:

1. I have filed with the Construction Contractors Board (“Board”), a Public Works Bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon.  
 **Yes**     **No (Check one)**

2. I have elected not to file a Public Works Bond with the Board because I am a disadvantaged, minority, women, disabled veteran or emerging small business enterprise certified under ORS 200.055. I have provided the Board written verification of such certification and written notification of my election not to file the Public Works Bond. I understand that my election not to file the Public Works Bond will expire one year from the date it was filed and that a claim for unpaid wages may be filed against the payment bond I submitted on the Project.  
 **Yes**     **No (Check one)**

3. I have verified any subcontractor involved in the Project has, prior to beginning any work on this Project, either filed the Public Works Bond with the Board or has elected not to file the Public Works Bond because the subcontractor is a disadvantaged, minority, women, disabled veteran or emerging small business enterprise certified under ORS 200.055.  
 **Yes**     **No (Check one)**

(a) I have verified that any subcontractor involved in this Project that has elected not to file the Public Works Bond has provided the Board written verification of its certification under ORS 200.055 and written notification of its election not to file the Public Works Bond.     **Yes**     **No (Check one)**

I understand the Public Works Bond described above is in addition to any other bond that I am required to provide, or that may be required by a subcontractor, for this Project.

**Project Name:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_

**Contractor’s Printed Name:** \_\_\_\_\_

**Contractor’s Signature:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**CITY OF MYRTLE CREEK  
STANDARD PERFORMANCE BOND**

Bond No.: \_\_\_\_\_  
Solicitation: \_\_\_\_\_  
Project Name: \_\_\_\_\_

\_\_\_\_\_ (Surety #1) Bond Amount No. 1: \$ \_\_\_\_\_  
\_\_\_\_\_ (Surety #2)\* Bond Amount No. 2: \$ \_\_\_\_\_  
*\*If using multiple sureties* Total Penal Sum of Bond \$ \_\_\_\_\_

We, \_\_\_\_\_ as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns, firmly by these presents to pay to the City of Myrtle Creek the sum of (Total Penal Sum of Bond)

\_\_\_\_\_ (Provided that we the Sureties bind ourselves in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

**WHEREAS**, the Principal has entered into a contract with the City of Myrtle Creek, the plans, specifications, terms and conditions of which are contained in the above-referenced Solicitation;

**WHEREAS**, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called “Contract”); and

**WHEREAS**, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety:

**NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH** that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the City of Myrtle Creek and members thereof, its officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said Contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the City of Myrtle Creek be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapters 279A, 279B and 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRINCIPAL: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

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

*[Add signatures for each surety if using multiple bonds]*

BY ATTORNEY-IN-FACT:

*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Email

**CITY OF MYRTLE CREEK  
PAYMENT BOND**

Bond No.: \_\_\_\_\_

Solicitation: \_\_\_\_\_

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

\_\_\_\_\_ (Surety #1) Bond Amount No. 1: \$ \_\_\_\_\_

\_\_\_\_\_ (Surety #2)\* Bond Amount No. 2: \$ \_\_\_\_\_

*\*If using multiple sureties* Total Penal Sum of Bond \$ \_\_\_\_\_

We, \_\_\_\_\_ as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns, firmly by these presents to pay to the City of Myrtle Creek the sum of (Total Penal Sum of Bond)

\_\_\_\_\_  
(Provided that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

**WHEREAS**, the Principal has entered into a contract with the City of Myrtle Creek, the plans, specifications, terms and conditions of which are contained in the above-referenced Solicitation;

**WHEREAS**, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

**WHEREAS**, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of Contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

**NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH** that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided by the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the City of Myrtle Creek and members thereof, its officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contribution due according to workers compensation

requirements and the State Unemployment compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the City on account of any labor or materials furnished; and do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the City of Myrtle Creek be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapters 279A, 279B and 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRINCIPAL: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

SURETY: \_\_\_\_\_  
*[Add signatures for each surety if using multiple bonds]*

BY ATTORNEY-IN-FACT:  
*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Email

**LOWEST BIDDER RESPONSIBILITY DETERMINATION FORM**  
*(TO BE COMPLETED BY THE CITY UPON NOTICE OF INTENT TO AWARD)*

**“Lowest responsible bidder”** means the lowest bidder who is not on the list established by the Construction Contractors Board pursuant to ORS 701.227 and who has:

1. Substantially complied with all prescribed public contracting procedures and requirements of the State of Oregon and the City of Myrtle Creek;
2. Met the standards of responsibility described in ORS 279B.110 and 279C.375, and Myrtle Creek Municipal Code Chapter 3.06; and
3. Not been disbarred or disqualified from bidding or debarred by the State of Oregon under ORS 279B.130 or 279C.440, or by the City under the provisions of Myrtle Creek Municipal Code Chapter 3.06.

**Project Name:** \_\_\_\_\_

**Bid/Project Number:** \_\_\_\_\_

**Business Entity/ Bidder’s Name:** \_\_\_\_\_

**CCB License Number:** \_\_\_\_\_

**Form submitted by City of Myrtle Creek.**

**Form submitted by:**

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

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

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

The City has (check all of the following):

Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

Determined whether the bidder has met the standards of responsibility. In so doing, the City has found that the bidder demonstrated that the bidder considered whether the bidder:

Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the Contract.

Is covered by liability insurance and other insurance in amounts required in the solicitation documents.

Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407, or has elected coverage under ORS 656.128.

Has disclosed the bidder's first-tier subcontractors in accordance with ORS 279C.370.

Has a satisfactory record of performance.

Has a satisfactory record of integrity.

Is qualified legally to contract with the City.

Has supplied all necessary information in connection with the inquiry concerning responsibility.

Determined the bidder to be (check one of the following):

Responsible under ORS 279C.375(2)(a) and (b).

Not responsible under ORS 279C.375(2)(a) and (b).

If the City has found the bidder not to be responsible, please see attached document explaining the City's determination.

**Note:** This form is to be submitted by the City of Myrtle Creek to the Construction Contractors Board immediately following issuance of the City's Notice of Intent to Award the subject contract. A copy must immediately be filed with the City Recorder.

**BUREAU OF LABOR AND INDUSTRIES  
PREVAILING WAGE RATES FOR PUBLIC WORKS CONTRACTS**

Prevailing Wage Rates are the minimum wages that must be paid to all workers employed in the construction, reconstruction, major renovation or painting of all public works, unless specifically exempted by state or federal law. Rather than including the entire State and/or Federal Prevailing Wage Rate publications in the bid specifications and contract, public entities may make reference to the specific prevailing wage rate publication where the prevailing wage rates are found or provide a link to the specific prevailing wage rate publication where the prevailing wage rates are found.

Oregon Bureau of Labor and Industries Prevailing Wage Rates applicable to the subject project/contract are available on BOLI's website at [www.oregon.gov.boli](http://www.oregon.gov.boli). The prevailing wages to be applied throughout the duration of this project are those in effect for BOLI Prevailing Wage Rate Region 6, (Douglas County Oregon), upon the date the project is first advertised.

Federal Prevailing Wages Rates under the Davis Bacon Act (40 U.S.C. 3141 et seq.) may be found at [www.wdol.gov](http://www.wdol.gov). The prevailing wages to be applied throughout the duration of this project are those in effect for Federal Prevailing Wage Rates under the Davis Bacon Act (40 U.S.C. 3141 et seq.) at the time the initial specifications were first advertised for bid solicitations.

If the project is subject to both ORS 279C.800 to 279C.870 and to the Davis Bacon Act (40 U.S.C. 3414 et seq.), the contractor and every subcontractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers on the projects.

For specific information or questions regarding the Prevailing Wage Rate Law, you may log on to the above referenced websites or contact the nearest Oregon Bureau of Labor and Industries office listed below.

**BOLI Office Locations**

Eugene	1400 Executive Parkway, Eugene, OR 97401	541/686-7623
Medford	700 E. Main, Suite 105, Medford, OR 97504	541/776-6270
Portland	800 NE Oregon St., #32, Portland, OR 97232	503/731-4074
Salem	3865 Wolverine St. NE, Bldg. E-1, Salem, OR 97305	503/378-3292

**THIS PROJECT IS SUBJECT TO THE PREVAILING WAGE RATES  
EFFECTIVE ON January 1, 2019**

## GENERAL CONDITIONS

### 1. DEFINITIONS

1.1 Whenever used in these General Conditions or in the other Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

- **"Bid"** means the offer of a bidder to perform the work described by the Contract Documents when made out and submitted on the prescribed Bid Form and properly signed.
- **"Bidder"** means any person, firm, or corporation submitting a bid for the work described hereunder.
- **"City"** means the City of Myrtle Creek.
- **"Contract Documents"** means and includes the Invitation to Bid, Information for Bidders, Bid Form, Construction Contract with Exhibit "A" Standard Contract Provisions, First-Tier Subcontractor Disclosure Form, Drug Testing Program Certification Form, Bidder's Responsibility Form, Performance Bond, Payment Bond, Public Works Bond Filing Certification form (when required), General Conditions, Technical Provisions, Special Conditions, Standard Drawings, Specifications & Plans, Supplemental Specifications and other Supplemental Agreements all as required for the full execution and satisfactory completion of the Project.
- **"Contractor"** means the firm or corporation executing the Contract with the City for the performance of the work hereunder.
- **"Engineer"** means the City's authorized Engineer, as designated by the City Administrator or Public Works Director for the Contract, either acting directly or through the inspector, within the scope of assigned duties.
- **"Payment Bond"** means the approved form of security furnished by the Contractor and Contractor's Surety as a guarantee of good faith on the part of the Contractor to make all payments that are the Contractor's obligations, in accordance with the terms of the Contract.
- **"Performance Bond"** means the approved form of security furnished by the Contractor and Contractor's Surety as a guarantee of good faith on the part of the Contractor to execute the work that is the Contractor's obligation, in accordance with the terms of the Contract.
- **"Plans"** means and includes the City approved maps, standard drawings, work order drawings and supplemental drawings and sketches which will

show the locations, character, dimensions and details of the work to be done.

- **"Project"** means all work described and specified herein and as indicated on the Plans.
- **"Public Works Bond"** means a \$30,000 form of security furnished by the Contractor and/or subcontractor and Contractor's and/or subcontractor's Surety to the Construction Contractors Board to pay claims ordered by the Bureau of Labor and Industries to workers performing labor under a public works project.
- **"Specifications"** means and includes the directions, provisions and requirements contained herein and referred to herein pertaining to the Project.
- **"Superintendent or Foreman"** means the executive representative of Contractor, authorized to receive and fulfill instructions from the Engineer or Engineer's representatives.
- **"Supplemental Agreement"** means the written agreements executed by the Contractor and the City covering alterations in the Contract, unforeseen work and materials incident and necessary to the Project.
- **"Supplemental Specifications"** means specific instructions setting forth conditions or requirements peculiar to the Project under consideration when said Project is not completely covered by the Specifications contained herein.
- **"Surety"** means the person, firm, or corporation who executes the bonds required from the Contractor.

## **2. CONTRACT DOCUMENTS**

### **2.1 Award, Execution of Documents, Delivery of Bonds.**

**2.1.1** If awarded, the Contract will be awarded to the lowest responsible bidder whose qualifications indicate the award will be in the best interest of the City and whose bid complies with all the prescribed requirements. No award will be made until the City has concluded such investigations as the City deems necessary to establish the responsibility, qualifications and financial ability of the bidders to do the work in accordance with the Contract Documents.

**2.1.2** In determining the lowest responsible bidder for the purpose of awarding the Contract, the City shall:

**2.1.2.1** give preference to goods and services that have been manufactured or produced in Oregon if the price, fitness, availability and quality are otherwise equal; and

**2.1.2.2** add a percentage increase on the bid of a non-resident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

**2.1.3** The City reserves the right to reject any and all bids not in compliance with all public bidding procedures and requirements or when such rejection is in the interest of the City; to reject the bid of a bidder who has previously failed to perform properly or complete contracts of a similar nature on time; and to reject the bid of a bidder who is not, in the opinion of the City, in a position to perform the Contract. If the Contract is awarded, the City will give the successful bidder written notice of award within 45 days after bid opening.

**2.1.4** At least three counterparts of the Construction Contract and such other Contract Documents as practicable will be signed by the City and Contractor. The City will identify those portions of the Contract Documents not so signed and such identification will be binding on all parties. The Contractor shall receive one executed counterpart of the Contract Documents.

**2.1.5** When required by the specifications, the Contractor shall deliver simultaneously with the execution of the Contract Documents a good and sufficient Payment Bond to ensure payment of the obligations incurred in the performance of this contract, a Performance Bond to assure performance of the Contract and the Public Works Bond Filing Certification form executed by the Contractor. No exceptions will be made to this provision.

**2.1.6** Failure of the successful bidder to execute the Contract Documents and deliver the required Payment Bond, Performance Bond and Public Works Bond Filing Certification form within ten days of the notification of the award shall be just cause for the City to annul the award.

## **2.2 Correlation, Interpretation, and Intent of Contract Documents.**

**2.2.1** The intent of the Plans and Specifications as contained herein is to describe the complete Project which the Contractor shall undertake to do in full compliance with the Construction Contract with Exhibit "A", Plans and Specifications. The Contract Documents comprise the entire agreement between the City and the Contractor. The Contract Documents may only be altered as provided in the General Conditions of the Contract.

**2.2.2** The Contract Documents are complementary; what is called for by one is as binding as if called for by all. Anything shown on the Plans and not described in the Specifications, or vice versa, shall be considered as if shown on the Plans and described in the Specifications. If the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor will call it to the Engineer's

attention in writing before proceeding with the work affected thereby. In resolving such conflicts, errors and discrepancies, the Contract Documents shall be given precedence in the following order: Construction Contract with Exhibit "A", Specifications and Plans. Within the Specifications, the order of precedence shall be as follows: General Conditions, Information for Bidders, Special Conditions and Technical Provisions.

**2.2.3** Figure dimensions on Plans shall govern over scale dimensions, and detailed drawings shall govern over general drawings. Any work that may reasonably be inferred from the Specifications or Plans as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to reference such recognized standards. The Contractor assumes full responsibility for having familiarized himself with the nature and extent of the Contract Documents, work locality and local conditions that may in any manner affect the work to be done.

**2.3 Verification and Warranty.** The Contractor shall make the determination of the nature of the work proposed under the Contract, local conditions which can be encountered within the Project area and all other matters which can in any way affect the work proposed under the Contract. It shall also be the responsibility of the Contractor to be thoroughly familiar with the Contract Documents. Failure to make the examination necessary for this determination or to examine any form, instrument or document of the Contract with Exhibit "A" shall not release the Contractor from the obligations of the Contract with Exhibit "A". The Contractor warrants that no verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of the Contract, has affected or modified any of the terms or obligations herein contained.

**2.4 Documents to be kept on the Jobsite.** The Contractor shall keep one copy of the Contract Documents at the jobsite, in good order, available to the Engineer.

**2.5 Additional Contract Documents.** The City will furnish to the Contractor, on request and free of charge, up to six copies of the Contract Documents. Additional copies of Contract Documents may be obtained upon request by paying the actual cost of reproduction.

**2.6 Surveys.** When required for the Project, surveying and staking of the component parts of the work shall be as detailed in the Technical Provisions and on the Plans. The Contractor shall construct the work in accordance with the construction stakes and shall be charged with full responsibility for conformity and agreement of the work with said construction stakes.

### **3. ENGINEER-CITY-CONTRACTOR RELATIONS**

**3.1 Authority of the Engineer.** All work shall be done under the general supervision of the Engineer. The Engineer shall decide any and all questions which may arise as to the quality and acceptability of any materials furnished, work performed, rate

of progress of work, interpretation of Plans, interpretation of the Specifications, and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor.

### **3.2 Duties and Responsibilities of the Engineer.**

**3.2.1** The Engineer will make periodic visits to the site of the Project to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents. The Engineer shall not be required to make comprehensive or continuous inspections to check the quality or quantity of the work, and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project. Visits and observations made by the Engineer shall not relieve the Contractor of obligations to conduct comprehensive inspections of the work, to perform acceptable work and to provide adequate safety precautions.

**3.2.2** The City, the Engineer or a representative thereof will be assigned to periodically observe the work and to act in matters of construction under the Contract. It is understood that the Engineer or representative shall have the power to issue instructions and make decisions within the limitations of the authority granted by the City. Such inspection shall not relieve the Contractor of obligations to conduct comprehensive inspections of the work, perform acceptable work and provide adequate safety precautions.

**3.2.3** All claims of the Contractor shall be presented to the Engineer through the inspectors, for a decision which shall be made in writing within a reasonable time. All decisions of the Engineer shall be final to the extent a particular matter may be subject to arbitration.

**3.3 Suspension of Work.** The Engineer shall have the authority to suspend the work, wholly or in part, for such period or periods as may be deemed necessary due to unsuitable weather or such other conditions as are considered unfavorable for prosecution of the work, or failure on the part of the Contractor to carry out the provisions of the Contract. The Contractor shall not suspend operation without the permission of the Engineer or Engineer's authorized representative.

### **3.4 Notice of Potential Claim.**

**3.4.1** The Contractor shall not be entitled to any additional compensation otherwise payable for any act or failure to act by the Engineer or the City, the happening of any event or occurrence or any other cause, unless the Contractor shall have given the Engineer a written notice of potential claim.

**3.4.2** The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved and insofar as possible, the amount of the potential claim. If based on an act or failure to act by the Engineer or the City, except in case of

emergency, such notice shall be given to the Engineer prior to the time that the Contractor starts performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within fifteen days after the happening of the event or occurrence giving rise to the potential claim.

**3.4.3** It is the intention of this section that differences between the parties arising under and by virtue of the Contract shall be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled if possible or other appropriate action may be taken promptly.

**3.5 Examination of Completed Work.** If the Engineer requests it, the Contractor at any time before acceptance of the Project by the City, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standards required by the Specifications. Should the work thus exposed or examined prove to be in accordance with the Specifications, the uncovering or removing, the replacing of the covering or making good of the parts removed, shall be paid for by the City; but should the work so exposed or examined prove to be not in accordance with the Specifications, the uncovering or removing and the replacing of the covering or the making good of the parts removed, shall be at Contractor's expense. Should any work be performed without giving notice of plan of work, thereby eliminating an opportunity of inspection by the Engineer, the Engineer may require the Contractor to uncover such work at Contractor's own expense for examination by the Engineer. Cost of uncovering such work shall be borne by the Contractor, whether or not the work is found acceptable. The work shall also be subject to inspection by appropriate governmental inspectors at all times.

**3.6 Contractor's Superintendent.** A qualified superintendent, who is acceptable to the Engineer, shall be maintained on the Project to give efficient supervision over the Project until its completion. The superintendent shall have full authority to act on behalf of the Contractor, and all directions given to the superintendent shall be considered given to the Contractor. In general, the Engineer's instructions shall be confirmed in writing and always upon written request from the Contractor.

**3.7 Information Regarding Existing Facilities.** Any information relative to the location of other utilities and structures as might be shown on the Plans will be obtained from the best information available and field observations; however, the City cannot guarantee the accuracy or completeness of this information. The Contractor shall, insofar as possible, determine the exact location of the underground obstructions prior to commencing excavation, and will be held responsible for the repair of any damage to any and all underground structures and/or utilities caused by his construction operations.

### **3.8 Use of Premises**

**3.8.1** All work included under the Contract is to be constructed on land belonging to the City, on public right-of-way administered and regulated by state and/or local

government or on easements to the benefit of the City or the public. The Contractor shall abide by special conditions or requirements of the property owner or governing authority. The Contractor shall confine equipment, the storage of materials and the operation of Contractor's workers to the limits as shown on the Plans or as indicated by law, ordinances, permits or directions of the Engineer and shall not unreasonably encumber the premises with materials.

**3.8.2** Any additional land and access thereto which the Contractor might desire for temporary construction facilities or for storage of materials shall be provided by the Contractor with no liability to the City. The Contractor shall pay all costs involved in acquiring such rights and all clean up shall be made as required by these Specifications.

**3.9 Private Property.** The Contractor shall not enter upon private property for any purpose without obtaining permission and shall be responsible for the preservation of all public property, trees, monuments, etc. along and adjacent to the street and/or right-of-way, and shall use every precaution necessary to prevent damage or injury thereto. The Contractor shall use suitable precautions to prevent damage to pipes, conduits and other underground structures and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

**3.10 Assignment of Contract.** Contractor shall not sublet, sell or assign the Contract or sublet any of the work to be performed hereunder without the written consent of the City. Any such assignment or subletting of any such work without City's consent shall be null and void and without force or effect.

**3.11 City's Right to do Work.** If the Contractor should, in the opinion of the Engineer, neglect to prosecute the work properly or neglect or refuse at Contractor's own cost, to take up and replace work that has been rejected by the Engineer, the Engineer shall notify the City who shall notify the Surety of the condition. After ten days written notice to the Contractor and the Contractor's Surety, or without notice if an emergency or danger to the Project or public exists, and without prejudice to any other right which the City may have under the Contract, the City may take over that portion of the Project which has been improperly executed, make good the deficiencies and deduct the cost thereof from the payments then or thereafter due the Contractor.

**3.12 City's Right to Terminate Contract.**

**3.12.1** Upon occurrence of any one or more of the following, the City may terminate the Contract at any time, immediately or upon such notice as the City in its sole discretion deems appropriate, by providing written notice to the Contractor which describes the reason for termination:

**3.12.1.1** Contractor persistently fails to perform the Work in accordance with the Contract Documents, including but not

limited to, failure to supply sufficient skilled workers, suitable materials or equipment and failure to adhere to the progress schedule as the schedule may be revised from time to time;

- 3.12.1.2** Contractor fails to comply with applicable laws or the provisions of any of the Contract Documents, including, but not limited to the Construction Contract with Exhibit "A" Standard City Contract Provisions;
- 3.12.1.3** Contractor disregards the authority of the Engineer;
- 3.12.1.4** Contractor violates any provision of the Contract and, after receiving notice of the violation, fails to remedy the breach immediately; or
- 3.12.1.5** Contractor files for bankruptcy under any chapter of the Bankruptcy Code (Title 11, United States Code); or a petition in bankruptcy is filed against Contractor under the Bankruptcy Code or any other provision of law seeking substantial relief; or Contractor makes a general assignment for the benefit of creditors; or a trustee, receiver or similar agent is appointed to take charge of Contractor's property for the benefit of creditors; or Contractor otherwise admits in writing to being unable to pay its debts as they become due.

**3.12.2** Upon the City's issuance of written notice of termination, the Contractor shall immediately cease all work under this Contract, unless, as shall be specified in the notice, the City, in its sole discretion, would be harmed by any uncompleted work, in which case, Contractor shall complete those items specified by the City in its notice.

**3.12.3** The City may terminate the Contract upon seven (7) days notice if the City determines for any reason that the completion of the Contract is no longer in the best interests of the City.

**3.12.4** If the City terminates the Contract pursuant to Paragraph 3.12.1, the City may choose any remedy available to it under the Contract, applicable statutes, City Code or common law, including but not limited to, completing the Project itself or through another contractor. The Contractor shall pay the City for all additional costs incurred by the City to obtain substitute performance. The Contractor shall be entitled to payment for that portion of the work that the Contractor completed according to the Contract, less the City's costs to obtain substitute performance for the balance of the work.

**3.12.5** If the City terminates the Contract pursuant to Section 3.12.3, the City shall pay Contractor for that portion of the work the Contractor has completed according to the Contract, plus Contractor's cost for materials ordered and delivered to the

site before Contractor receives the City's notice of termination; provided that such materials shall then belong to the City.

**3.13 Contractor's Right to Stop Work or Terminate Contract.** The Contractor may suspend work or terminate the Contract upon ten days written notice to the City, for any of the following reasons:

**3.13.1** If an order of any court or other public authority caused the work to be stopped or suspended for a period of ninety days through no act or fault of the Contractor or his employees;

**3.13.2** If the City should fail to act upon any request for payment within thirty days after its approval by the Engineer; or

**3.13.3** If the City should fail to pay the Contractor any sum within thirty days after its award by arbitrators.

**3.14 Rights of Various Interests.** Wherever work being done by the City's forces is contiguous to work covered by the Contract, the respective rights of the various interests involved shall be established by the Engineer to secure the completion of the various portions of the work in general harmony.

**3.15 Subcontracts.**

**3.15.1** The Contractor shall not be permitted to subcontract any of the work to be performed under the Contract without the written consent of the City, submission of the First-Tier Subcontractor Disclosure Form as required prior to the bid opening deadline and verification that the subcontractor has filed a Public Works Bond, when required, with the Construction Contractors Board prior to beginning any work on the project. The Contractor shall not employ any subcontractor that the Engineer may object to due to subcontractor lacking the capability of performing work of the type and scope anticipated. No changes will be allowed from the approved subcontractor list without approval of the Engineer.

**3.15.2** The Contractor agrees to be as fully responsible to the City for the acts and omissions of the Contractor's subcontractors or of any persons either directly or indirectly, employed by Contractor's subcontractors as Contractor is for the acts and omissions of persons directly employed by Contractor.

**3.15.3** Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the City.

**3.16 Unforeseen Difficulties.** The Contractor shall protect the work and materials from damage due to the nature of the work, the elements, carelessness of other contractors or from any cause whatever until completion and acceptance of the Project. All loss or damages arising out of the nature of the work to be done under these Contract Documents, from any unseen obstruction or defects which may be

encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the Contractor.

**3.17 Work During an Emergency.** The Contractor shall be responsible for and must have resources available for all emergency work which might occur on the Project under construction for which the Contractor is responsible. The Contractor shall perform any work and furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases the Contractor shall notify the Engineer of the emergency as soon as practicable, but the Contractor shall not wait for instructions before proceeding to properly protect both life and property.

**3.18 Oral Agreements.** No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents. No provision of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence shall be introduced in any proceeding of any other waiver or modification.

#### **4. MATERIALS AND WORKMANSHIP**

##### **4.1 Materials to be Reviewed Before Use.**

**4.1.1** Only materials conforming with the specified requirements and conditionally accepted by the Engineer shall be used in the Project.

**4.1.2** Before any material to be used in the Project is delivered, the Contractor shall advise the Engineer of the source from which the material is to be obtained, furnish such samples as may be required for testing purposes, and receive the Engineer's conditional acceptance for the use of that particular material. The conditional acceptance of any source of supply by the Engineer does not imply that all material from that source will be accepted. Should material from any conditionally accepted source fail to maintain a quality meeting the requirements of the Specifications, use of material from that source shall be discontinued and the Contractor shall furnish acceptable material from other sources. Regardless of the source, any material delivered for the Project which fails to meet the requirements will be rejected. Only material meeting all requirements will be allowed to be incorporated in the Project. Any material or item incorporated in the Project which does not meet requirements of the Contract Documents, even if it was used with the consent and/or the presence of an inspector, shall be removed and acceptable material shall be used in its place, with all costs related to such removal and installation being borne by the Contractor.

**4.1.3** Any material which, after conditional acceptance, has for any reason become unsuitable for use shall be rejected and not used.

##### **4.2 Tests of Materials.**

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

**4.2.2** In the absence of any definite Specification or reference to a Specification in the Technical Specifications or in the Special Provisions for the particular Project involved, it shall be understood that such materials shall meet the Specifications and requirements of the American Society for Testing Materials. Unless otherwise specified, all tests of materials shall be made in accordance with the methods prescribed by the American Society for Testing Materials.

**4.3 Storage of Materials.** Materials shall be so stored as to insure the preservation of their quality and fitness for the Project. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces, and not on the ground, and/or they shall be placed under cover. Stored materials shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the City and the private property owner.

**4.4 Character of Workers.** The Contractor shall at all times be responsible for the conduct and discipline of Contractor's employees and/or any subcontractor or persons employed by subcontractors. All workers must have sufficient knowledge, skill and experience to properly perform the work assigned to them. Any foreman or worker employed by the Contractor or subcontractor who, in the opinion of the Engineer, does not perform the work in a skillful manner, appears to be incompetent or acts in a disorderly or intemperate manner shall, at the written request of the Engineer, be removed from work on any portion of the Project except as allowed by the Engineer.

**4.5 Construction Means, Methods, Techniques, and Procedures.** The Contractor shall have the full power and authority to select the means, methods, techniques and procedures for performing the work covered under the Contract, provided said means, methods, techniques and procedures are in strict compliance with the requirements of all local, state and federal authorities and with these Specifications, and are not in conflict with the recommended installation practices of the manufacturers who are the suppliers of the materials to be utilized on the contemplated Project. The construction means, methods, techniques and procedures utilized shall produce a satisfactory quality of workmanship and shall be adequate to maintain the schedule of progress as required under the provisions of these Specifications.

**4.6 Contractor's Tools and Equipment.** The Contractor's tools and equipment used on the work covered under the Contract shall be furnished in sufficient quantity

and of a capacity and type that will safely perform the work specified, and shall be maintained and used in a manner that will not create a hazard to persons or property, or cause a delay in the progress of the work.

- 4.7 Rejected Materials and Work.** Any material supplied by the Contractor which is condemned or rejected by the Engineer or the Engineer's authorized representative because of non-conformity with the Contract Documents shall be removed at once from the vicinity of the Project by the Contractor at his own expense, and the same shall not be used on the Project. Any defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed within ten (10) days after written notice is given by the Engineer, and the work shall be re-executed by the Contractor at his own expense.
- 4.8 Unnoticed Defects.** Any defective work or materials furnished by the Contractor and discovered by the Engineer before the Project has been given final acceptance or final payment has been made, or during the guarantee period, shall be removed and replaced by work and materials which shall conform to the provisions of the Contract Documents. Failure on the part of the Engineer or his representative to condemn or reject bad or inferior work or materials shall not be construed to imply acceptance of such work or materials.
- 4.9 Right to Retain Imperfect Work.** If any part or portion of the work done or material furnished by the Contractor under the Contract proves to be defective and not in accordance with the Plans and Specifications, and if the imperfection in the same is not of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the City shall have the right and authority to retain such work but shall make such deductions in the payment therefore as may be just and reasonable.
- 4.10 Cutting and Patching.** The Contractor shall do, or be responsible for, all cutting, fitting or patching that may be required by, shown on or reasonably implied by the Plans. Any defective work performed or material furnished by the Contractor, which is discovered by the Engineer before final acceptance of the Project or before final payment has been made, shall be removed and replaced or patched at the Contractor's expense in a manner approved by the Engineer or his representative.
- 4.11 Cleanup.**
- 4.11.1** As the Project progresses and immediately after completion of the Project, the Contractor shall clean up and remove all refuse and unused materials of any kind resulting from the Project. If the Contractor fails to commence the cleanup within 24 hours after being directed to do so by the Engineer, the Engineer may have the cleanup performed by others. The cost shall be borne by the Contractor and may be deducted from payments due or to become due the Contractor.

**4.11.2** After the Project is completed and before final acceptance of the Project, all areas affected by the Project shall be neatly finished and all equipment, temporary structures, rubbish and waste shall be removed from the Project area.

**4.12 Guarantee.** Contractor shall guarantee all work performed under the Contract for a period of at least one year from the date of completion and acceptance by the City. Any defective portions of such work, whether due to defective materials or workmanship, shall be replaced by Contractor at no cost to the City during the guarantee year. If the defective materials were furnished by the City and the failure is the result of such defective material rather than improper handling and installation, the City will replace the defective material at its expense. Otherwise, the Contractor shall be responsible to replace the defective material at Contractor's own cost.

## **5. INSURANCE, LEGAL AND FINANCIAL RESPONSIBILITY, AND PUBLIC SAFETY**

### **5.1 Insurance.**

**5.1.1 Policy Requirements.** The insurance policies specified herein shall be approved as to form by the City. Contractor shall deliver a certificate of all required policies to City upon execution of the Contract Documents and prior to commencement of any work under the contract. If requested by the City, Contractor shall furnish the City with executed copies of such policies of insurance. Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable to the City. Insurance coverage shall be provided by companies admitted to do business in Oregon and rated A- or better by AM Best. A thirty (30) day notice of cancellation, termination or non-renewal in coverage clause shall be included in all insurance policies. Failure to maintain any required insurance coverage in the minimum required amount shall constitute a material breach of the Contract and shall be grounds for immediate termination of the Contract. If the insurer is unwilling or unable to provide such commitment, the Contractor shall provide the City with the relevant sections of its policies describing how the insurer may reduce, modify or cancel the insurance. Furthermore, the Contractor has an affirmative duty to provide the City with any notice the Contractor receives regarding the reduction, modification or cancellation of its insurance within 24 hours of Contractor's receipt of such notice. All policies required by these provisions shall:

**5.1.1.1** also name the City as an additional insured, protecting City from any and all claims, losses, actions or omissions of Contractor or as a result of the joint concurring or contributory act, omission or negligence of Contractor and City arising with or related to activities specified under the Contract;

**5.1.1.2** be written as primary policies, not contributing with, or in excess of, any coverage City may have; and

**5.1.1.3** have loss payable clauses in favor of and reasonably satisfactory to City.

**5.1.2 Commercial General Liability Insurance.** During the performance of the Contract, Contractor shall obtain and maintain continuously in effect a commercial general liability insurance policy, including personal and advertising injury liability and products, completed operations and construction site coverage, with a combined single limit per occurrence of not less than \$2,000,000. The aggregate limit shall not be less than \$4,000,000. The policy shall be endorsed to state that the aggregate limit of liability shall apply separately to the Contract. Coverage may be written in combination with Commercial Automobile Liability Insurance with separate limits for Commercial General Liability and Commercial Automobile Liability. If available, such policy shall contain a contractual liability endorsement to cover Contractor's indemnification obligations under the Contract. Claims Made policies will not be accepted.

**5.1.3 Commercial Automobile Liability Insurance.** At all times during the term of the Contract, and at the sole expense of Contractor, Contractor shall maintain continuously in effect, "Symbol 1" commercial automobile liability coverage covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than \$2,000,000. If this coverage is written in combination with the Commercial General Liability, the aggregate limit for Commercial General Liability shall not be less than \$4,000,000 and the policy shall be endorsed to state that the aggregate limit of Commercial General Liability shall apply separately to the Contract.

**5.1.4 Workers Compensation.** At all times during the term of the Contractor, and at the sole expense of the Contractor and Subcontractors, the Contractor and all Subcontractors shall comply with ORS 656.017, which requires them to provide Workers Compensation coverage for all their subject workers.

**5.1.5 Pollution Liability.** Contractor or appropriate Subcontractor shall obtain, at their expense, and keep in effect during the term of the Contract, Pollution Liability Insurance covering their liability for bodily injury, property damage and environmental damage resulting from sudden accidental or gradual pollution and related cleanup costs incurred by the Contractor or appropriate Subcontractor, all arising out of the work or services (including the transportation risk, when applicable) to be performed under the Contract. Combined single limit per occurrence shall not be less than \$2,000,000, with an annual aggregate limit of not less than \$4,000,000. If available, such policy shall contain a contractual liability endorsement to cover Contractor's indemnification obligations under the Contract. Claims Made policies will not be accepted.

**5.2 Indemnification.** The Contractor shall hold the City harmless from, and indemnify it for, all loss, costs, claims, demands, damages, suits, actions and judgments for property damage and/or personal injury, including death, arising out of the Project

or performance under the Contract by the Contractor's agents or employees, or any of them. In any event any such action or claim is brought against City, Contractor shall, if City so elects, upon tender by City, defend the same at Contractor's sole cost and expense, promptly satisfy any judgment adverse to City or to City and Contractor jointly and reimburse City for any loss, costs, damage or expense (including legal fees) suffered or incurred by City.

**5.3 Taxes and Charges.** The Contractor shall pay state and local sales and use taxes on all items as required by the laws and statutes of the state and its political subdivisions. The Contractor shall withhold and pay any and all withholding taxes, whether state or federal; pay all social security charges and state unemployment compensation charges; and pay or cause to be withheld, as the case may be, any and all taxes, charges, fees or sums whatsoever which are now or may hereafter be required to be paid or withheld under the laws.

**5.4 Bid Bond, Payment Bond, Performance Bond and Public Works Bond.**

**5.4.1 Contracts for Under \$25,000.00.** Except when required by the purchasing agent, and except for public improvement contracts, bids on all public contracts under twenty-five thousand dollars (\$25,000.00) are exempt from the requirements for a Bid Bond, a Performance Bond to assure performance of the Contract and a Payment Bond to assure payment of the obligations incurred in the performance of the Contract. The Information for Bidders shall state when Bonds are required for contracts under \$25,000.00.

**5.4.2 Contracts for \$25,000.00 or More.** Except for public improvement contracts, or except when waived by the Council, bids on all public contracts of twenty-five thousand dollars (\$25,000.00) or more, shall be accompanied by a Bid Bond, and the Contractor shall post a Performance Bond to assure performance of the Contract and a Payment Bond to assure payment of the obligations incurred in the performance of the Contract. The Information for Bidders shall state when the requirement for Bonds have been waived for contracts of \$25,000.00 or more.

**5.4.3 Public Improvement Contracts & Contracts for Highways, Bridges and Other Transportation Projects:**

**5.4.3.1** Bids on Public Improvement contracts for one hundred thousand dollars (\$100,000.00) or less, and contracts for highways, bridges and other transportation projects for fifty thousand dollars (\$50,000.00) or less, are exempt from the requirement of a Bid Bond, a Performance Bond and a Payment Bond.

**5.4.3.2** Bids on Public Improvement contracts for more than one hundred thousand dollars (\$100,000), and contracts for highways, bridges and other transportation projects for more than fifty thousand dollars (\$50,000), must be accompanied by a Bid Bond, Performance Bond and Payment Bond.

**5.4.4 Emergency Contracts.** For all contracts awarded under Municipal Code Subsection 3.06.025(F), the City Council or the Purchasing Agent may waive the requirements for Bid Bond, the Payment Bond and the Performance Bond. Upon receiving the Purchasing Agent's report regarding the emergency conditions necessitating waiver, as required by Municipal Code Subsection 3.06.025(F), the Council may modify or reject the Purchasing Agent's decision to waive Bond requirements.

**5.4.5 Public Works Bond.** Before beginning work on a public works contract, a contractor or subcontractor, unless exempt under ORS 279C.800 to 279C.870, shall submit a \$30,000 Public Works Bond to the Construction Contractors Board and certify to the City that such Bond has been submitted. In case of an emergency, or when the City's interest or property would probably suffer material injury by delay or other cause, the requirement to file a Public Works Bond may be excused if the Purchasing Agent has declared an emergency under Myrtle Creek Municipal Code 3.05.030 (7).

**5.4.6 Submittal and Return of Bid Bonds.** When required by the above Subparagraphs, the Bid Bond shall accompany the bid in the form of cash, certified check, cashier's check, irrevocable letter of credit or Bid Bond in a form approved by City, and in an amount equal to ten percent (10%) of the total amount of the bid. There shall be no exceptions to this provision. All required Bid Bonds, excepting that of the Contractor submitting the successful bid, will be returned within thirty days after the Contract has been awarded. The Bid Bond from the successful Contractor will be retained until bidder has entered into a satisfactory Contract with the City, and when required, furnished a Performance Bond to assure performance of the Contract, a Payment Bond to assure payment of the obligations incurred in the performance of the Contract and the Public Works Bond Confirmation form executed by the Contractor. Should the successful bidder fail or refuse to execute the Contract and/or furnish the Payment Bond, Performance Bond or Public Works Bond Confirmation form as required, the Bid Bond deposited by said bidder shall be retained as liquidated damages by the City.

**5.4.7 Bond Form.** The form of all bonds required by the City shall be as the City may prescribe, and shall be with a Surety company satisfactory to the City and authorized to do business in the State of Oregon. Bonds shall be in force for one year after acceptance of the completed Project to cover all guarantees against defective materials and workmanship and all claims by subcontractors or third parties for services or materials provided to Contractor or Contractor's subcontractors.

**5.5 Royalties and Patents.** The Contractor shall pay all royalty and license fees, unless otherwise specified. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the City and the Engineer harmless from loss on account thereof.

**5.6 Permits and Licenses.**

**5.6.1** The Contractor shall apply for and obtain, but the City shall cover the cost of, all rights-of-way permits, easements, franchises, highway crossing permits and railroad crossing permits as required. The Contractor shall comply with all specifications or requirements stipulated in the permits granted to the City.

**5.6.2** The Contractor shall obtain at Contractor's expense, all other permits (such as building permits, burning permits, blasting permits and safety permits), licenses and inspection fees necessary for construction purposes as required by appropriate local, county, state or federal laws and/or ordinances. The Contractor shall also be registered to do business with the City of Myrtle Creek prior to beginning work on the Contract.

**5.7 Laws to be Observed.** The Contractor shall keep fully informed of all local and county ordinances, state and federal laws in any manner affecting the Project herein specified. Contractor shall at all times comply with said ordinances, laws and regulations, and the City's Standard Contract Provisions in Exhibit "A" of the Construction Contract; and protect and indemnify the City and City's officers and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, provisions or regulations.

## **5.8 Safety.**

**5.8.1** The Contractor will be solely and completely responsible for conditions of the jobsites, including safety of all persons and property during work on the Project. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal, state, county and local laws, ordinances and codes. The Contractor shall comply with ORS 279C.505(2) drug testing program requirements at all times throughout the completion of the Project.

**5.8.2** The Contractor shall also comply with the "U.S. Department of Labor Occupational Safety and Health Act", the "Construction Safety Act" administered by the U.S. Department of Labor, and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, except where these are in conflict with state laws, in which case the more stringent requirement must be followed.

**5.8.3** Contractor shall comply with all federal, state and local safety requirements, including but not limited to regulations pertaining to health hazard notification, control of hazardous energy, use of hazardous substances, handling and disposal of hazardous waste, removal and disposal of asbestos, entry into and work in confined spaces and handling of materials containing lead. City will notify Contractor of any hazardous conditions of which City is aware and will provide Contractor with information about City's safety and hazard notification programs. Such notification from the City does not relieve Contractor of any responsibility under the Contract or under federal or state statute, regulation or common law to inform itself of existing and potential hazards, to communicate those hazards to its

employees, and to use all reasonable steps to minimize the risk of harm to its employees, other workers and the public.

**5.8.4** The Contractor shall maintain at the jobsite all articles necessary for giving first aid to the injured and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the jobsite.

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

**5.8.6** If death, serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Engineer and the City. In addition, the Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, work on the Project or adjacent to the sites, giving full details and statements of witnesses.

**5.8.7** If any claim is made by anyone against the Contractor or any subcontractor because of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

**5.9 Equal Opportunity Clause.** The provisions of Executive Order 11246 of September 24, 1965, and the Rules and Regulations issued therein are hereby incorporated by reference, and the Contractor agrees, by acceptance of the Contract, to comply with such Executive Order, rules, regulations and amendments thereto, to the extent the same are applicable to the contracting and/or subcontracting of services or work hereunder.

**5.10 Warning Signs and Barricades.** The Contractor shall provide adequate signs, barricades and lights and take all necessary precautions for the protection of the work under the Project and the safety of the public. All barricades and obstructions shall be protected at night by signal lights which shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and shall be painted white or whitewashed to increase their visibility at night. Suitable warning signs shall be so placed and illuminated at night as to show in advance where construction, barricades or detours exist.

**5.11 Flaggers.** In addition to furnishing and maintaining adequate signs, barricades and lights, the Contractor is required to furnish any and all flaggers that are required to control traffic. The City is hereby specifically exempted from furnishing any flaggers for the Project. If flaggers are required on any jobsite, they shall be supplied by the Contractor at no additional cost to the City.

**5.12 Public Safety and Convenience.** The Contractor shall at all times conduct work on the Project so as to insure the least possible obstruction to traffic and inconvenience to the general public and residents in the vicinity of the Project, and to insure the protection of persons and property in a manner satisfactory to the

Engineer. No road or street shall be closed to the public except with the permission of the Engineer and proper governmental authority. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches and irrigation ditches, which shall not be obstructed except as approved by the Engineer.

**5.13 Protection of Work and City's Property.** The Contractor shall at all times safely guard the City's property and equipment from injury or loss in connection with Contractor's work under the Contract. The Contractor shall at all times safely guard and protect the Project and adjacent property (as provided by law and the Contract Documents) from damage. Contractor shall be responsible for any damage to the City's property and equipment which is a result of the Contractor's negligence.

**5.14 Sanitary Provisions.** The Contractor shall provide and maintain such sanitary accommodations for the use of its employees and those of its subcontractors as may be necessary to comply with the requirements and regulations of the local and state departments of health and as directed by the Engineer.

**5.15 Payment of Prevailing Wages on Public Works in Oregon.**

**5.15.1** The Contractor and all subcontractors on the Project shall pay not less than the "prevailing rate of wage" as that term is defined in ORS 279C.800 to 279C.870, and if applicable, the Federal Prevailing Wage required under the Davis-Bacon Act (40 U.S.C. 3141 - 3148), whichever is higher. The determination and application of such prevailing rate of wage is provided for in ORS 279C.800 through 279C.870, and if applicable, the Davis-Bacon Act (40 U.S.C. 3141 - 3148).

**5.15.2** If the Bureau of Labor has made no determination of the prevailing rate of wage, it shall be the obligation of the Contractor to determine the same by making application to the Bureau of Labor or otherwise.

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

**5.15.4** Each certified statement shall be delivered or mailed by the Contractor or Subcontractor to the City. A true copy of the certified statement shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 - 3148), whichever applies.

**5.15.5** As provided by ORS 279C.810, the contract amount threshold for application of the state prevailing wage rate law is \$50,000.00.

**5.16 Subcontractor and Supplier Agreements.** The Contractor shall include in its subcontracts for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing the Construction Contract:

**5.16.1** A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days of payment by the City out of such amounts as are paid to the Contractor by the City under the Contract; and

**5.16.2** 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 this requirement. The 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:

**5.16.2.1** For the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made; and

**5.16.2.2** Computed at the rate specified in ORS 279C.515(2).

**5.16.3** The Contractor shall include in each of its subcontracts, for the purpose of performance of the Contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in this section and requiring each of its subcontractors to include such clauses in their subcontracts with lower-tier subcontractors or suppliers.

**5.16.4** None of the provisions of this section are intended to prevent the Contractor or any subcontractor from including in its contracts, the provision described in ORS 279C.580 (5) and (6).

## **6. PROGRESS AND COMPLETION OF PROJECT**

**6.1 Contract Time and Commencement of Construction.** The Contractor shall be capable of commencing construction on the Project covered under the Contract within ten calendar days after signing of the Construction Contract. The Contract shall be in effect from the time it is signed until the Project is complete and accepted by the City.

**6.2 Preconstruction Conference.** A preconstruction conference will be scheduled by the City prior to commencement of construction. The Contractor will be notified of the time and place of this conference and shall be required to attend. The City may require the Contractor to provide a schedule of Project work at this time.

### **6.3 Prosecution of the Project.**

**6.3.1** It is expressly understood and agreed that the time of beginning, rate of progress and time of completion of the Project are of the essence of the Contract. The Contractor shall perform the construction of said Project with due diligence and at such a rate and in such a manner as, in the opinion of the Engineer, is necessary for completion within the time set forth in Paragraph 4 of the Construction Contract.

**6.3.2** After commencement of construction on the Project by the Contractor, if the Contractor is delayed by reason of the failure of the City to provide sufficient materials for construction thereof or to provide continuous open right-of-way, then the completion date of said Project shall be extended to the extent that the Contractor is delayed in carrying on said Project by reason of such failure on the part of the City. If such a delay caused by the City results in the Contractor having to move its workers and equipment off the Project, then the Contractor shall also be eligible to receive compensation from the City for the expenses involved in moving off and moving back on the Project.

**6.3.3** The Contractor shall arrange its work and dispose of materials so as to insure the least possible interference and inconvenience to the landowners on or beside whose property the construction is taking place, or to the public where the construction lies in or near a public thoroughfare. Contractor shall employ only such number of construction crews as are reasonably necessary to construct said Project within the allotted time. The City may require the employment of an additional crew or crews, if in its judgment it is necessary in order to complete said Project with the time required.

**6.3.4** If the Contractor desires to carry on work at night or outside the regular hours, timely notice shall be given to the Engineer to allow satisfactory arrangements to be made for inspecting the Project in progress.

**6.4 Changes in the Project.** The City may, as the need arises, order changes in the Project through additions, deletions or modifications without invalidating the

Contract. Compensation and time of completion affected by the change shall be adjusted at the time of ordering such change.

**6.5 Extra Work.** New and unforeseen items of work found to be necessary but which cannot be covered by any item or combination of items for which there is an established Contract price, shall be classified as extra work. Upon written order from the City and approval from the Engineer, the Contractor shall do such extra work as may be required for the proper completion or construction of the whole Project contemplated. In the absence of such written order, no claim for extra work shall be considered. Extra work shall be performed in accordance with these Specifications where applicable and work not covered by the Specifications or special provisions shall be done in accordance with the best practice as approved by the Engineer. Extra work required in an emergency to protect life and property shall be performed by the Contractor as required. Contractor shall notify the Engineer of the emergency as soon as possible, but shall begin work prior to providing notice if immediate work is necessary to protect life or property.

**6.6 Unforeseen Difficulties.** A delay beyond the Contractor's control occasioned by an act of God, or by strikes, lockouts, fire, etc., may entitle the Contractor to an extension of time to complete the Project as determined by the Engineer, provided however, that the Contractor shall immediately give written notice to the Engineer of the cause of such delay. In no event shall the Contractor be entitled under the Contract to collect or recover any damages, loss or expense incurred by any delay other than as caused by the City as stipulated hereinabove in Paragraph 6.3 "Prosecution of the Project".

**6.7 Use of Completed Portions.** The City shall have the right to take possession of and use any completed or partially completed portions of the Project. Such use shall not be considered as final acceptance of any portion of the Project, nor shall such use be considered as cause for an extension of Contract completion time unless authorized by a change order issued by the City.

## **7. MEASUREMENT AND PAYMENT**

### **7.1 General.**

**7.1.1** All work acceptably completed under the Contract shall be measured by the Engineer according to United States Standard Measures, and the quantities of work performed or materials furnished shall be computed on the basis of such measurements.

**7.1.2** The Contractor shall accept the compensation as herein provided in full payment for furnishing all materials not provided by the City and all labor, tools and equipment; for performing all work under the Contract; for all loss or damage arising from the nature of the Project other than unforeseeable environmental conditions as described in ORS 279C.525, the action of the elements or any unforeseen difficulties which may be encountered during the prosecution of the Project, until its final acceptance by the City.

- 7.2 Payments.** The City shall make partial payments within thirty (30) days for work which has been completed and accepted by the City.
- 7.3 Final Payment.** The City shall retain five percent (5%) of all payments until the total Project has been given final acceptance by the City. The Project must be accepted by the City prior to releasing retainage. Upon the City's acceptance of the Project, the retainage will be released and the Contractor shall be responsible for the workmanship and materials for one year thereafter.
- 7.4 City's Right to Withhold Payment.** The City may withhold payment in whole or in part on an approved invoice to the extent necessary to protect City from loss due to any of the following causes discovered subsequent to approval of the invoice by the Engineer or the Engineer's representative:
- 7.4.1** Defective work;
  - 7.4.2** Evidence indicating the probable filing of claims by other parties against the Contractor;
  - 7.4.3** Failure of the Contractor to make payments to subcontractors, material suppliers or workers; or
  - 7.4.4** Damage to another contractor.
- 7.5 Payment for Uncorrected Work.** Should the Engineer direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the amount due the Contractor on said Project shall be made to compensate the City for the uncorrected work.
- 7.6 Payment for Extra Work.** In any case where the Contractor deems additional compensation is due Contractor for work or materials not clearly covered in the Contract or not ordered by the Engineer according to provisions of the Contract Documents, the Contractor shall notify the Engineer, in writing, of his intention to make a claim in order that such matters may be settled, if possible, or other appropriate action promptly taken. If such notification is not given, or the Engineer is not afforded proper facilities by the Contractor for keeping strict account of actual cost, then the Contractor hereby agrees to waive the claim for such extra compensation. Such notice by the Contractor, and the fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim. Claims for additional compensation shall be made in itemized detail and submitted, in writing, to the City and Engineer within ten (10) days following completion of that portion of the Project for which the Contractor makes his claim. In case the claim is found to be just, it shall be allowed and paid under a supplemental agreement to be entered into between the parties to the Contract.

## **7.7 Release of Liens.**

**7.7.1** Before the City pays the Contractor for the work included under the Contract, the Contractor shall sign and deliver to the City a release of liens or claims sworn to under oath and duly notarized. The release shall state that the Contractor has satisfied all claims and indebtedness of every nature in any way connected with the Project, including but not limiting the generality of the foregoing, all payrolls, amounts due to subcontractors, accounts for labor performed and materials furnished, incidental services, liens and judgments.

**7.7.2** If any lien or claim remains unsatisfied after payment to the Contractor is made, the Contractor shall refund to the City all monies that the City may be compelled to pay in discharging such a lien or claim, including all costs and reasonable attorneys' fees.

**7.8 Acceptance of Payment Constitutes Release.** The acceptance by the Contractor of a payment for the invoice shall release the City from all claims and liability to the Contractor for all things done or furnished in connection with the work specified on said invoice, and every act of the City and others relating to or arising out of the Project. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from obligations under the Contract, the Performance Bond or the Payment Bond as herein provided.

**7.9 Correction of Defective Work.** The Engineer's approval of the invoice for work completed and the City's payment to the Contractor on such invoice, shall not relieve the Contractor of the responsibility for faulty materials or workmanship on said work during the one-year guarantee period as stipulated in Paragraph 4.12. The one-year guarantee period for each Project begins when the Project is accepted by the City. The City shall promptly give notice of faulty materials or workmanship which are discovered within the one-year guarantee period and the Contractor shall promptly replace any such defects. If the Contractor fails to make the repairs and replacements promptly, the City may do the work, and the Contractor and Contractor's Surety shall be liable for the cost thereof.

## **8. ENVIRONMENTAL MATTERS**

**8.1 Contractor Compliance.** Contractor shall comply with, and require its subcontractors to comply with, all applicable federal, state and local statutes, ordinances, orders, rules and regulations relating to the protection of human health and environment, including but not limited to, the use, storage, release, spill, disposal or other handling of petroleum products and other hazardous substances.

### **8.2. Unanticipated Regulatory Compliance and Site Conditions.**

**8.2.1** If Contractor is delayed or additional work is required due to the enactment of new or an amendment to existing statutes, ordinances or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after submission of the successful bid, City may, at its sole discretion:

- 8.2.1.1** terminate the Contract;
- 8.2.1.2** complete the Project itself;
- 8.2.1.3** use non-City forces already under contract with the City;
- 8.2.1.4** require that the underlying property owner be responsible for the additional work;
- 8.2.1.5** call for bids for a new contractor to provide the necessary services; or
- 8.2.1.6** issue Contractor a change order setting forth the additional work that must be undertaken.

**8.2.2** If Contractor encounters a condition not referred to in the Contract Documents, not caused by Contractor and not discoverable by a reasonable pre-bid visual site inspection, and such condition requires compliance with the regulations referred to in Paragraph 8.2.1 above, Contractor shall immediately provide City notice of the condition. Except as required by any environmental or natural resource regulation, or, in case of an emergency, Contractor shall not commence work or incur any additional job site costs with regard to the condition encountered without written direction from City. Upon request, Contractor shall estimate emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition, and promptly deliver such estimate to City for resolution.

**8.2.3** In the event of an occurrence of an unanticipated site condition as described in Paragraph 8.2.2 above, City, within a reasonable period of time, may do any of the following at its sole discretion:

- 8.2.3.1** terminate the Contract;
- 8.2.3.2** complete the Project itself;
- 8.2.3.3** use non-City forces already under contract with the City;
- 8.2.3.4** require that the underlying property owner be responsible for the additional work;
- 8.2.3.5** call for bids for a new contractor to provide the necessary services; or
- 8.2.3.6** issue Contractor a change order setting for the additional work that must be undertaken.

**8.2.4** In the event City terminates the Contract under Paragraph 8.2.1.1 or 8.2.3.1, Contractor shall be entitled to all costs and expenses incurred to the date of the termination, including overhead and reasonable profits, on the percentage of the Project completed. Contractor shall not be entitled to profits on the uncompleted portion of the Contract. If the City chooses to issue a change order or terminate the contract for either of the reasons set forth in Paragraph 8.2.1 or 8.2.3, it shall have access to Contractor's documentation used to prepare Contractor's bid when making its determination of the additional compensation due.

## TECHNICAL PROVISIONS

### BASIC BID

No.	Item	Quantity	Unit	Unit Price	Total Price
1	Mobilization	1	LS		
2	Saw cut existing asphalt	70	LF		
3	Excavation and Prep of existing street	550	CY		
4	Clear and Grub	1	LS		
5	Shoulder rock and Excavation rock	200	TN		
6	3" Paving of new street	250	TN		
7	Extruded Curb	80	LF		
8	Curb and Gutter	300	LF		
9	New catch basin	1	EA		
10	Adjust catch basin's, manhole, and valve cans as needed	5	EA		
<b>TOTAL BASIC BID</b>				<b>\$</b>	

**Note: Quantities may be increased or decreased to accommodate funding.**

### 1. GENERAL

#### A. Measurement of Quantities

1. All Work completed under the Contract will be determined by the Engineer using United States Customary Units of Measurement. The method of measurement and computations to be used in determination of quantities of materials furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practices.

2. The Work completed under this Contract will be measured in accordance with the Contract Documents.
3. The term "Lump Sum" when used as an item of payment will mean full compensation for the Work described in the Contract Documents. When a complete structure or structural unit (in effect, lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.
4. Volumes of earthwork, particularly excavation and fill, will be computed by the average-end area method or by other methods of equivalent accuracy.

B. Scope of Payment

1. Work shown in the Plans or described in Specifications for which no item is listed as part of the Contract Price or included in the payment description in this section shall be included in a Unit Price or Lump Sum item and will considered to be included in the total Contract Price.

C. Basic Bid

1. Construction Facility

- a. Payment for Construction Facilities shall be on a lump sum basis. The lump sum payment shall be full compensation for mobilization, temporary utilities, fences and barricades, temporary construction, safety requirements, environmental controls, and restoration and cleanup, coordination, public convenience, field engineering, special project requirements, construction scheduling, and submittals.

2. Repair Failed Asphalt Sections

- a. Payment for repair failed asphalt sections shall include removal of existing material to a depth up to 6 inches tack coat and fill with asphalt concrete pavement material. Payment shall include all material, labor and equipment for removal and disposal of existing material and placement and compaction of new asphalt material.

3. Asphalt Concrete Pavement

- a. Payment for Asphalt Concrete Pavement shall be on a tonnage basis, based on batch weight, and shall include tack coat and testing.

- b. Payment shall include all materials, labor, equipment, hauling, placement and compaction required to complete the asphalt concrete pavement.
  - c. Payment shall also include roadway cleaning, adjustment of valve boxes and other incidental items needed.
- 4. Remove and Replace Existing Catch Basin
  - a. Payment for removal and replacement of existing catch basin shall be on a unit price basis. Payment shall include catch basin, excavation and related work for a complete installation.
- 5. Sidewalk Concrete
  - a. Payment for Sidewalk and Driveway Concrete shall be based on the square foot basis. Payment shall include excavation to place the new sidewalk, aggregate base, formwork, installation of new concrete surface, finishing and all material, labor and installation costs.
- 6. Driveway Concrete
  - a. Payment for Sidewalk and Driveway Concrete shall be based on the square foot basis. Payment shall include excavation to place the new sidewalk, aggregate base, formwork, installation of new concrete surface, finishing and all material, labor and installation costs.
- 7. Curb Basin
  - a. Payment for Curb Basin shall be on a unit price basis.
  - b. Payment shall include all materials, excavation and backfill, and all other related incidental work for complete installation.
- 8. Curb
  - a. Payment for Curb shall be on a lineal foot basis. Measurement shall be on face of curb at flow line. Payment shall include new aggregate base, and new cast-in-place concrete, formwork, necessary backfilling, excavation to place new curb, and all other incidental work.
- 9. 3 Foot High Chain Link Fence

- a. Payment for 3 foot high chain link fence shall include all materials, labor and equipment for a complete installation as recommended by the fence manufacturer.

### **Technical Specifications**

1. All work shall be in accordance with the Oregon Standard Specifications for Construction, 2015 or latest edition.
2. Catch basin shall be in accordance with standard detail drawing RD 364.
3. The street can be closed during construction. However, access must be maintained at all times to the two properties.
4. City will install striping upon completion of project.
5. Contractor shall be responsible for all grade control.
6. Asphalt concrete overlay shall be a minimum of 2 inches thick.
7. Minimum aggregate base depth under sidewalks shall be 3 inches.
8. Minimum aggregate base depth under driveways shall be 6 inches.
9. Refer to measurement and payment section for definition of payment item.

## STANDARD DRAWINGS

Engineer Insert Standard Drawings