

City of Madras
Marie Street Rehabilitation

INVITATION TO BID

BIDS DUE:
Tuesday, May 25, 2021
2:00 pm
at
MADRAS CITY HALL
125 SW "E" Street, Madras, OR 97741

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INVITATION TO BID

Sealed bids will be accepted by Jeffrey Hurd, Public Works Director, at the Madras City Hall, 125 SW "E" Street, Madras, OR 97741, until **2:00 pm, Tuesday, May 25, 2021**, at which time and place bidding will be closed, and the bids opened and read. All times shall be as shown on the City Recorder's Clock, located in the City Hall front office; no bids will be received after closing. In this Invitation to Bid ("ITB"), the City of Madras may sometimes be referred to as "City." Each bidder is required to submit a First-Tier Subcontractor Disclosure Form, as required by ORS 279C.370, in a separate envelope within two (2) hours of the bid closing time. The City will reject a bid if the bidder fails to submit the required disclosure form by this deadline.

The work includes, but is not limited to, sanitary sewer installation, pulverization of existing pavement, excavation, HMAC paving, aggregate base, and shoulder work. All work once Notice to Proceed is given, shall be substantially completed by October 29, 2021

The bid proposal ("Bid") shall be submitted in a sealed envelope and marked: **Marie Street Rehabilitation**

Plans, specifications, addenda and notifications of bid results for this project may be viewed or bid set acquired for fee at the Premier Builders Exchange, 63052 Layton Ave. #100 Bend, OR 97701 (Mailing address P.O. Box 6731 Bend, OR 97708 (phone 541-389-0123). Plans, specifications, and addenda may also be viewed, printed or ordered online at <http://www.premierbx.com>, then click on "Posted Projects." Bidders are responsible for checking with the Madras Public Works Department (541-475-2344) for the issuance of any addenda prior to submitting a bid. The Contractor is responsible for all addenda/changes to the documents and will be considered non-responsive if the Contractor's bid does not reflect those addenda/changes.

Technical questions regarding the project, or requests for clarification or change, should be directed to Jeffrey Hurd, City of Madras Public Works Dept., 125 SW "E" Street, Madras, OR 97741; phone (541) 475-2344; fax (541) 475-1038 and must be received by **4:00 p.m., Thursday, May 20, 2021**.

There will NOT be a pre-bid conference for this project.

Each bid must contain a certification declaring the bidder's residency status, as defined in ORS 279A.120. In determining the lowest responsive Bid, the City shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident bidder equal to the percentage, if any, of the preference given to the bidder in the state in which the bidder resides.

The successful bidder must comply with the Oregon Public Contracting Code (ORS ch. 279A, 279B and 279C) and the City's public contracting rules, as all are amended from time to time, in the performance of the work.

The project is a public works project subject to the state prevailing wage rates under ORS 279C.800 to 279C.870. No bid will be received or considered unless the bid contains a statement that the bidder will comply with ORS 279C.838, 279C.840. The wage rates may be found at <https://www.oregon.gov/boli/employers/Pages/prevaling-wage-rates.aspx>

The City may reject any bid not in compliance with all prescribed public bidding procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all bids upon a finding of the City that it is in the public interest to do so.

No bid shall be received or considered unless the bidder is licensed by the Construction Contractors Board as required by ORS 671.530.

INFORMATION FOR BIDDERS

1. GENERAL DESCRIPTION OF PROJECT.

A general description of the work to be performed is contained in the Invitation to Bid (“ITB”). The scope is indicated in the applicable parts of the contract documents and project specifications.

2. BID DOCUMENTS.

The bid proposal documents (collectively, the “Bid Documents”) include the Notice of Invitation to Bid, Information for Bidders, Contract, General Conditions, Special Provisions, Plans and Specifications, Bid, First-tier Subcontractor Disclosure Form, the Bid Bond, the Performance Bond, the Payment Bond, and any addenda issued prior to receipt of bids. All requirements and obligations of the Bid Documents are hereby incorporated by reference into the Contract and are binding on the successful bidder upon award of the Contract.

Bid Documents are provided to bidder only for the purpose of obtaining bids on the work and do not confer a license or grant for any other use. Each bidder assumes full responsibility for errors, omissions or misinterpretations resulting from the use of incomplete sets of Bid Documents. Bidders shall use complete sets of Bid Documents in preparing Bids; City shall assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

City utilizes City-approved Public Improvement Design & Constructions Standards, specifications, and construction details as the basis for the project. When an item is not shown or referenced within this document, the Contractor must refer back to the most recent edition of the State of Oregon’s Oregon Standard Specifications for Construction 2021 manual as a basis for a publicly constructed project. If a bidder has any question of which specification or detail to follow, it is the bidder’s responsibility to request the clarification in writing from the City prior to bid. City-approved Public Improvement Design & Constructions Standards may be viewed on City’s website at: <https://www.ci.madras.or.us/publicworks/page/public-improvements-design-standards>

3. FORM OF BIDS; SUBMISSION.

The following minimum requirements as to the form and manner of submitting bids must be strictly observed; variance from these requirements will result in rejection of the bid as unresponsive.

- a) Each bid must be submitted on forms furnished by the City.
- b) Each bidder must sign its bid.
- c) Bid security, in the required form and amount, must accompany each bid.
- d) Each blank in the Bid must be filled in unless an alternative is provided. Each separate bid item must be bid on, unless the Bid form clearly indicates otherwise.

- e) Each bid must be submitted in a separate sealed envelope, marked as specified in this ITB so as to indicate its contents and allow identification of the bidder without opening, and in the hands of the Public Works Director at the time and place specified for bid opening.
- f) A Bid shall contain no modifications, deletions, exceptions, reservations or conditions, which in any way conflict with or purport to alter any provision contained in the Bid Documents.

4. PREPARATION OF BIDS.

The bid form must be used without alteration. All blank spaces in the Bid form must be filled in, in ink, or typed, in both words and figures where required. No changes shall be made in phraseology of the forms. Amounts stated in words shall govern in cases of discrepancy between the amount stated in words and the amount stated in figures.

The following bids will be deemed unresponsive: (a) any bid which contains omissions, alterations, and/or additions of any kind unless the modification is made in accordance with this ITB; (b) any bid which contains prices uncalled for; (c) any bid which is contingent upon the acceptance of conditions that differ from the bid Documents; and/or (d) any bid which, in any manner, fails to conform to the conditions of the Bid Documents.

Each bidder shall sign his/her bid in the blank space provided. Bids made by corporations, partnerships or limited liability companies shall contain names and addresses of the principal officers, partners or members, as applicable. If a corporation makes the Bid, it must be signed by one of the corporation's principal officers. If made by a partnership or limited liability company, it must be signed by one of the partners or members, clearly indicating that he/she is signing as a partner or member of the firm. In the case of a Bid made by a joint venture, each of the joint venturers must sign the Bid in his/her personal capacity.

5. SUBMISSION OF BIDS.

In accordance with ORS 279C.365, all bids must be submitted at the time and place and in the manner prescribed in the Notice of Invitation to Bid (i.e., the Closing). If a bid is submitted by mail, the sealed envelope containing the bid must be enclosed in a separate envelope plainly addressed for mailing in conformance with instructions in the ITB. Upon submission of a bid, City will electronically or mechanically time-stamp or hand-mark each bid and any modification upon receipt.

6. MODIFICATIONS OR WITHDRAWAL OF BID.

Bids may be modified only as allowed by OAR 137-049-0320. A bidder may withdraw its submitted Bid by written notice provided the notice complies with OAR 137-049-0320 and is received by City prior to the time set for Bid opening. The bidder or its authorized representative may also withdraw its Bid in person prior to the closing, upon presentation of appropriate identification and satisfactory evidence of authority. After the Closing, no Bid may be withdrawn for a period of sixty (60) calendar days and at no time after the award of the contract.

7. BID SECURITY.

Each bid must be accompanied by a bid security of ten percent (10%) of the amount bid. (For the purpose of this provision, the amount of the bid shall be the base bid, only.) The bid security

must be payable to the City in lawful money of the United States, in the form of a cashier's check, certified check, or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008. In the alternative, the bid security may be in the form of a bid bond executed by a surety company authorized to do business in the State of Oregon and acceptable to the City. The City may retain the bid security of any bidder for the entire duration of the period in which the bid is irrevocable and open for acceptance.

Should the City award the Contract to a bidder and the bidder fails, refuses, and/or is unable to execute the Contract and promptly return it with any required performance bond, payment bond, and/or any required proof of insurance, the City shall be entitled to the total amount of the bid security as liquidated damages and not as a penalty.

City will release the bid security of all unsuccessful bidders after a contract has been fully executed and all required bonds and insurance have been provided, or after all bids have been rejected.

8. CONDITIONS OF WORK.

Each bidder must inform him/herself of the conditions relating to the execution of the work, and make him/herself thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the successful bidder of his/her obligations to enter into a Contract and complete the contemplated work in strict accordance with the Contract documents. The bidder acknowledges and represents that it has made allowances for normal inclement weather indigenous to the Project Site, in its estimating, planning and scheduling of the Work.

Before submitting a Bid, each bidder personally shall inspect the site of the proposed work to arrive at a clear understanding of the conditions under which the work is to be done. By submitting a bid, the bidder represents and warrants that (a) the bidder has compared the site with the Bid Documents and has satisfied him/herself as to the actual conditions of the site, existing construction, subsurface conditions, the actual elevations, and any other conditions affecting the carrying out of his/her work and (b) the bid is based upon the materials, systems and equipment required by the Bidding Documents without exception.

Each bidder must inform him/herself on all statutes and regulations, both Federal and State, relevant to the execution of the work, the employment of labor, protection of public health, access to the work and similar requirements.

By submitting a bid, the bidder represents and warrants that the bidder has read and understands the Bid Documents and its bid is made in accordance therewith; and bidder agrees to be bound by the terms and requirements set forth in the Bid Documents and Contract Documents.

By submitting a bid, the bidder represents and warrants that the bidder has the capability, in all respects, and the moral and business integrity, reliability, technical ability, financial resources, physical plant, management, superintendence, equipment and materials which will assure effective and efficient good-faith performance in full compliance with the Contract Documents and with any and all schedules and completion dates required by City.

9. AWARD OF CONTRACT.

At least seven days before awarding the contract, City will post on City's website a notice of City's intent to award a contract.

City will award the contract to the lowest responsive and responsible bidder, whose bid will best serve the interests of City and is in compliance with applicable law. City reserves the right to (a) accept or reject any or all bids, (b) waive minor informalities and errors in such bids, each in accordance with Oregon law, (c) postpone the acceptance of the bid and the award of the contract for a period not to exceed sixty (60) calendar days from the date of the bid opening, and (d) reject for good cause any or all bids upon a finding of City that it is in the public interest to do so.

The lowest bidder is determined by the aggregate amount of the base bid, plus any alternates selected by City, that does not exceed the available funds. Any or all alternates may be accepted or rejected by City in any order. If all Base Bids exceed the City's available funds, the lowest Bid will be determined on the basis of the Base Bid combined with deductible alternates.

A responsive bidder will mean a bidder who has submitted a bid which conforms, in all material respects, to the solicitation documents. A responsible bidder will mean a bidder who has the capability, in all respects, to perform fully the Contract requirements, and the integrity and reliability which will ensure good-faith performance. Responsibility will be determined in accordance with the standards set forth in ORS 279C.375 and OAR 137-049-0390. City will document its determination of the successful bidder's responsibility of the Responsibility Determination Form substantially as set forth in ORS 279C.375(3)(c).

10. PERFORMANCE BOND AND PAYMENT BONDS; INSURANCE.

The successful bidder shall file with the City, at the time of execution of the Contract, a Performance Bond and a Payment Bond, each of not less than an amount equal to 100% of the Contract price, on the forms furnished by the City, as security for the faithful performance of this contract and also as security for the payment of all persons performing labor and furnishing materials under the Contract.. The Surety Company furnishing this bond shall have a sound financial standing and a record of service satisfactory to the City, and shall be authorized to do business in the State of Oregon. Alternatively, the Contractor may file a certified or cashier's check made payable to City in lieu of all or a portion of the Performance Bond.

Each bid shall be accompanied by a letter or form from the bidder's insurance company stating that, upon award of the contract, the types and amount of insurance required elsewhere in these specifications will immediately become effective. In addition, the successful bidder shall submit certificates evidencing insurance coverage required by the Contract.

11. PUBLIC WORKS BOND

The successful contractor and all subcontractors must have a public works bond filed with CCB before starting work on the project, unless exempt.

12. REQUEST FOR CLARIFICATION OR CHANGE; SOLICITATION PROTESTS; PROTEST OF AWARD.

A. Clarification. Prior to the deadline provided in the Notice of Invitation to Bid for submitting a request for change or protest, a bidder may request clarification of any provision of the Bid Documents. Requests for clarification shall be submitted to the person identified in the Notice of Invitation to Bid. Any clarification to a bidder, whether orally or in writing, does not change the Bid Documents, and is not binding on the City, unless the City amends the Bid Documents by written addendum.

B. Request for Change. A bidder may request in writing a change to the Specifications or Contract terms and conditions on or before **Tuesday, May 18, 2021**. All requests for change shall be directed to the person identified in the Invitation to Bid, and must comply with OAR 137-049-0260(2).

C. Solicitation Protest. A bidder may protest the Specifications or Contract terms and conditions by delivering a written protest on those matters to the City on or before **Tuesday, May 18, 2021**. All protests of Specifications or Contract terms and conditions must be in writing, and must comply with OAR 137-049-0260(3).

D. Right to Protest Award. A bidder may submit to the City a written protest of the City's intent to award within seven (7) days after the City's issuance of the notice of intent to award the Contract. A bidder may submit a protest of the award only as allowed by, and only in compliance with, OAR 137-049-0450(4).

13. PERMITS AND LICENSES.

The Contractor will have or obtain all applicable federal, state, and/or local permits and licenses pertaining to the project, including, without limitation, any permits and/or approvals required by Jefferson County, the City of Madras, and the State of Oregon. The selected contractor will be responsible for all patent and royalty payments.

14. ADDENDA.

Changes to the Bid Documents, whether in response to requests for clarification or change or a solicitation protest, or to issue supplemental instructions, may only be made by written addenda. The City will not mail notice of any addenda to the bidders, but will publish notice of any addenda on the Premier Builders Exchange website. Addenda may be downloaded off the Premier Builders Exchange website, and bidder should frequently check said website until closing. All addenda so issued shall become part of the Bid Documents. No other oral or written statements to bidders shall be binding on the City unless reduced to written addendum.

15. PRE-BID INQUIRIES.

Bidders with non-technical, pre-bid inquiries may contact the Public Works Dept., (Michele Quinn) at 541-325-0313.

16. DISCLOSURE AND SUBSTITUTION OF FIRST-TIER SUBCONTRACTORS

A. Within two (2) working hours after the date and time of the deadline when the bids are due to the public contracting agency, for any public improvement project exceeding \$100,000, all Bidders shall submit to City a disclosure form identifying any first-tier subcontractors (those entities that would be contracting directly with the prime contractor) that will be furnishing labor and/or materials on the contract, if awarded, whose subcontract value would be equal to or greater than:

1. Five percent (5%) of the total Contract Price, but at least \$15,000; or
2. \$350,000, regardless of the percentage of the total Contract Price.

B. Bidders are required to disclose the following information about each required first-tier subcontractor:

1. The subcontractor's name and address,
2. The category of Work that the subcontractor would be performing,
3. The subcontractor's Construction Contractors Board (CCB) registration number, if one is required, and
4. The subcontract dollar value.

C. City must reject a bid if the Bidder fails to submit the disclosure form with this information by the stated deadline.) If there are no subcontractors or suppliers required to be disclosed, Bidder must still timely provide the required disclosure form, noting on the completed form "None," which form must be submitted separately and be properly marked in the same manner as any other first-tier subcontractor disclosure form. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids which are submitted by Bid Closing, but for which the separate disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

D. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585.

CITY OF MADRAS

GENERAL CONDITIONS

Contractor's services under the Contract is subject to the provisions of these General Conditions, City and Contractor agrees to comply with the provisions set forth in these General Conditions, as they may be modified by special conditions (if any) identified in the Contract as one of the Contract Documents.

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ARTICLE 1

Definitions

- A. For the purposes of the Contract, the following terms shall have the meanings hereinafter set forth:
1. The term “Architect/Engineer” means the person, firm, or corporation that prepared the drawings and specifications, or acts as a consultant to the Owner during the project, whether it be an architect or engineer.
 2. The term “drawings of record” means those annotated drawings submitted by the Contractor during progress of construction to the Owner or the Architect/Engineer, illustrating how various elements of the work were actually installed.
 3. The term “Contract” means, collectively, the agreement signed by the parties thereto, these General Conditions, and all other documents and exhibits listed as “Contract Documents” in the agreement signed by the parties.
 4. The term “contract change order” means a document prepared by the Owner or the Architect/Engineer, as directed and approved by the Owner as a change to the Contract incorporating approved Contractor’s proposals for changes in the Work. Contract change orders shall be numbered consecutively in chronological order and shall refer to the field change order(s) covered.
 5. The term “Contract Sum” means the amount payable to Contractor under the Contract.
 6. The term “Contractor” means the person, firm, or corporation responsible for the execution of the work contracted for by Owner.
 7. The term “days,” unless expressly stated otherwise, means calendar days.
 8. The term “field change order” means an order issued to the Contractor, by the Architect/Engineer or the Owner’s Construction Representative, to carry out minor revisions in the Work. The Contractor’s field superintendent shall be authorized to supply quotations for the Work directly to the Architect/Engineer or the Owner’s Construction Representative. Such field change orders shall be numbered consecutively, in chronological order.
 9. The Architect/Engineer and the Owner use the term “or approved equal” to indicate that the material or product to be supplied or installed must be equal to that specified and as approved.
 10. The terms “Owner” or “City” means the City of Madras.
 11. The term “Owner Request for Proposal (Owner RFP)” means a request by the Owner for a proposal on contemplated changes in the Work. Such Owner RFPs shall be numbered consecutively, in chronological order.

12. The term "Owner's Construction Representative (OCR)" means the Owner's agent, designated by Owner. The OCR coordinates the activities of the Architect/Engineer, Contractor, Owner's consultants, and all aspects of the project.
 13. "Owner Representative" means, individually, and collectively, each present and future City employee, officer, agent, and representative.
 14. The term "Project" means all construction of which the Work may be a part or the whole. The Project may contain work by Owner or by separate contract.
 15. The term "punch list" means a list, prepared by the Architect/Engineer and/or the Owner, of the Contractor's uncompleted or uncorrected work.
 16. The term "separate contract" means a contract between Owner and a contractor, other than the Contractor under this Contract, for the construction or furnishing of a portion of the Project.
 17. The term "subcontractor" means, without limitation, any firm, corporation, or person working directly or indirectly for the Contractor that furnishes or performs a portion of the work, labor, or material, according to the drawings and/or specifications.
 18. The term "substantial completion" means the completion of the work to the extent that the Owner may have uninterrupted occupancy and use of the facility or specified portion thereof for the purpose for which intended.
 19. The term "Work," unless otherwise specified, indicates all items to be furnished, performed and paid for by the Contractor and its subcontractors, and includes all materials, tools, methods, labor, overtime labor, standby labor, equipment services, transportation, power, fuel, water, and other items and facilities of every kind necessary for the complete job and to the entire performance of this Contract.
 20. The term "Work in place" means work, which has been installed in accordance with the drawings and specifications, but does not include equipment or material that has been delivered to the job site and not yet installed.
- B. Capitalized terms not otherwise defined herein shall have the meanings given to the terms in the Contract.

ARTICLE 2

General Provisions

- A. The Contract shall be deemed to have been made in, and shall be construed under, the laws of the State of Oregon.
- B. Contractor shall direct all communications to the designated OCR.
- C. Contractor shall perform services under this Contract in a skillful and competent manner in accordance with good practice standards of the construction industry. Contractor shall be responsible to Owner for errors or omissions in construction and failure to perform this Contract, and shall correct or remove any defective work.

- D. Contractor's Work shall comply with all applicable laws, regulations, ordinances, building codes, and requirements of federal, state and local government authorities and agencies having jurisdiction over the facility to be constructed, including those of the utility companies, and shall give all notices and obtain all licenses and permits required.
- E. Contractor shall comply with construction procedures contained in the Contract Documents.
- F. Written notice shall be deemed to have been duly given (i) if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, (ii) if sent by facsimile, with transmission confirmation received to the fax number provided in the Contract, or (iii) if delivered at, or sent by registered or certified mail to, the person's address set forth in the Contract.
- G. Time limits stated in this Contract are of the essence.
- H. Contractor shall maintain an efficient and accurate accounting system for all work in connection with this Contract. Contractor's accounts and records covering these charges and all invoices, payments, correspondence, memoranda, and other writings, on account of this Contract, shall, at all reasonable times during the term of this Contract, and for two (2) years thereafter, be open to inspection and copying by Owner or its authorized representatives.
- I. Contractor shall pay for additional sets of drawings and specifications requested by Contractor, over and above the bid and contract sets furnished by Architect/Engineer. Payments are to be made directly to the blueprinter or to the party furnishing the drawings and specifications.
- J. Upon acceptance of this Contract, Contractor shall execute and deliver separate Performance and Payment Bonds, each in an amount not less than 100% of the total Contract Sum, and fully executed by a Surety Company authorized to do business in the State of Oregon and approved by Owner. In the event of any increases in the total Contract Sum, Contractor shall increase the Performance and Payment Bonds so that each equals the new total Contract Sum. Contractor shall pay the costs of all Bonds.
- K. Contractor agrees to immediately remove any liens, claims, or encumbrances which, because of any act or default of Contractor, or of Contractor's subcontractors or sub-subcontractors, or material suppliers, are made against the Owner or the Project; and to defend, (with counsel of Owner's choice), indemnify, and save Owner harmless against and from all resulting loss and expenses, including attorney's fees.
- L. In carrying out any of the provisions hereof or in exercising any authority granted by the Contract, there will be no personal liability imposed upon any public official or employee of Owner.
- M. In the event any provision of this Contract is void, invalid, or unenforceable under the laws of the State of Oregon; the balance of the Contract shall remain in effect and binding on the parties hereto.
- N. Contractor shall perform all work under this Contract as an independent contractor and shall not be considered an agent of Owner, nor shall contractor's subcontractors or employees be sub-agents of Owner.

- O. This Contract is not intended to entitle Contractor to any benefits generally granted to Owner's employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the Contractor are vacation, holiday and sick leave, other leave with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Public Employees Retirement System).
- P. The Contractor is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Worker's Compensation coverage under this Contract. If the Contractor has the assistance of other persons in the performance of this Contract, the Contractor shall qualify and remain qualified for the term of this Contract as required by ORS 656.407 or as a contributing assistance of any other person, Contractor shall execute a Joint Declaration with City's Workers' Compensation carrier absolving Owner of any and all liability from Workers' Compensation provided in ORS 656.029(2).

ARTICLE 3
Intent of the Contract Documents

- A. The intent of the Contract Documents is to include all of the Work for the Contract Sum and within the Contract Time. The drawings and specifications are to be considered complementary, and all work necessary for the execution of the Work if shown on the drawings and not described in the specifications, and all work described in the specifications and not shown on the drawings, or any work which is obviously necessary to complete the Work within the limits established by the drawings and specifications, shall be considered part of the Contract, and shall be executed by Contractor in the same manner and with the same quality of material as other portions of the Contract without extra compensation.
- B. Unless expressly stipulated otherwise, Contractor shall provide and pay for all services, labor, overtime labor, standby labor, methods, materials, equipment, transportation, power, fuel, water, and all other facilities and services, including operating costs incurred in checking out equipment, and all other items and facilities of every kind necessary to complete the intent of the Contract for the Contract Sum within the Contract Time.
- C. Words describing material or work which have a well-known technical or trade meaning unless otherwise specifically defined in the contract, shall be construed in accordance with such well-known meaning, recognized by architects, engineers and tradesmen.
- D. The Contract and each of the Contract Documents are complementary, and they shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should Contractor observe any conflicts within the Contract Documents, Contractor shall bring them to the Owner's attention for decision and revision as soon as possible after originally observed. In the event of duplications or conflicts within the Contract Documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, provided, however, that Owner shall receive a credit for all costs saved accruing to Owner in the event the least expensive method of work is directed by Owner. A duplication of work is not intended by the Contract Documents and any duplication specified shall not become a basis for extra cost to Owner.

- E. Contractor shall secure written instructions from the OCR before proceeding with Work affected by omissions or discrepancies in the Contract Documents.

ARTICLE 4
Substitutions

- A. Throughout the specifications, manufacturer's name and catalog number may specify types of material in order to establish standards of quality and performance and not for the purpose of limiting competition. Unless specifically specified otherwise, Contractor may assume the phrase "or approved equal" except that the burden is upon Contractor to prove such equality. If Contractor elects to prove such equality, Contractor must request the Architect/Engineer and Owner's approval in writing to substantiate equality, with supporting data and samples, if required, to permit a fair evaluation of the proposed substitute with respect to quality, serviceability, warranty, and cost. Such supporting data shall include the basic specifications of the specified item(s), and the specifications, characteristics and other information concerning the proposed substitution demonstrating its equality to the specified items(s), and the effect of the substitution on the schedule and cost, if any.
- B. After award of the Contract, proposed substitutions will be considered only if Owner receives the advantage of lesser cost with no decrease in quality, or earlier completion date, or both. In any event, a request for substitution shall be made sufficiently in advance of Project needs to permit sufficient time for evaluation by Architect/Engineer and Owner without jeopardizing the construction schedule.
- C. In the event that Owner approves a substitution, Contractor shall assume all risk and costs for redesign and adjustment of Work affected by the substitution and its effect on adjoining Work, and any delays occasioned by its use.

ARTICLE 5
Architect's/Engineer's Status

- A. Architect/Engineer is the interpreter of the drawings and specifications.
- B. It is not incumbent upon Architect/Engineer or Owner to notify Contractor when to begin, cease or resume work, nor to give early notice of rejection of faulty work, nor in any way to superintend so as to relieve Contractor of any responsibility or of any consequences for neglect or carelessness by Contractor or its subordinates.

ARTICLE 6
Contractor's Superintendent

- A. Contractor shall provide the services of a competent on-site representative, as approved in writing by Owner, from the commencement of construction to final completion and acceptance of the Work. Contractor's on-site representative shall represent Contractor at the Work, and all directions, instructions, or notices given to the on-site representative by Owner or the Architect/Engineer shall be as binding as if given to Contractor.
- B. Contractor's on-site representative shall be in charge of the Work at all times and shall have authority to furnish estimates and to approve field change orders. Contractor shall provide on-site representative with such assistants as are necessary to properly execute and coordinate all phases of the Work.

- C. Contractor's project manager, construction superintendent, assistant construction superintendent, if any, and trade foremen, as required, shall not be removed from the Work under this Contract without the prior written approval of Owner.

ARTICLE 7
Subcontractors

- A. Contractor, upon notification of selection as apparent successful bidder, and prior to award of Contract, shall submit to Owner, for approval, a list of proposed subcontractors and suppliers for each of the major items of the Work. Owner reserves the right to reasonably reject any subcontractor or supplier that has not been qualified by Owner in writing prior to award of Contract, without additional cost to Owner. Where Owner rejects any subcontractor or supplier that has been prequalified by Owner in writing, the Contract Sum shall be adjusted by contract change order pursuant to provisions of this Contract for pricing additional or deleted work. Contractor shall advise Owner of Contractor's selection of approved subcontractors and suppliers prior to commencement of Work by the subcontractors and suppliers.
- B. To the extent the specifications have been divided into separate headings or sections to cover the principal trades or subtrades represented in the Work, it is done for convenience. This arrangement shall not limit Contractor in the extent of the Work included in each of the various subcontracts, nor shall the use of the term "subcontractor" relieve Contractor of responsibility for seeing that all of the Work of the Contract is performed properly, whether or not specifically called for in a particular section.
- C. All contracts concerning the Work entered into by Contractor with subcontractors shall include the terms and conditions governing Contractor. No provisions of this Contract or of any contract between the Contractor and subcontractors shall be construed as an agreement between Owner and subcontractors. Contractor shall be as fully responsible to the Owner for the acts and omissions of a subcontractor, of the persons employed by a subcontractor, or of firms and/or subcontractors engaged by a subcontractor, as Contractor is for the acts or omissions of its own employees.

ARTICLE 8
Separate Contracts

- A. Owner reserves the right to let separate contracts in connection with the Work. Contractor shall afford such other firms, contractors, or subcontractors adequate opportunity for the introduction and storage of their material and the execution of their work, and shall properly connect and coordinate its work with such other firms, contractors, or subcontractors.
- B. Contractor shall cooperate with other firms, contractors, or subcontractors on the Work and with Owner so that all portions of the Work may be completed in the least possible time within normal working hours. Contractor shall furnish other firms, contractors, or subcontractors, whose work is fitted into Contractor's, detail and erection drawings giving full information regarding the fabrication and assembly of Contractor's work. When possible, drawings shall show checked field measurements.
- C. Should Contractor cause damage to any separate firm, contractor, or subcontractor on the Work, Contractor agrees to use its best efforts to negotiate a settlement with such firm, contractor or subcontractor. Contractor shall defend, indemnify and save Owner harmless

from any and all claims, losses, liability, or actions arising therefrom, even if Contractor was not negligent in causing the damage.

ARTICLE 9
Allocation of Risk

- A. All reports giving the results of soil investigations or borings conducted by Owner may be examined at Owner's offices. Any investigations or borings were carried out and retained for design purposes only, and are not considered adequate for construction. Prior to submitting any bids, Contractor is required to acquaint him/herself with the site and all other conditions relevant to the Work, and make all investigations essential to a full understanding of the difficulties, which may be encountered in performing the Work.
- B. Contractor represents that prior to submitting its proposal for the Work, Contractor carefully examined all of the Plans and Specifications, acquainted him/herself with the site and all other conditions relevant to the Work, and made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work.
- C. Owner does not warrant the correctness of any soil investigations or borings, or of any interpretations, deductions or conclusions given in any report relative to subsurface conditions. Soil investigations or borings are not warranties of conditions between soil borings nor are they guaranteed to represent all conditions that may be encountered. Contractor has made and shall make its own deductions and conclusions as to the nature of the materials to be excavated, the difficulties of making and maintaining the required excavation, the difficulties which may arise from subsurface conditions, and of doing any other work affected by the subsurface conditions, and shall accept full responsibility therefore.
- D. During construction, and until acceptance by Owner, Contractor shall be responsible for the premises and for the Work and shall bear the risk of loss for all damage thereto, however caused, and regardless of whether any damage is the fault of Contractor.

ARTICLE 10
Indemnification

- A. To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Construction Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Article 10(A), (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim,

damage, loss or expense is caused in part by a party indemnified hereunder, and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 10(A). If any provision of this Article 10(A) could be read to require a type or degree of indemnification or insurance not permitted by Oregon law, it is hereby expressly restricted only to that type or degree of indemnification or insurance which is permitted by Oregon law. Without limitation, to the extent required under ORS 30.140, no provision of the Contract shall require the Contractor, or its surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by negligence of the indemnitee, provided this Article 10(A) shall not affect any provisions of the Contract that requires Contractor or Contractor's surety or insurer to indemnify against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitor, or the indemnitor's agents, representatives or subcontractors.

- B. In any and all claims against Owner or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors' or workers' compensation acts, disability acts or other employee benefit acts.
- C. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.
- D. In addition to any other insurance required under the Contract Documents, Contractor shall carry sufficient insurance to defend, indemnify and hold Owner harmless as provided in this provision.

**ARTICLE 11
Contractor's Insurance**

- A. Contractor shall not commence work until Contractor has furnished two (2) copies of certificates of insurance evidencing that Contractor has obtained the insurance required under this Article 11, which shall be secured with companies and in form satisfactory to the Owner.

<i>Type</i>	<i>Limits</i>
1. Employer's Insurance	
a. Workers' Compensation covering all employees who are engaged in any work under the contract	Statutory limits
b. Employers' Liability including bodily injury caused by disease	\$500,000 each accident
2. Commercial General Liability*:	\$1,000,000 each person \$2,000,000 each occurrence
a. Bodily injury (including death) and Personal Injury	\$1,000,000 each

accident

- | | | |
|----|---|---|
| b. | Property Damage and Broad Form Property Damage | \$1,000,000 aggregate |
| 3. | Comprehensive Automobile Liability including Owned, Non-owned and Hired Vehicles:
occurrence | \$1,000,000 each person
\$2,000,000 each |
| a. | Bodily injury (including death)
accident | \$1,000,000 each |
| b. | Property damage
accident | \$1,000,000 each |

* The Commercial General Liability policy shall include coverage for bodily injury, property damage, independent contractors, blanket contractual, personal injury, products and completed operations, broad form property damage (including but not limited to completed operations) and coverage for explosion, collapse and underground hazards. This insurance shall include contractual liability to cover the liability assumed by the Contractor under the indemnification provisions of the General Conditions.

- B. When the construction is to be accomplished within a public or private right-of-way requiring special insurance coverage, Contractor shall conform to the particular requirements and provide the required insurance. Contractor shall include in its liability policy all endorsements that the applicable government authority may require for the protection of the authority, its officers, agents, and employees. Contractor shall provide insurance coverage for special conditions, when required.
- C. Contractor shall maintain the above insurance at all times until Owner's acceptance of the Work.
- D. Each liability insurance policy required under this Article 11 will be in form and content satisfactory to Owner, will list Owner and each Owner Representative as additional insureds, and will contain a severability of interest clause; the workers' compensation and employers' liability insurance will contain a waiver of subrogation in favor of Owner. The insurance Contractor is required to obtain under this Agreement may not be reduced or cancelled without ten (10) days' prior written notice to Owner. Contractor's insurance will be primary, and any insurance or self-insurance retention of the additional insureds will be excess and noncontributing. Contractor will furnish Owner with appropriate documentation evidencing the insurance coverage (including copies of the additional insured endorsements) Contractor is required to obtain under this Article 11 upon Contractor's execution of the Contract and at any other time requested by Owner. If Contractor fails to maintain insurance as required under this Article 11, Owner will have the option, but not the obligation, to obtain such coverage, with costs to be reimbursed by Contractor immediately upon Owner's demand.
- E. Maintenance of insurance by Contractor as specified in this Article shall in no way be interpreted as relieving Contractor of any responsibility and Contractor may carry, at its own expense, such additional insurance as Contractor deems necessary.

- F. "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Owner's acceptance of the Work. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. This will be a condition of the final acceptance of Work or services and related warranty (if any).
- G. Contractor shall require all subcontractors (unless otherwise approved by the Owner) to carry insurance at least equal to that required by Paragraphs 1, 2, and 3 of Paragraph A of this Article.

ARTICLE 12

Safety

- A. Contractor shall take all necessary precautions for the safety of its employees, Owner's employees, and the public, and protection of the Work and of adjoining property, and shall comply with all applicable provisions of federal, state and local safety laws and building codes and Owner's fire insurance carrier's requirements to prevent accidents, injury to persons, loss of life and damage to property.
- B. Contractor shall not permit any structure to be loaded excessively.
- C. For work at an existing facility operated by Owner, Contractor shall obtain approval, from Owner, as to time and duration of activities prior to blasting, welding, torch cutting, building of fires, or making changes in the process water, city water, or fire protection systems.
- D. Contractor shall properly erect and maintain all necessary safeguards for the protection of workers, Owner, Owner's employees, and the public. Contractor shall post danger signs and markers warning against hazards created by features of the construction.
- E. Safety and accident reports shall be submitted in accordance with federal, state, and local regulations. Contractor shall inform Owner of any accidents within three (3) days of occurrence.
- F. Owner, OCR, and Architect/Engineer are not responsible for safety, safety procedures, safety analysis of any condition on the project, or coordinating any safety efforts or programs of any contractor or subcontractor.

ARTICLE 13

Royalties and Patents

Contractor shall pay all royalties and license fees. Contractor shall defend all suits or claims for infringement of any patents and shall save Owner harmless from loss on account thereof except the Owner shall be responsible for all such loss when a particular process or product is specified by it unless Contractor shall have information that a particular process or product infringes a patent, in which event, Contractor shall be responsible for loss on account thereof unless Contractor promptly provides such information to Owner.

ARTICLE 14
Ownership of Documents

All drawings, specification computations, sketches, test data, survey results, photographs, renderings, models, electronic data and other material related to the Work prepared by Contractor, or furnished to Contractor by Owner or the Architect/Engineer, are the property of Owner. Contractor shall submit to Owner the original and a reproducible copy of all such materials upon Owner's request, otherwise upon completion of construction. Contractor shall not use any such materials or copies thereof on other work nor shall contractor divulge information from such materials without Owner's prior written approval.

ARTICLE 15
Methods of Carrying on the Work

- A. Contractor shall be responsible for construction means, methods, techniques, sequences, procedures, coordination, orderly scheduling, and management of all Work by its employees and subcontractors.
- B. Contractor shall confine its equipment, apparatus, materials, and operations of workers and subcontractors within limits allowed by Owner and shall not unnecessarily encumber the premises. Contractor shall be responsible for all materials and equipment stored by Contractor or its subcontractors.
- C. Contractor shall use the premises only for purposes necessary to the performance of this Contract. Contractor shall not make use of any existing structures on Owner's property or any facilities therein without prior approval from Owner.
- D. Whenever Contractor shall receive materials, equipment, or personal property from any person having a contract with Owner for storage, erection, or installation, Contractor shall give to such person, or Owner, written receipt for the items delivered and shall be responsible for the proper care, storage, or replacement of items received.
- E. All manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by Contractor as directed by the manufacturer unless otherwise specified.
- F. Contractor shall maintain one complete copy of the Contract documents at the job site, with all Owner RFPs, change orders, reviewed shop drawings, observation reports and other documents necessary to the prosecution of the Work. All Contract documents shall be kept up to date with legible markings.

ARTICLE 16
Surveys, Permits and Regulations

- A. This Contract does not constitute a land use permit, nor does acceptance of this Contract by Contractor constitute approval of any legislative or quasi-judicial action required as a condition precedent to use of the land for the intended purpose.
- B. Contractor shall compare and continually check for changing conditions, all dimensions, elevations, lines, grades and other information appearing on the drawings with the work of other contractors and with the actual dimensions, elevation lines grades and site conditions.

Contractor shall report in writing to the Architect/Engineer and Owner any discrepancies in the prevailing conditions before proceeding with the Work. Contractor shall be responsible for any cost or expense, which results from its failure to so compare and report.

- C. Contractor shall obtain and pay for all permits, licenses, certificates, inspections and other approvals required, both temporary and permanent. Any such fees shall be included in the Contract Sum. Prior to Contractor's application for a building permit, Contractor shall secure Owner's approval of the Project value to be used for permit purposes.
- D. When construction crosses highways, railroads, streets, watercourses, or utilities under the jurisdiction of a state, county, city or other public agency, public utility or private entity, Contractor shall conform to the permits, licenses, regulations and conditions of such authorities. Contractor is responsible for the knowledge of all underground utilities present on the site.

ARTICLE 17

Materials, Employees and Workmanship

- A. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. All workers and subcontractors shall be skilled in their trades. Contractor shall furnish evidence of the skill of its workers and subcontractors upon the request of Owner.
- B. Contractor shall at all times enforce strict discipline and good order among its employees and all subcontractors, and shall not employ or keep on the job any employee or subcontractors' employees whom Owner deems undesirable or unfit. If Owner requires Contractor not to employ or keep on the job any employee or subcontractors' employees, Contractor shall promptly comply without any additional costs to Owner or any increase in the Contract Sum.

ARTICLE 18

Connecting the Work

- A. Contractor shall do all cutting, fitting, and patching that may be required to make the several parts of the Work come together properly and to fit Contractor's Work to receive or be received by the work of other firms as shown upon or reasonably implied by the drawings and specifications. After others have finished their work, Contractor shall promptly complete and finish the Work as Owner may direct.
- B. Contractor shall not endanger, cut, or alter the work of any other firm without the consent of Owner.
- C. Requirements for additional cutting, fitting, and patching resulting from Contractor's defective or untimely Work shall not be a basis for additional cost to Owner.
- D. If any part of the Work depends for proper execution or maximum durability upon the work of any other firm, Contractor or its subcontractor(s) shall inspect said work before commencing its own Work and shall make known, for approval by Owner, any departures from the drawings and specifications. Failure of Contractor to observe these requirements shall bar Contractor from claiming thereafter that defects in its own Work are due to defects in the work of others, unless Contractor submits clear and convincing evidence that a thorough inspection of said other work was made before Contractor's Work went forward and

that tests which were reasonable and customary failed to disclose the defects which later appeared.

- E. Where it is necessary to connect to existing facilities, Contractor shall not interrupt Owner's operations to make such connections, but the Work shall be done according to a schedule convenient to, and approved in writing by, Owner. Any overtime, necessary for such connections shall be at Contractor's expense.

ARTICLE 19

Protection of Work, Property and Persons

- A. Contractor shall protect the Work, its employees and equipment, Owner's property, adjacent property and the public from personal injury, loss, or property damage from any cause whatsoever.
- B. Contractor shall be responsible for any injury, loss, or damage to any presently existing improvements on the premises caused by Contractor or its employees, agents, or subcontractors and in the event of such injury, loss, or damage, Contractor shall promptly make such repairs or replacements as required by Owner without additional cost to Owner.
- C. Contractor shall provide and erect all planking, bridges, bracing, shoring, sheet piling, lights, and warning signs necessary for the protection of streets, adjacent property and the public. Contractor shall provide scaffolds, tarpaulins, and similar items as required to protect Owner's equipment and employees. Contractor shall, if necessary, seal off its Work from Owner's work so as not, to interfere with Owner's operations.
- D. During the progress of the Work, Contractor shall protect all finished Work as soon as same is erected and shall maintain such protection until no longer required.
- E. The completed Work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by State and Federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the Work subject to such safety regulations shall be fabricated, furnished, and installed in compliance with their requirements. Contractor shall be held responsible for compliance with the requirements included herein.
- F. Contractor shall preserve and protect existing vegetation such as trees, lawns and shrubs which may be impacted by the Work and which are not to be removed. Contractor shall consult with Owner concerning trees to remain adjacent to the construction area. Contractor shall protect trees from stockpiling, vehicle driving and parking beneath tree canopies, dumping of refuse or chemically injurious materials or liquids, and continual puddling or running water. Contractor shall not remove more than six inches of existing soil or fill more than two inches over existing soil within six feet of trees to be saved. Contractor shall be permitted to remove interfering branches and roots only where absolutely necessary and without injury to trunks, and shall employ a qualified tree surgeon to remove branches or roots and to treat cuts.

ARTICLE 20
Inspections and Tests

- A. Contractor shall permit and facilitate observation or inspection of the Work by Owner, Owner's representatives, and governmental authorities having jurisdiction, at all times when the Work is in preparation or progress.
- B. The costs for inspections or tests not required by the specifications, but which Owner requests, will be borne by Owner, except where Contractor's Work fails any inspection, Contractor will pay the costs of that inspection. All inspection requests of Owner shall be complied with.
- C. All tests shall be performed by a testing agency approved by Owner and shall be in accordance with the current standards of the American Society for Testing and Materials, unless otherwise specified by Owner. Contractor shall furnish Owner with two (2) copies of the test procedures used.
- D. Acceptance by Owner of test data or inspections of any portion of the Work by Owner shall not relieve Contractor of its obligation to perform the Work as required by the Contract.
- E. Operating equipment and systems shall be performance tested in the presence of Architect/Engineer to demonstrate compliance with the specified requirements. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by Architect/Engineer. Contractor shall schedule such testing with Architect/Engineer at least one (1) week in advance of the planned date for testing. All costs of performance testing shall be borne by Contractor.
- F. Failure of Architect/Engineer or Owner, during the progress of the Work, to discover or reject defective Work or Work not in accordance with the drawings and specifications shall not be deemed an acceptance thereof or a waiver of Owner's right to proper execution of the Work. No partial or final payment or partial or entire occupancy of the premises by Owner shall be construed to be an acceptance of Work or materials which are not strictly in accordance with the Contract, or a waiver of Owner's rights.
- G. If any Work is covered up without approval of Owner or Architect/Engineer, it shall be uncovered for examination, and, after examination, Contractor shall perform all re-work required to correct defective work and restore it to the condition called for by the Contract. In such case, the cost of uncovering the Work and of all re-work involved shall be borne by Contractor.
- H. If Owner or Architect/Engineer must perform re-inspections due to failure of the Work to comply with requirements of the Contract Documents during final inspection, Owner may deduct its costs and Architect's/Engineer fee for such additional services from the final payment due Contractor.
- I. Contractor shall furnish, without charge, samples of materials or products as requested by Owner or Architect/Engineer, whether or not specifically called for in the Contract. Contractor shall not incorporate any such material or product into the Work until after Owner or Architect/Engineer has approved the samples submitted in writing. The samples shall be

submitted to give Owner and Architect/Engineer ample time for review, selection or approval so as to not delay the Work.

ARTICLE 21
Physical Data and Subsurface Utilities

- A. Existing subsurface utilities in the project are shown in the plans to the best of the Engineer's knowledge. However, it is the Contractor's responsibility to verify the existence of these or any other utilities and to determine their exact location and depth prior to start of construction by potholing. Any utilities, which are found to obstruct the new construction, shall be relocated or replaced by the Contractor at the direction of the Engineer. Use of the utilities shall be maintained during construction through temporary connections or other measures suitable to the Owner of the utility obstructing the new construction. It is the Contractor's responsibility to ensure that all the utilities are fully operational upon completion of the project. No extra compensation beyond the bid prices will be made for removal, temporary connections, relocations, or replacements of utilities.
- B. In accordance with ORS 757.541 to 757.571 it shall be the Contractor's responsibility to notify all utility offices that will be affected by the construction operation at least 48 hours in advance of his intension to begin construction. Under no circumstances shall the Contractor expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, the Contractor may locate, expose, and provide temporary support for all existing underground utilities. The Contractor shall reschedule his/her work to allow relocation of any conflicting utility.
- C. Neither the City of Madras, including its officers or agents, nor other involved parties shall be responsible to the Contractor for damages as a result of the Contractor's failure to protect utilities encountered in the Work.

ARTICLE 22
Protection of Facilities, Existing Structure and Archaeological Items

- A. The Contractor shall take the necessary precautions to protect existing structures, landscaping, pavement markings, fences, waterways, drainage swales, and other features during construction. The Contractor shall repair or replace existing structures, improvements and features damaged as a result of construction or damaged by flood, fire, vandalism or neglect. The Contractor shall be responsible for all costs for such repairs or replacements, as directed by the Engineer and shall complete necessary repairs or replacements prior to acceptance by the Owner of the completed Work.
- B. An attempt has been made to show existing structures and features on the drawings. The completeness and accuracy of information shown cannot be guaranteed, and it is presented simply as a guide to avoid known possible difficulties.
- C. The Contractor shall protect underground and aboveground structures from damage, whether or not they lie within the limits of rights-of-way or easements obtained by the City of Madras. Where such existing structures must be removed for construction, the Contractor shall restore said structures to a condition equal to or better than their original condition as specified.
- D. The contractor shall notify the Engineer of any damage to underground structures and make repairs or replacements before backfilling. Without additional compensation, the Contractor

may remove and replace in a condition equal to or better than the original, such small miscellaneous structures as fences and mailboxes that interfere with the Contractor's operations.

- E. During the process of construction, it is expected that minor relocations of parts of the Work may be necessary. Such relocations shall be made only at the direction of the engineer. If existing structures are encountered that are not accurately shown on the drawings and that prevent the construction from proceeding as shown, the Engineer shall be notified before continuing with the construction, in order that the Engineer may make such field revisions as necessary to avoid conflict with the existing structures. If the Contractor fails to notify the Engineer with an existing structure is encountered, and proceeds with the construction despite the interference, the construction shall do so at his own risk.
- F. In the event that archaeological materials or human remains are discovered during the implementation of the project, all work will cease in the area of discovery and handled in according with ORS 358, 390 and 97.740-760, NHPA and the Native American Graves Protection and Repatriation Act.

ARTICLE 23

Additional or Deleted Work

- A. Within twenty-four (24) hours after receipt of a field change order and within five (5) days after receipt of an Owner RFP for changes in the Work not covered by agreed-upon "unit Prices," Contractor shall submit to Owner a lump sum proposal, itemized by cost code, stating the amount to be added to or deducted from the Contract Sum and the effect, if any, on the schedule by reason of such changes. The amount for additional or deleted Work not covered by "unit prices" shall be determined in accordance with section 00196 of the 2021 Oregon Standard Specifications for Construction.
- B. When a schedule of unit prices for additions or deletions to the Work is made a part of the Contract, and in the event Owner issues a field change order or Owner RFP for additional or deleted Work to which unit prices are applicable, no percentage fee or other mark-up will be applied to scheduled unit prices. Owner will have the right to establish verification procedures for all Work performed under unit price Contract provisions.
- C. In no event shall Contractor proceed with changes in the Work without a written order from Owner to so proceed. Owner will be under no obligation to pay for unauthorized extra, additional, or changed Work performed by Contractor without a written Change Order or written order to proceed executed by Owner.

ARTICLE 24

Schedule

- A. Contractor shall submit, to Owner, a Type "A" (as defined by 2021 Oregon Standard Specifications section 00180) schedule of the Work within ten (10) days after receipt of written notice to proceed and shall maintain the schedule on a current basis until the Work is completed. Time limits set forth in the Contract for substantial completion, final completion, or any other project milestones, shall govern, and the schedule must be adjusted to comply. Contractor shall perform the Work in accordance with the schedule as well as within the dates specified in the Contract.

- B. Periodically as required by Owner, Contractor shall report to Owner on the status of the Work on duplicate marked copies of the current schedule. Contractor shall indicate in the status report any Work that is not proceeding according to the current schedule or to modify the schedule. Any modifications to Contractor's schedule notwithstanding, Contractor shall remain responsible to complete the Work within the times specified in the Contract.
- C. If the Work is not proceeding according to the Schedule and the owner does not reasonably believe Contractor's proposed actions or schedule modifications are sufficient to accomplish completion of the Work within the Contract time, Contractor shall be in default under the Contract. If Contractor fails to cure such default by submitting proposed actions or schedule modifications, reasonably acceptable to Owner, within ten (10) days of receiving written notice of the default, Owner may perform such Work as it deems necessary to bring the Work into compliance with the current schedule and to credit the cost thereof against payments due Contractor. Such action shall not constitute Owner's waiver of any other claim or claims against Contractor resulting from Contractor's failure to perform on schedule or within the time limits set forth in the Contract.
- D. Contract Completion Dates and Liquidated Damages: Once the Contractor has moved onto the Project site, work shall commence and continue, uninterrupted, until fully complete and accepted by the Owner. All work associated with the Project shall be completed in all respects by the completion date specified in the Contract.

Owner and Contractor recognize that the Owner will suffer financial loss if the work of the Project is not completed by the dates specified above, plus any mutually agreed upon extensions. They also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by Owner, if the work is not complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that failure to meet the completion date specified in the Contract will result in Liquidated Damages of five hundred dollars (\$500.00) for each and every calendar day, including the correction of deficiencies and final clean up, that completion of the Work is delayed beyond the completion date specified in the Contract.

ARTICLE 25

Delays and Extension of Time

- A. If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or by any other firm employed by Owner or by changes ordered in the Work, strikes, lockouts, fires, floods, earthquakes, or acts of God, acts of war, or public enemy, inability to obtain materials due to government restrictions, acts of public officials, or by any cause which Owner shall decide justifies the delay, then the schedule for completion of the Work shall be extended for a period equal to the delay so caused. No such delay shall be recognized unless it alone increases the overall critical path duration of the schedule in effect at the time of the delay.
- B. No schedule extension shall be allowed for delay commencing more than five (5) days before claim therefore is made in writing to the Owner. In case of a continuing delay, only one claim is necessary.
- C. No claim for delay shall be allowed Contractor on account of the Architect's/Engineer's or Owner's failure to return drawings and shop drawings to Contractor until ten (10) working

days after Owner's receipt of a demand for such drawings, and not then, unless such claim is reasonable. Disapproval of drawings by Owner shall not be a claim for delay.

- D. Extension of time of completion by Owner, if any, shall be Contractor's sole remedy for delay, no matter how or by whom caused, and Contractor shall not be entitled to any increase in the Contract Sum or to damages or additional compensation as a consequence of such delays, provided however, Contractor shall be entitled to compensation for delays caused by Owner's failure to obtain such permits as are Owner's responsibility in a timely manner.
- E. Contractor shall cause each subcontract or agreement with material suppliers to contain a provision limiting remedies of subcontractors and suppliers for delay to those allowed the Contractor under Paragraph D, above.

ARTICLE 26
Temporary Sign

Contractor may, at no cost to Owner, provide a suitable temporary sign acceptable to the Owner advertising the Work and indicating thereon the title of the project and name of Architect/Engineer and Contractor. The sign shall be no larger than 4 feet by 8 feet. Layout, text and location of such sign shall be as approved by Owner.

ARTICLE 27
Temporary Structures and Services

- A. Toilets. Contractor shall provide suitable toilet facilities at approved locations with proper enclosures for the use of all workers, and shall maintain such in a sanitary and operable condition, all in conformity with local regulations.
- B. Temporary buildings. Contractor shall provide such temporary buildings as may be required for the use of its workers and the safe storage of tools and materials. Such structures shall be located on the job site with location as approved in advance by Owner.
- C. Temporary Electric Power. Contractor shall provide and pay for all temporary light and power required for the Work including all wiring, connections, and accessories, and all power consumed.
- D. Temporary Water Supply. Contractor shall make all necessary arrangements for and provisions of water including temporary piping and hose extensions required for construction purposes. Contractor shall obtain and pay for temporary permits from proper authorities and pay for all water used.
- E. Temporary Facilities. Contractor shall install and operate an adequate number of temporary hoists and furnish and maintain temporary scaffolds, ladders, runways, and the like as required for the proper execution of the Work. As soon as the progress of the Work will permit, Contractor shall erect the permanent stairs, platforms, ramps, catwalks, etc., properly equipped with handrails and other safeguards and shall provide wood or paper coverings to protect these and all other permanent parts of the facility from damage or defacement during the Work.
- F. Removal of Temporary Structures and Services. Contractor shall remove temporary structures and services installed by Contractor upon completion of the Contract or as directed

by Owner. Contractor shall make any repairs or alterations necessitated by such removal at Contractor's expense.

- G. Pestilence Control. Contractor shall guard against and, if necessary, exterminate rodents, termites, vermin, and other pests. All personnel on the project site shall be required to dispose of garbage and refuse in covered metal containers, which the Contractor shall furnish and empty regularly.
- H. Pollution Control. Contractor shall comply with requirements of Owner and of governmental authorities having jurisdiction, regarding pollution control.
- I. Contractor shall not disrupt or interrupt electric, gas, water, steam, or other utilities or services to existing structures without prior notice to Owner and then only at a definite time and for a definite duration as approved by Owner in writing.
- J. If Work is to be performed upon or adjacent to an existing structure, the Work shall be executed in such manner as will not interfere with the continued free and comfortable use of the structure, walks and grounds. Contractor shall keep building exits clear of obstructions at all times.
- K. Contractor shall provide designated smoking areas, separate from areas where work is actively being performed, for its employees and subcontractors.

ARTICLE 28

Security of Equipment and Operable Machinery

Site-parked mobile equipment, operable machinery, and hazardous parts of the new construction subject to mischief shall be kept locked or otherwise made inoperable whenever left unattended.

ARTICLE 29

Technical Submittals and Shop Drawings

- A. The Contractor shall submit technical data and shop drawings in accordance with these Standards for all materials that shall be incorporated into the Work. The submittals shall consist of such descriptive information as necessary to enable the Engineer to advise the Owner whether the Contractor's proposed materials are in general conformance to the design concept and in compliance with the drawings and specifications. The information to be submitted shall include applicable drawings, descriptive data, material specifications, certificates, samples and/or test results. If a complete submittal is made, the Owner will review and return comments within 14 calendar days.
- B. Unless specific requirements are called for in other sections, the Contractor shall submit six copies of all technical submittals and shop drawings. The Engineer will review and return two copies of such data and drawings to the Contractor. The Contractor shall make such corrections to the data and drawings as have been indicated by the Engineer and shall furnish the Engineer with corrected copies, if so directed.

ARTICLE 30
Weather Protection and Heating

- A. Contractor shall provide and maintain weather protection and temporary heating as required to properly protect all Work from damage. Contractor shall not use any installed or partially installed heating system for temporary heating purposes, unless specifically authorized in writing by Owner.
- B. When necessary to enclose buildings for construction, Contractor shall provide all permanent and temporary enclosures required and shall provide temporary heating by means of adequately ventilated devices to maintain suitable temperatures for the Work of all trades. Temporary heating shall be maintained for such periods as required or as directed by Owner. When directed by Owner, Contractor shall remove all temporary enclosures.
- C. If portable ventilating fans are used to dispel moisture, Contractor shall provide the same with adequate safety guards and the area shall be broom clean to insure protection of personnel.
- D. Contractor shall use only flameproof tarpaulins.

ARTICLE 31
Cleaning

- A. Contractor shall at all time keep the premises free from accumulation of waste materials or rubbish caused by employees, subcontractors, or the Work. At the completion of the Work, Contractor shall remove, from the site, all rubbish, tools, scaffolding and surplus materials, and shall leave the Work broom clean unless otherwise directed. If, in the opinion of Owner, Contractor fails to keep the premises clean, Owner may remove waste materials, rubbish, and charge the expense of such removal to Contractor.
- B. Contractor shall thoroughly wash and clean all glass; replace broken glass; clean hardware; remove paint stains, spots, smears, marks, and dirt from all surfaces; clean fixtures; and wash terrazzo tile floors and all exposed concrete so as to present clean work to Owner for acceptance.
- C. Contractor shall neatly stack construction materials such as concrete forms and scaffolding when not in use. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from surfaces to prevent marring or other damage.
- D. Volatile wastes shall be properly stored in covered metal containers and removed daily.
- E. Wastes shall not be buried or burned on the site, or disposed of into storm drains, sanitary sewers, streams, or waterways. Contractor shall remove and dispose of all wastes from the site in a manner complying with local ordinances and state and federal anti-pollution laws.
- F. Contractor shall periodically wet down walls, debris, trucks, chutes, etc. as required minimizing flying dust. Contractor shall provide enclosed chutes for upper floors to selected ground floor collecting or loading areas adjacent to the bottom of chutes shall be sprayed or dampened with water to prevent dust.

ARTICLE 32
Contract Documents and Record Documents

- A. The Contractor shall maintain at the project site one set of specifications, full-sized drawings, shop drawings, equipment drawings, and supplemental drawings that shall be corrected as the Work progresses to show all changes made and the location of existing underground utilities, structure, valves, etc. encountered or located. Identify the above items clearly on the drawings with proper tie (i.e. dimensions) to existing above-ground objects or property lines. Record and accurately indicate depths, sizes and locations of all buried and concealed pipes, conduits and cables installed or encountered; as well as changes, additions, and revisions due to change orders, addenda, obstruction or clarifications. If requested by the Engineer, current record drawings with changes marked shall be submitted weekly to the engineer for review. Any identified discrepancies shall be corrected and drawings shall be remarked.
- B. A monthly progress payment to the contractor will not be made until the record drawings are correctly marked with current information in sufficient details to the satisfaction of the Engineer. Upon completion of the contract, current specifications and drawings shall be turned over the Engineer for inclusion with the project records. If deficiencies are found in either the quality or the accuracy of the record specifications and drawings, they will be returned unapproved for the Contractor's revision and resubmission. Additional review of subsequent submissions by the Engineer shall be at the contractor's expense.
- C. Final payment will not be made until satisfactory records have been submitted to the Engineer by the Contractor.

ARTICLE 33
Progress Payments and Final Payments

- A. Owner will make progress payments to Contractor on account of the Contract Sum as follows:

On or before the last day of each month, Contractor shall submit a statement indicating the value of labor and materials acceptably incorporated into the Project during that calendar month. Progress payment invoices will be paid within 30 days from the date the Owner reviews and approves the invoice. Progress payments shall be reviewed by the Owner within 7 days.

There shall be a five percent (5%) retainage of all sums due. The retainage shall be paid to Contractor with final payment, subject to the provisions of Article 34.

- B. For lump sum bid items, the Contractor is to submit a lump sum breakdown for the Owner's review and approval prior to progress payment review and approval.
- C. Progress payments submitted shall include the following:
 - 1. Contract bid and/or change order item number(s) and description.
 - 2. Contract bid and/or change order item(s) unit pricing and quantities.
 - 3. Requested bid and/or change order item quantities and amount(s).

4. Previous bid and/or change order item quantities and amount(s).
 5. Remaining bid and/or change order quantities and amount(s) to be billed.
- D. Partial payments shall not constitute acceptance by Owner of Contractor's Work nor be construed as a waiver of any right or claim by Owner in connection with the Work.
 - E. Contractor shall submit invoices with a detailed cost breakdown.
 - F. Contractor shall keep the Project, including any structure or the land upon which the Project is erected free and clear of all liens, claims, security interests or encumbrances in favor of any person and arising by reason of having provided labor, materials or equipment relating to the Work. Contractor shall indemnify and hold Owner, the Project, and the real property harmless from and against any liens, notices, or claims that may be filed in connection with Contractor's performance under this Contract or with construction of the Work, including without limitation, damages, costs, or attorney fees arising therefrom.
 - G. Applications for Payment shall include the value of materials or equipment not incorporated in the Work, but delivered and suitably stored at the site or at some other location agreed upon in writing by the parties hereto. Contractor warrants that title to all equipment and materials shall pass to Owner upon Owner's payment therefore or upon incorporation into the Work, whichever occurs first. Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title. Title thereto shall vest in Owner provided; however, the vesting of title shall not impose any obligation on Owner or relieve Contractor of its obligations under the Contract.
 - H. Contractor shall submit an updated schedule with each application for payment.
 - I. Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Architect/Engineer and Owner will promptly make such inspection. Owner will make final payment to Contractor approximately thirty (30) days after Owner's acceptance of the completed Work.
 - J. Before submitting application for final payment, Contractor shall remove all equipment from the project and complete Contract closeout procedures.
 - K. By acceptance of the final payment, Contractor warrants that it has received payment in full for its performance of the Contract and waives all further claims against Owner in connection with the Work. Final payment by Owner shall be conclusive proof of Owner's performance of the Contract.

ARTICLE 34
Owner's Right to Withhold Payment and Retainage

- A. Owner shall have the right to withhold from payments due Contractor such sums as necessary, in Owner's sole opinion, to protect Owner against any loss or damage which may result from negligence or deficient Work by Contractor; failure by Contractor to perform its obligations, including failure to maintain satisfactory progress of the Work; or claims against Contractor or Owner relating to Contractor's performance or work. In addition, Owner may withhold payments from Contractor for damages, caused by Contractor, for which no

adjustment is made, or any subcontractors; and where reasonable evidence indicates a claim will be filed against Owner or the property.

B. If Contractor fails to take prompt and adequate action to bring the Work on schedule or to correct deficiencies in the Work, or to perform any other obligations, Owner shall have the right to perform such Work or cure any default by Contractor as Owner deems necessary, and to credit the cost thereof against payments due Contractor.

C. Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

1. Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

2. In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless the Owner finds in writing that accepting a bond, security or other instrument described in options (a) or (c) below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

a. to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by the Owner, including but not limited to:

i. Bills, certificates, notes or bonds of the United States.

ii. Irrevocable letters of credit issued by an "insured institution," as defined in ORS 706.008.

b. that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor; or

- c. that the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.
 - d. When the Owner has accepted the Contractor's election of any of the options above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond under option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.
3. The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.
4. In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraphs (a) and (c) of Paragraph C(2) of this Article 34, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.
5. Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Paragraph C of this Article 34 as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 the Contractor has deposited bonds, securities or other instruments or has elected to have the Owner deposit accumulated retainage in an interest-bearing account, the Contractor shall comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.
6. Additional retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by ORS 279C.845(7).
7. Owner may, at its sole discretion, issue a written notice of Substantial Completion for the purpose of establishing the starting date for specific warranties, and to establish the date that the Owner will assume the responsibility for the cost of operating such portions of the Project. Said notice shall not be considered as final acceptance of any portion of the

Work or relieve the Contractor from completing the remaining Work within the specified time and in full compliance with the Contract Documents. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete including acceptable testing as specified in the Contract Documents on the date of Substantial Completion. The Owner shall have the right to exclude Contractor from the project after the date of Substantial Completion, but the Owner shall allow Contractor reasonable access to complete or correct remaining items of Work.

ARTICLE 35
Premium Time

- A. Owner reserves the right to accelerate the schedule from time to time, without cause, upon written direction to Contractor to so accelerate. If the forces of contractor or any of its subcontractors are required to work overtime as a result of such acceleration, Owner will reimburse Contractor for the premium portion of overtime wages paid plus applicable federal and state payroll taxes and other actual payroll costs attributable to the overtime premium. Reimbursement for such acceleration shall not include any overhead or profits of Contractor or its subcontractors on the premium portion of overtime wages.
- B. Contractor shall keep and maintain accurate records of all overtime hours to be reimbursed and shall secure Owner's approval of such records on a daily basis. Reimbursement shall be made based on such approved records by change order as provided herein.
- C. This article shall have no application to overtime work that Contractor is required to perform due to its own failure to meet the Contract schedule or, without limitation, due to any other fault of Contractor.

ARTICLE 36
Claims and Demands

- A. If Contractor claims that any written instructions issued after the effective date of this Contract, by drawings or otherwise, involve extra costs under the Contract, Contractor shall not be entitled to reimbursement for such extra costs unless Contractor shall so notify the Architect/Engineer and Owner in writing before proceeding to execute the Work and within seven (7) days after receipt of such instructions.
- B. Claims and demands for any other cause whatsoever, by Contractor against Owner, must be served in writing upon Architect/Engineer and Owner within fourteen (14) days from the occurrence of the cause thereof, except as otherwise expressly provided, or Contractor shall be deemed to have waived such claims or demands.

ARTICLE 37
Taxes

Contractor shall pay all federal, state, and local taxes, including, but not limited to, excise taxes, sales and use taxes.

ARTICLE 38
Owner's Right to Occupy

- A. Owner has the right to occupy or use, ahead of schedule, all or any substantially completed or partially completed portion of the Work, notwithstanding the time of completion for all of the Work. If occupancy or use increases the cost of the Work (other than for delay or for corrections which are Contractor's responsibility), Contractor shall be entitled to extra compensation. If such occupancy or use delays completion of the Work, Contractor shall be entitled only to any extension of time. Claims for such extra compensation or extension of time, or notification to Contractor of Owner's intent to so occupy or use, shall be made within five (5) days of the event giving rise to the claim for extra compensation or extension of time, or not later than five (5) days prior to Owner's intended date of occupancy or use.
- B. After Owner has taken occupancy of all or any substantially completed portion of the Project, Contractor shall not disrupt the use and occupancy thereof to make corrections in the Work but shall, at Owner's discretion, make such corrections at Contractor's expense outside of Owner's normal hours of operation.

ARTICLE 39
Owner's Right to Terminate

- A. If Contractor fails to commence the Work in accordance with the provisions of the Contract; fails to diligently prosecute the Work to completion in a timely, efficient, workmanlike, skillful and careful manner, and in strict accordance with the provisions of the Contract (including the scheduled completion date and any interim scheduled milestone dates); fails to deploy adequate qualified personnel or equipment to complete the Work on time; fails to perform any of its obligations under the Contract; or fails to make prompt payments to its subcontractors, materialmen, or laborers, Contractor must cure any such default within seven (7) days after written notice of the default or Owner shall have the right to (i) terminate the Contract; (ii) take possession of all or any part of Contractor's materials, equipment, supplies, and other property of any kind used in the performance of the Work and to use such property including engaging the services of other parties therefore. No action taken by Owner hereunder shall be deemed a waiver of any other right or remedy. If the cost to Owner of performing the balance of the Work is more than the balance of the Contract Sum that has not been paid to Contractor, Contractor shall be liable, and shall reimburse Owner, for such excess.
- B. If Contractor fails to prosecute the Work properly; or fails to perform any provision of the contract; or does, or omits, anything whereby safety or proper construction may be compromised or whereby damage or injury may result to persons or property, after three (3) days' written notice to Contractor, Owner shall have the right to make good all omissions or deficiencies and may deduct the cost therefore from the Contract Sum. No action taken by Owner hereunder shall affect any other rights or remedies of Owner or relieve Contractor from any consequences or liabilities arising from such acts or omissions.
- C. Owner may stop or suspend the work, in whole or in part, or terminate the Contract for public interest and without cause by giving seven (7) days' prior written notice of suspension or termination to Contractor. In such event, the Contract price shall be adjusted with respect to the Work completed at the time of termination. Owner will pay Contractor for Work completed according to payment provisions of the Contract and Owner will reimburse Contractor for all costs necessarily incurred in organizing and carrying out the stoppage of

the Work and paid directly by Contractor. Owner will not reimburse Contractor for any continuing contractual commitments to subcontractors, materialmen, or others, or for penalties or damages for canceling such contractual commitments in as much as Contractor shall make all subcontracts and other commitments subject to this provision.

- D. Contractor and Owner recognize that if Contractor is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of the Contract. Accordingly, Contractor and Owner agree that upon the occurrence of any such event, Owner may request of Contractor, or its successor in interest, assurance of future performance in accordance with the Contract. Upon failure to comply with such request within ten (10) days of the request, Owner may terminate the Contract.
- E. If Owner stops or suspends the Work, or terminates the Contract, and an arbitrator or a court determines that Owner's termination was wrongful, such termination will be deemed converted to a termination without cause, set forth above, and Contractor's remedy is limited to the recovery of the payments permitted for such termination for public interest and without cause as set forth in subparagraph C, above.
- F. Termination by Owner shall not constitute any waiver of rights, claims or causes of action Owner may have against Contractor.

ARTICLE 40
Arbitration

Arbitration Required/Mediation First Option. Any dispute or claim that arises out of or which relates to this Contract, or to the interpretation or breach thereof, or to the existence, scope, or validity of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then-effective arbitration rules of Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The Owner, the Contractor, and all subcontractors, sub-subcontractors, material suppliers, engineers, architects, designers, construction lenders, bonding companies, and all other parties concerned with and involved in the performance of the contract are bound, each to the other, by this arbitration clause, provided such party has signed this Contract, or signs an agreement that incorporates this Contract by reference, or signs any other agreement to be bound by this arbitration clause. The parties acknowledge that mediation usually helps parties to settle their dispute. Therefore, any party may propose mediation whenever appropriate by any mediation process or mediator as the parties may agree upon. Any mediation or arbitration shall take place in Jefferson County.

ARTICLE 41
Attorney Fees

If any arbitration or litigation is instituted to interpret, enforce, or rescind this Contract, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition

for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

ARTICLE 42

Assignment

- A. Contractor shall not assign its rights or obligations under, or arising from, the whole or any part of the Contract or any subcontract without Owner's prior written consent.
- B. Contractor hereby assigns, to Owner (and its assigns), all interest in subcontracts and purchase orders, now existing or hereinafter entered into by Contractor, for performance of any part of the Work. Assignment will be effective upon acceptance by Owner, in writing and only as to those subcontracts and purchase orders that Owner so designates. Owner may accept assignment at any time during the course of construction prior to final completion. All of Contractor's subcontracts and purchase orders shall provide that they are freely assignable by Contractor to Owner (and its assigns). It is agreed and understood that such assignment is part of the consideration to Owner for entering into the Contract and may not be withdrawn prior to final completion.

ARTICLE 43

Guarantees and Warranties

- A. In addition to any specific guarantees and warranties required by the Contract, Contractor guarantees to perform the Work in a first class, workmanlike manner and guarantees all Work against defects in material or workmanship for a period of one (1) year from the date of acceptance of the Work or final payment by the Owner, whichever is later. Acceptance shall mean final acceptance of the entire Work, early partial occupancy notwithstanding. However, Contractor shall be liable to the Owner for all damages sustained by Owner due to the failure of any foundation within two (2) years of final payment under the contract.
- B. All guarantees or warranties of equipment or materials furnished to Contractor or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Owner. If any manufacturer or supplier of any equipment or material furnishes a guarantee or warranty for a period in excess of one (1) year from the date of acceptance, Contractor's guarantee, as provided in Paragraph A of this Article shall be deemed to extend for a like period as to such equipment or material.
- C. Contractor shall fulfill any warranties of manufacturers for material or equipment installed.
- D. Within a reasonable time after receipt of written notice thereof, Contractor shall correct defects in material or workmanship which exist prior to or during the period of any guarantee provided herein and any damage to other Work or property caused by such defects or the repairing of such defects, at Contractor's own expense and without cost to Owner, and without interruption to Owner's occupancy.
- E. The guarantees and warranties shall not be construed to modify or limit any rights or actions, which Owner may otherwise have against Contractor by law or statute, or in equity.

ARTICLE 44
Public Contract

- A. Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or materials for the performance of the work provided for in this Agreement.
- B. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractor incurred in the performance of the Agreement.
- C. Contractor shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or materials furnished for the Work.
- D. Contractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- E. Contractor shall demonstrate that an employee drug testing program is in place.
- F. To the extent that demolition is part of the Work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.
- G. To the extent lawn and landscape maintenance is part of the Work, Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- H. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or any Subcontractor by any person in connection with this Agreement as the claim becomes due, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this agreement.
- I. If Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor materials in connection with this Agreement within 30 days after receipt of payment from the Owner or a contractor, the Contractor or 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 Contractor or 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 Owner or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- J. If Contractor or any Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the agreement, 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 payment of a claim in the manner authorized in ORS 279C.515 does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

- K. A person may not be employed by the Contractor or any Subcontractor for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of agreements for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay:
- (1) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - (2) For all overtime in excess of 10 hours in any one day or 40 hours in one week when the work week is four consecutive days, Monday through Friday; and
 - (3) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- L. Contractor shall give notice in writing to employees either at the time of hire or before commencement of work on the agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. Contractor shall include an identical provision in its subcontracts and require all Subcontractors, of any tier, to include an identical provision in all subcontracts.
- M. In the case of agreement for personal services as defined in ORS 279C.100, the employee shall be paid at least time and half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services agreements who are excluded under ORS 653.010 to 6533.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- N. Agreements for services must contain a provision that requires that persons employed under the agreement shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.
- O. The provisions of ORS 279C.545 shall apply to all claims for overtime under this Agreement.
- P. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any agreement for the purpose of providing or paying for the services.
- Q. All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
- R. Workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. If the Project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, all workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage. Contractor shall include this provision in each Subcontract awarded under this Agreement.

- S. Contractor represents and agrees that the specifications contain a sufficient provision stating that Contractor and every Subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).
- (1) Contractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).
- (2) Every Subcontract must require the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).
- T. The hourly rate of wage to be paid by the Contractor or every Subcontractor subject to prevailing wage rates to workers shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed.
- U. Contractor and every Subcontractor subject to prevailing wage rates to workers shall keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the project.
- V. To the extent Contractor or any Subcontractor subject to prevailing wage rates shall also provide for or contribute to a health and welfare plan or a pension plan, or both, for its employees on the project, the Contractor or Subcontractor, as applicable, shall post notice describing such plans in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under Paragraph V, above. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information.
- W. Contractor or the Contractor's surety, and every Subcontractor or Subcontractor's surety, shall file certified statements with the Owner in writing on 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 upon such public work, and that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the Contractor or the Contractor's surety, or Subcontractor or the Subcontractor's surety that the Contractor or Subcontractor has read such statement and certificate 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. Each certified statement required shall be delivered or mailed by the Contractor or Subcontractor to the Owner. Certified statements shall be submitted 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. If a contractor fails to file the required certified statements, the public agency shall retain 25 percent of any amount earned by the contractor until the contractor has filed with the public agency certified statements as required by this Paragraph X. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

- X. Contractor or Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Agreement.
- Y. Contractor represents and agrees that the Owner has fully and timely included a provision that the Contractor and any Subcontractor shall comply with ORS 279C.840 in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents and that the Owner has no liability for unpaid minimum wages.
- Z. Owner shall make progress payments under the Agreement monthly as work progresses. Payment shall be based upon estimates of work completed that are approved by the Owner. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein. In instances when an invoice is filled out incorrectly or when there is any defect or impropriety in any submitted invoice when there is a good faith dispute, the Owner shall so notify the Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the Contractor within seven days of being notified by the Owner, shall not cause a payment to be made later than specified in this section.
- AA.If requested in writing by a first-tier Subcontractor, the Contractor, within 10 calendar days after receiving the request, shall send to the first-tier Subcontractor a copy of that portion of any invoice, request for payment submitted to the Owner or pay document provided by the Owner, to the Contractor specifically related to any labor or materials supplied by the first-tier Subcontractor.
- BB.Payment of interest may be postponed when payment on the principal is delayed because of disagreement between Owner and the Contractor.
- CC.The Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As work progresses, the Owner may in its sole discretion reduce the amount of the retainage and the Owner may in its sole discretion eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the contract is completed if, in the Owner's sole opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's surety; except that when the contract work is 97 ½ percent completed the Owner may, at its discretion, and without application by the Contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the Contractor, the Owner shall respond in writing within a reasonable time.
- DD.The retainage held by the Owner shall be included in and paid to the Contractor as part of the final payment of the contract price. The Contractor shall notify the Owner in writing when the Contractor considers the work complete and the Owner shall, within 15 days after receiving the written notice, either accept the work or notify the Contractor of work yet to be performed on the contract.
- EE. The Contractor shall not request payment from the Owner of any amount withheld or retained in accordance herewith until such time as the Contractor has determined and certified to the Owner that the Subcontractor is entitled to the payment of such amount. A dispute between the Contractor and a first-tier Subcontractor relating to the amount or entitlement of a first-tier Subcontractor to a payment or a late payment interest penalty under a clause included in

the subcontract pursuant to the terms hereof does not constitute a dispute to which the Owner is a party. The Owner shall not be included as a party in any administrative or judicial proceeding involving such a dispute. The Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including material supplier, for the purpose of performing a construction contract:

(1) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the Owner under such contract; and,

(2) An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the Owner, to pay 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 subparagraph (1) of this Paragraph FF. 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 Owner or Contractor when payment was due. The interest penalty shall be:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and,

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

FF. 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 payment clause and an interest penalty clause conforming to the standards of Paragraph FF, above, in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

GG. Contractor certifies, under penalty of perjury, that Contractor is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380 (4).

HH. Contractor certifies that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055, as applicable, before the subcontractors commence Work under the Contract.

II. The provisions of ORS 279C.605 shall apply to any claims against Contractor's payment bond.

JJ. The provisions of ORS 279C.525 shall apply to this Agreement.

KK. Contractor shall comply and require all Subcontractors to comply with applicable requirements of all laws, codes, ordinances, regulations and statutes, including but not limited to those in ORS Chapter 279C. To the extent that ORS Chapter 279C, or any other law, code, ordinance or regulations, requires any term or condition to be included in this Agreement, such term or condition are hereby incorporated by this reference. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, code, rule, statute, ordinance or regulation and whenever there is any conflict between

any provisions contained herein and any statute, law, code, ordinance, rule or regulation the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, code, rule, statute, ordinance or regulation.

END OF GENERAL CONDITIONS

SPECIAL PROVISIONS

SCOPE OF WORK

Work covered by this Contract and the basis of payment shall include all labor, equipment, and materials necessary to construct the following improvements required to complete the project.

All Work shall be performed in accordance with these Special Provisions and in accordance with the City of Madras Public Improvement Design and Construction Standards, 2021 Oregon Standard Specification for Construction (hereafter referred to as the “Standards”), as published by ODOT and APWA, Oregon Chapter as applicable. Any conflict between these Special Provisions and the Standards will be resolved in favor of the more restrictive specifications or as directed by the City of Madras.

COOPERATION WITH UTILITIES

Deschutes Valley Water District will be replacing their water main within the limits of the project beginning May 1st and will be completed by June 30th. The contractor cannot begin work until Deschutes Valley Water District is completed with their waterline replacement.

Contact information for Deschutes Valley Water District: Joel Gehrett
(541)-475-3849
jgehrett@dvwd.org

Cascade Natural Gas has a gas line on the west side of Marie Street within the limits of the project. It is not anticipated be in conflict with the work, but the contractor shall verify with Cascade Natural Gas by potholing the mainline to verify there are no conflicts. If conflicts arise, contact Cascade Natural Gas to resolve.

Contact information for Cascade Natural Gas: Brian Gainer
541-706-6296
Brian.gainer@cngc.com

The City does not anticipate any conflicts with utilities but has included contact information for utilities within the area

Contact information for Pacificorp: Donald “Flip” Shelton
(541) 325-5106
Donald.Shelton@pacificorp.com

Contact information for Crestview Cable: Brett Goodman
(541) 815-2731
bgoodman@crestviewcable.com

Contact information for Century Link: Craig Redelings
(541) 385-0296
Craig.Redelings@centurylink.com

PRECONSTRUCTION CONFERENCE

A Preconstruction conference at the City of Madras Public Works office will be required before proceeding with the work.

MOBILIZATION

All work for Mobilization shall be performed in accordance with section 00210 of the Standards except as modified

Section 00210.40 add the following bullets after the last bullet point.

- Procurement of the bonds and insurance coverage required, air and noise pollution control measures, and project site cleanup.
- No burning shall be allowed. The Contractor shall control dust and keep all existing roads used for access to and from the construction area free from dirt, rocks, and debris. After construction, all debris, including stray gravel and any other materials designated by the Engineer to be removed, shall be transported away from the construction site and disposed of in accordance with applicable local, State and Federal laws. All property shall be left in a condition satisfactory to the property owners. The Contractor shall clean-up the construction site daily.
- Obtaining permission for additional access to construction areas or additional workspace on private properties, if necessary, shall be the responsibility of the Contractor with no additional compensation from the Owner for such access. The Contractor shall be responsible for damages resulting from access to and from the project site. As work is completed, the Contractor shall restore all areas to a condition equal to or better than existed prior to construction activities.
- Any monuments or other items not specifically covered under the bid schedules that lie within the construction limits and need to be adjusted to finished grade shall be adjusted as part of this bid item. Disturbed or adjusted survey monuments must be reset or verified by a Professional Land Surveyor.

CONSTRUCTION SURVEY

The Owner shall provide horizontal and vertical control only. The Contractor shall be responsible for providing constructing staking necessary to complete the Work according to the Contract Documents.

The Contractor shall be responsible for checking for conflicts with the control information and notify the Engineer prior to use. The Engineer may make electronic files available to facilitate layout. If the survey control is knocked out, it shall be reestablished at the Contractor's expense.

All survey monuments shall be preserved in accordance with ORS 209.140 and 209.150. If such monuments are disturbed or destroyed, the Contractor shall comply with the requirements of said ORS at his own expense.

Contractor shall be responsible for the removal and disposal of all flagging, lath, stakes, and other temporary staking materials after the project is completed.

The accepted quantity of Survey will be paid for at the Contract unit price Lump Sum.

TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE

All work for Temporary Work Zone Traffic Control, Complete shall be in accordance with sections 00220 and 00221 of the Standards except as modified:

Add the following to the end of the bullet that begins with “Provide and maintain safe temporary access to business and residence driveways...”

In addition, the contractor shall be responsible to contact each business/residence and coordinate access to each property.

00220.40 (e) Lane Restrictions:

Delete item (1) and replace with the following:

(1) Closed Lanes – One or more lanes may be closed when allowed, shown, or directed during the following periods of time except as indicated in 00220.40(e-2):

- Daily, Monday thru Friday between 7:00 a.m. and 6:00 p.m.

Delete item (2) and replace with the following:

(2) Opened Lanes – Keep all traffic lanes open during the following periods:

- Friday from 6:00 p.m. thru Monday at 7:00 a.m.
- Friday May 28 at 7:00 am until Tuesday June 1 at 7:00 am
- Friday July 2 at 7:00 am until Monday July 5 at 7:00 am

GENERAL EXCAVATION

All work for General Excavation shall be in accordance with section 00330 of the Standards.

PAVEMENT PULVERIZATION – 8” DEPTH

Pavement pulverization – 8” depth is added as a special provision and shall be in accordance with the plans and specifications herein:

The Contractor shall reclaim existing asphalt by pulverizing and mixing with existing base material to a depth of eight (8) inches to produce a homogenous mixture. The mixture of pulverized asphalt and base rock will be referred to hereafter as reclaimed material.

Reclaimed material shall meet the following requirements for gradation:

<u>Sieve Size</u>	<u>% Passing</u>
3”	100
1½”	95-100

The gradation may be revised with the approval of the Engineer, but the top size of the reclaimed material may not exceed 25% of the reclaimed material depth.

The equipment used for pulverizing and mixing shall be self-propelled, capable of pulverizing to the depth and gradation specified in the bid, capable of adding water to produce a uniform homogenous mixture. It shall be equipped with automatic depth control and maintain a constant cutting depth and width.

Mixing shall be accomplished in place using single-shaft or multiple-shaft mixers. Agricultural disks or motor graders are not acceptable for mixing.

After reclamation of the existing asphalt, the contract shall grade the material to the specified line, grade and Cross Section as shown on the plans and compact the mixture in accordance with Section 00330.43 (c) of the Standards. Compact, finish and open the area to traffic by the end of the shift each day.

The quantities of Pavement pulverization – 8” depth will be measured on the area basis, measured along the lines and grades of the area pulverized.

The accepted quantities of Pavement pulverization – 8” depth will be paid for at the Contract unit price per square yard. Payment will be payment in full for furnishing all equipment, labor and incidentals necessary to complete the work as specified. No separate or additional payment will be made for:

- Draining water from the Subgrade.
- Blading, shaping and compacting the Subgrade, including roadbed materials, to the final line grade and Cross Section.
- Removing of excess material from the site.

12 INCH STORM SEWER PIPE

All work for 12 Inch Storm Sewer Pipe shall be in accordance with section 00445 of the Standards except as modified:

Delete section 00445.73.
Delete section 00445.74.

STORM SEWER TRASH RACKS

Storm Sewer Trash Racks is added as a special provision and shall be in accordance with the plans and specifications herein:

This work consists of furnishing and installing pipe guard gates on the culvert pipes to the lines and grades as shown or established.

Furnish material meeting the following requirements:

Commercial Grade Concrete 00440.00

Section 00440 – Delete section 00440.14 Acceptance Sampling and Testing and replace with the following section:

00440.14 Acceptance Sampling and Testing

- (a) General- Commercial Grade Concrete will be accepted based on visual acceptance and delivery ticket information.

LPG-12 12” Pipe Guard Gate manufactured by TRASHRACKS or approved equivalent.

General - Construct storm sewer trash racks as shown and per the manufacturers recommendations.

Measurement - The quantities of storm sewer trash racks constructed under this Section will be measured on the each basis as constructed in place to include all labor, equipment and materials to excavate, install concrete, trash rack, to the lines shown on the plans.

Payment

Pay Item	Unit of Measurement
• Storm Sewer Trash Rack.....	Each

No separate or additional payment will be made for excavation, embankment, and concrete.

STORM WATER SWALE

Stormwater Swale is added as a special provision and shall be in accordance with the plans and specifications herein:

This work consists of furnishing and installing a roadside swale for stormwater drainage to the lines and grades as shown or established.

Furnish material meeting the following requirements:

Non-Woven Rip Rap Geotextile 02320

Open Graded Drain Rock and Stone - Furnish open graded drain rock and stone for the swale section meeting the requirements of 00330.16 except:

Provide a maximum size between 7 inches and 2 inches.

General - Construct stormwater swale as shown. Perform excavation, fine grading, geotextile installation, and rock placement work only when the facility area is dry.

Check Dam - Install concrete blocks according to the plans and manufacturer’s instructions. Remove broken block material from the site when work is complete.

Measurement - The quantities of stormwater swale constructed under this Section will be measured on the linear foot basis down the centerline of the swale as constructed in place to include all labor, equipment and materials to excavate and grade to the lines shown on the plans including geotextile and rock.

Payment

Pay Item	Unit of Measurement
• Stormwater Swale.....	Linear Foot

No separate or additional payment will be made for geotextile and aggregate.

8 INCH SANITARY SEWER PIPE

All work for 8 Inch Sanitary Sewer Pipe shall be in accordance with section 00445 of the Standards except as modified:

- **Section 00445.80 Measurement** – Delete the last two sentences of this section in its entirety and replace with the following sentence “No separate measurement will be made for video pipe inspection or trench resurfacing”.
- **Section 00445.91 Payment** – Delete the following two sentences in its entirety from the section:”
 “Video pipe inspection will be paid for according to 00415.90.”
 “Trench resurfacing will be paid for according to 00495.90.”

Add the following bullets to section that begins with “No separate or additional payment will be made for:”

- Video Pipe Inspection
- Trench Resurfacing

CONCRETE SANITARY SEWER MANHOLES

All work for Concrete Sanitary Sewer Manholes shall be in accordance with section 00470 of the Standards.

CONNECTION TO EXISTING MANHOLES

All work for Connection to Existing Manholes shall be in accordance with section 00490 of the Standards.

MINOR ADJUSTMENT OF MANHOLES

All work for Minor Adjustment of Manholes shall be in accordance with section 00490.80 of the Standards.

MAJOR ADJUSTMENT OF MANHOLES

All work for Major Adjustment of Manholes shall be in accordance with section 00490.80 of the Standards.

LEVEL 2, 1/2 INCH ACP MIXTURE PG 58-34 OIL

All work for Level 2, 1/2 Inch ACP Mixture PG 58-34 Oil shall be in accordance with section 00744 of the Standards except as modified:

- **Section 00744.80 Measurement** – Delete the first sentence and replace with the following:
 “The quantities of ACP will be measured on the surface area basis”
- **Section 00744.90 Payment** – Delete the word “ton” and replace with “square yard”

EXTRA FOR ASPHALT APPROACHES

All work for Asphalt Approaches shall be in accordance with section 00749 of the Standards
AGGREGATE BASE, 2 INCH THICK

All work for Aggregate Base, 2 Inch Thick shall be in accordance with section 00641 of the Standards except as modified:

00641.10 (a) Base and Shoulder Aggregate:

Delete the phrase “Base Aggregate shall be dense-graded unless otherwise specified. Shoulder Aggregates shall be either 1”-0 or ¾” -0 size as the Contractor elects” and replace with the following phrase

“Base aggregate shall be either pulverized material or dense-graded. Shoulder aggregates shall be either pulverized material or dense-graded.

Add the following to “Furnish base and shoulder Aggregates meeting the following requirements” to include:

 “Pulverized Material in accordance with these special provisions”

00641.44 (a) Aggregate Base Courses:

Add the following:

- (3) Pulverized Material – Compact the surface of each layer of Pulverized Material using rollers conforming to 00641.24. Roll until there is no appreciable reaction or yielding under the compactor.

AGGREGATE BASE, 4 INCH THICK

All work for Aggregate Base, 2 Inch Thick shall be in accordance with section 00641 of the Standards except as modified:

00641.10 (a) Base and Shoulder Aggregate:

Delete the phrase “Base Aggregate shall be dense-graded unless otherwise specified. Shoulder Aggregates shall be either 1”-0 or ¾” -0 size as the Contractor elects” and replace with the following phrase

“Base aggregate shall be either pulverized material or dense-graded. Shoulder aggregates shall be either pulverized material or dense-graded.

Add the following to “Furnish base and shoulder Aggregates meeting the following requirements” to include:

“Pulverized Material in accordance with these special provisions”

00641.44 (a) Aggregate Base Courses:

Add the following:

- (1) Pulverized Material – Compact the surface of each layer of Pulverized Material using rollers conforming to 00641.24. Roll until there is no appreciable reaction or yielding under the compactor.

INCIDENTAL WORK- NO SEPARATE PAYMENTS (ALL SCHEDULES)

It is the intent of these documents that the bid item amounts listed in the Proposal shall provide full and complete payment for this project, as described in the Plans and Specifications. Payment for any work, whether or not it is noted on the Plans or in the Specifications, that is necessary for the completion of the project as designed, but not listed explicitly as or with a bid item, shall be included in the payments for the listed bid items.

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BID FORM

TO: PUBLIC WORKS DIRECTOR
Project Name: Marie Street Rehabilitation
City of Madras
125 SW "E" Street
Madras, OR 97741

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Bid are those named herein; that this Bid is, in all respects, fair and without fraud; and it is made without collusion with any official of the City of Madras, Madras, Oregon, hereinafter called City; and that this Bid is made without any connection or collusion with any person making another Bid on this Contract.

The Bidder further declares that he has carefully examined the project site and the Contract documents; is satisfied as to the quantities involved, including materials and equipment, and conditions of work involved; and that this Bid is made according to the provisions and under the terms of the Contract documents, which documents are hereby made a part of this Bid. Bidder acknowledges that bidder has read and understands the terms and conditions of the Bid Documents, and accepts and agrees to be bound by the terms and conditions of the Bid Documents.

The Bidder agrees that all of the applicable provisions of Oregon law relating to public contracts (ORS Chapter 279A, 279B & 279C) and the City's public contracting rules are, by this reference, incorporated in and made a part of this Bid. Bidder hereby states that Bidder agrees to be bound by and comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.

The Bidder certifies that Bidder has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining required subcontracts.

[Circle one.] Bidder (is) (is not) a resident of the State of Oregon. If Bidder is a resident of another state, specify state of residency: _____.

Construction Contractors Board Registry Number: _____.

The Bidder agrees that if this Bid is accepted, Bidder will, within ten (10) days after notification of acceptance, execute a contract with the City in the form of Contract included in the Bid Documents; and will, at the time of execution of the Contract, deliver to the City the Performance Bond and Payment Bond required herein, together with proof of required insurance; and will, to the extent of this Bid, furnish all materials necessary to complete the work in the manner, in the time, and according to the methods as specified in the Contract documents and required by the Public Works Director.

The Bidder agrees to commence work upon the issuance of a "Notice to Proceed" by the City and fully complete the project according to the times specifically set forth in the Contract Documents. Bidder further agrees to pay liquidated damages as set forth in the Contract Documents for failure to complete within the specified time.

Bid security in the amount of ten percent (10%) of the Base Bid plus any additive alternates is attached. Failure to submit such security shall result in the Bid being considered non-responsive. If the Bidder is awarded the Contract for the work herein proposed and shall fail or refuse to

execute the Contract and furnish the specified Performance Bond, Payment Bond and proof of required insurance within ten (10) days after receipt of notification of acceptance of the Bid, the City shall retain the bid security deposited herewith according to the conditions of the Invitation to Bid and Information for Bidders as liquidated damages and not as a penalty; and it is agreed that the said sum is a fair measure of the amount of damage the City will sustain in case the Bidder shall fail or refuse to enter into the Contract for the said work and to furnish the Performance and Payment Bonds as specified in the Contract documents.

Base Bid: Having become completely familiar with the local conditions and legal requirements affecting the cost of the work at the place where the work is to be executed, and having carefully examined the site conditions as they currently exist, and having carefully examined the Bid Documents, titled:

Marie Street Rehabilitation

Together with any addenda to such Bid Documents as listed hereafter, the undersigned hereby proposes and agrees to provide all labor, materials, equipment, transportation, supervision and other facilities and services as necessary and/or required to execute all of the work described in the Bid Documents for the consideration:

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
1	Mobilization	1	LS	\$	\$
2	Construction Survey	1	LS	\$	\$
3	Temporary Work Zone Traffic Control, Complete	1	LS	\$	\$
4	General Excavation	870	CY	\$	\$
5	Pavement Pulverization – 8” Depth	3200	SY	\$	\$
6	12 Inch Storm Sewer Pipe	525	LF	\$	\$
7	Storm Sewer Trash Racks	33	EA	\$	\$
8	Storm Water Swale	1105	LF	\$	\$
9	8 Inch Sanitary Sewer Pipe	101	LF	\$	\$
10	Concrete Sanitary Sewer Manholes	1	EA	\$	\$
11	Connection to Existing Manholes	1	EA	\$	\$
12	Minor Adjustment of Manholes	2	EA	\$	\$
13	Major Adjustment of Manholes	2	EA	\$	\$
14	Level 2, ½ Inch ACP Mixture, PG 58-34 Oil	5970	SY	\$	\$
15	Extra For Asphalt Approaches	29	EA	\$	\$
16	Aggregate Base, 2 Inches Thick	950	SY	\$	\$
17	Aggregate Base, 4 Inches Thick	5370	SY	\$	\$
				TOTAL BID	\$

Addenda Acknowledgement: The undersigned acknowledges receipt of the following addenda:
(List by number and date appearing on addenda.)

Addendum No. Date	_____	Addendum No. Date	_____
_____	_____	_____	_____
Addendum No. Date	_____	Addendum No. Date	_____
_____	_____	_____	_____

NOTE:

The undersigned agrees that the Bid is a “firm offer” and shall be irrevocable, valid, binding, and open for acceptance for a period of sixty (60) days from the date of closing of bids. If notified in writing by the City of the acceptance of this Bid within sixty (60) days of the bid closing date, subject to such other period as may be specified in the Bid Documents, the Bidder shall execute the Contract between the City and Bidder no later than ten (10) calendar days after the City’s acceptance of the Bid.

The undersigned declares that the person or persons signing this Bid is/are fully authorized to sign on behalf of the firm listed and to fully bind the firm listed to all the Bid's conditions and provisions thereof.

It is agreed that no person or persons or company other than the firm listed below or as otherwise indicated has any interest whatsoever in this Bid or the Contract that may be entered into as a result of the Bid and that in all respects the Bid is legal and firm, submitted in good faith without collusion or fraud.

The undersigned declares that the undersigned has complied or will comply with all requirements of local, state, and national laws, and that no legal requirement has been or will be violated in making or accepting this Bid, in awarding the Contract to him and/or in the prosecution of the work required.

Contractor agrees to be bound by and will comply with the provisions of 279C.838, 279C.840

Contractor certifies that it has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts.

The name of the Bidder who is submitting this Bid is:

Firm Name: _____
Printed Name of Individual: _____
Telephone Number: _____
Facsimile Number: _____
Email Address: _____
Address: _____

All communications concerning this Bid and with the Contract will be sent to Bidder at the above address, fax number or e-mail address.

The names of the principal officers of the corporation submitting this Bid, or of the partners or members of the partnership or limited liability company submitting this Bid, or of all persons interested in this Bid as principals, are as follows:

(IF SOLE PROPRIETOR, PARTNERSHIP OR LIMITED LIABILITY COMPANY)

IN WITNESS HERETO, the undersigned has set his/her (its) hand this _____ day of _____, 20____.

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: _____

By: _____

Title: _____

BID BOND

Bond # _____

KNOWN ALL MEN BY THESE PRESENTS, that _____, hereinafter called the Principal, and _____, a corporation duly organized under the laws of the State of _____, having its principal place of business at _____, in the State of _____, and authorized to do business in the State of Oregon, as Surety, are held and firmly bound unto the

_____, hereinafter called the Obligee, in the penal sum of _____ DOLLARS (\$ _____), for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this Bond is that, whereas, the Principal herein is herewith submitting his/her or its bid for the **Marie Street Rehabilitation**, said bid proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the said bid proposal submitted by the said Principal be accepted, and the Contract be awarded to said Principal, and if the said Principal shall execute the proposed Contract as required by the bidding and Contract documents with the time fixed by said documents, then this obligation shall be void, otherwise to remain in full force and effect. Signed and sealed this _____ day of _____, 20_____.

SURETY:

CONTRACTOR:

Name

Name

By: _____

By: _____

Title: _____

Title: _____

Phone Number: _____

CONTRACT

THIS AGREEMENT made as of the ____ day of _____, 20__ between

“CITY”:

City of Madras
125 SW “E” Street
Madras, OR 97741
Phone: 541/475-7672
Fax: 541/475-7061

and

“CONTRACTOR”:

“Contractor”
“Address”
“Phone”
“Fax”

for **“PROJECT”:** Marie Street Rehabilitation

1. The Contract Documents. For purposes of this Contract, the following documents (the “Contract Documents”) form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Notice of Invitation to Bid
3. Information for Bidders
4. Bid
5. Conditions of the Contract (General, supplementary, if any, and other Conditions).
6. Special Provisions
6. Drawings.
7. Specifications.
8. Payment and Performance Bonds.
9. Approved Submittals.
10. Addenda issued prior to, and all Modifications and Change Orders issued after execution of this Agreement.
11. Special Provisions

Conflicts or discrepancies among the Contract Documents shall be resolved in the following order of priority: (1) Change Orders, amendments, and addenda to this Contract, with those of a later date taking precedence over those of earlier date; (2) the Special Provisions; (3) the General Conditions; (4) the Contract; and (5) the Plans and Specifications; Plans govern Specifications for quantity and location and Specifications govern Plans for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern;

provided that where the Contract Documents provide for different or conflicting standards or requirements as to any portion of the Work, Contractor shall be obligated to provide the better quality, greater quantity, or comply with the more stringent requirements. Submittals are not Contract Documents unless and until they are formalized as a Change Order.

2. The Work; Defined Terms.

2.1 The execution of this Contract by City and Contractor authorizes Contractor to carry out and complete the construction services described in this Contract for the Project. Contractor, in consideration of the Contract Sum (defined below) and the mutual covenants and conditions of this Contract, agrees to furnish all materials, equipment, labor, transportation, services, and incidental items necessary to successfully complete the Project and carry out the duties and obligations imposed on Contractor by the Contract Documents (the “Work”). Contractor shall perform all of the Work in strict accordance with and as required by the Contract Documents and in accordance with any instructions as issued by the City.

2.2 Capitalized terms used, but not defined, in this Contract have the meanings given to such terms in the General Conditions.

3. The Contract Sum.

City shall pay Contractor for the performance of the Work, subject to additions and deductions by Written Change Order as provided in the Contract Documents, the sum of _____ DOLLARS (\$ _____) (the “Contract Sum”). Monthly progress payments and final payment shall be made in accordance with the General Conditions. The Contract Sum includes, without limitation, all preconstruction services provided by Contractor. City will make payments to Contractor in accordance with the General Conditions.

4. Time of Commencement and Completion. Timely and proper completion of the Work is of the essence to this Contract. Immediately upon City’s delivery of the written notice issued to Contractor by City (the “Notice to Proceed”), Contractor will commence completion of the Work diligently, continuously, and in accordance with the Schedule (defined below). The Work will be Substantially Completed (defined below) not later than October 29, 2021 (the “Completion Date”). Within fifteen (15) days after receipt of the Notice to Proceed, Contractor will submit to City a schedule of the Work (the “Schedule”) as required in the General Conditions. As used in this Contract, the term “Substantially Completed” means that stage in the progress of the Work when City determines, in City’s sole discretion, that the Work (or designated portion thereof) is sufficiently complete in accordance with the Contract Documents so that City may use the Work for its intended purpose.

5. Liquidated Damages. Should Contractor fail to complete performance of the Work within the time prescribed herein, the harm that will be caused by such delay will be impossible or very difficult to accurately determine. Contractor agrees to pay City \$500 per day as agreed liquidated damages for the delay, not as a penalty, but as a reasonable forecast of just compensation for loss and expenses for each and every calendar day or fraction thereof elapsing between the specified substantial completion date and the date the work is actually substantially completed by Contractor.

6. Requirements.

6.1 Prompt Payment. Contractor shall make prompt payment as due to all persons supplying labor or materials to Contractor for the Work provided under this Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor, services or material furnished to Contractor or a Subcontractor in connection with this Contract as such claim becomes due, City may pay such claim to the person furnishing the labor or material and charge the amount of the payment against funds due or to become due to Contractor under this Contract.

6.2 Confidential Information. During the course of this Contract, Contractor may have access to confidential information of City and may participate in confidential discussions with City. Contractor shall not disclose confidential City information to any third party during the term of this Contract or after its termination except as required by a court of competent jurisdiction or with the consent of City.

6.3 Records. In addition to Contractor's records maintenance obligations required under applicable Law, Contractor will maintain complete and accurate records relating to the Work and this Contract, including, without limitation, financial records. Contractor's financial records will be maintained in accordance with sound accounting practices. All records will be maintained by Contractor for a period of three years after City makes final payment and all other pending matters between City and Contractor are closed. If an audit, litigation, or other action involving this Contract is commenced before the end of the three-year period, the records will be retained until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later. City and its authorized representatives will have direct access to all of Contractor's books, documents, papers, and records (including electronic records) which pertain to this Contract for the purpose of conducting audits and examinations or making copies, excerpts, and transcripts. City will reimburse Contractor for Contractor's cost of preparing copies.

6.4 Compliance with Laws. Contractor will perform the Work in compliance with the Laws (defined below). Prior to the Effective Date, Contractor has obtained all licenses, approvals, or certificates necessary or appropriate to perform the Work, including, without limitation, a City business license. For purposes of this Contract, the term "Law(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, or ordinances related to or concerning Contractor, this Contract, the Project, the Project site, or the Work, including, without limitation, any Environmental Law (defined below), all applicable Oregon public contracting provisions set forth in the General Conditions, and incorporated herein by this reference, ORS Chapters 279A, 279B, and 279C, and related administrative rules, and all applicable City ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force or which may be later amended, modified, enacted, or promulgated; the term "Environmental Law(s)" means any federal, state, or local statute, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.

7. Relationship and Roles Parties.

7.1 Duties. Contractor will furnish and perform, or arrange for and direct, all Work necessary for completion of the Project in accordance with the Contract Documents. Contractor will: (a) furnish all labor, materials, equipment, tools, supplies, or services necessary or appropriate to complete the Work; (b) execute and complete the Work in a first-class

workmanlike manner; (c) obtain and pay for all licenses, inspections, and permits required by any private or public authority in connection with the Work; (d) properly manage and dispose of all waste, including, without limitation, sediment, paint, cement wash, asphalt, motor oil, and grease, in accordance with all applicable Laws; and (e) be responsible to City for the acts and omissions of Contractor, each Contractor Representative (defined below), and any other persons performing any Work with or for Contractor. Contractor will maintain proper licensure with the Oregon Construction Contractors Board and maintain the insurance and bonds as required by this Contract, and in accordance with the General Conditions. As used in this Contract, the term “Contractor Representative(s)” means, individually and collectively, each present and future Contractor officer, director, employee, representative, contractor, subcontractor, or agent.

7.2 Authority; Binding Obligation; Conflicts. Contractor has full power and authority to sign and deliver this Contract and to perform all Contractor’s obligations under this Contract. Contractor represents and warrants that (a) Contractor has entered into this Contract on the basis of its own investigation, examination, and personal knowledge of the Contract Documents and Project site, and (b) Contractor has not relied on any representations or warranties other than those expressly provided in this Contract. This Contract is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Contract by Contractor and the performance of Contractor’s obligations under this Contract will not (x) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (y) violate any law, judgment, or order to which Contractor is subject, or (z) require the consent, authorization, or approval of any person, including, without limitation, any governmental body. Contractor represents and warrants that the person signing this Contract is duly authorized and has the legal capacity to execute and deliver this Contract.

8. **Independent Contractor.** Contractor is an independent contractor of City. Contractor is not an officer, employee, or agent of City, as those terms are used in ORS 30.265. Contractor will be free from direction and control over the means and manner of performing the Work, subject only to the right of City to specify the desired results. Contractor has the authority to hire other persons to assist Contractor in performing the Work (and has the authority to fire such persons). City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from the performance of the Work, including, without limitation, income, social security, workers’ compensation, and employment insurance taxes. Contractor is licensed under ORS Chapter 701. City will not provide any benefits to Contractor, and Contractor will be solely responsible for obtaining Contractor’s own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. In the performance of the Work, Contractor is customarily engaged in, and will continue to customarily engage in, an independently established business as described in ORS 670.600(3).

9. **Contractor Not an Agent of City.** This Contract does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City. City is not, by virtue of this Contract, a partner or joint venturer with Contractor in connection with activities carried out under this Contract and will have no obligation with respect to Contractor’s debts or any other liabilities of each and every nature.

10. **Suspension and Debarment.** Contractor shall fully comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 regarding debarment and suspension and agrees to include or cause to be included in any subcontract and/or supplier at any tier the requirement that the

subcontractor and/or supplier comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 if the contract is expected to equal or exceed \$25,000. Contractor, by signing this Agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If Contractor is unable to certify to the statements contained in this certification, they must provide an explanation as to why they cannot. Contractor shall provide immediate written notice to the Department if at any time Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Contractor agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Contractor further agrees by signing this Agreement, that it will include this section titled “**Suspension and Debarment**” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions. Pursuant to 2CFR180.330, Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. Contractor acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment. Contractor agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to the Department upon request. Contractor must run a search in www.epls.gov and print a copy of completed searches to document proof of compliance.

11. Failure to Maintain Insurance. If Contractor at any time during the term hereof should fail to secure or maintain insurance required in the General Conditions, City will have the option, but not the obligation, to obtain such coverage with costs (together with interest at the maximum rate permitted by law computed from the date City obtains such coverage) to be reimbursed by Contractor immediately upon City’s demand.

12. Delegation, Subcontracts and Assignment. Contractor shall not delegate or subcontract any of the Work required by this Contract or assign or transfer any of its interest in this Contract, without the City’s prior written consent and as detailed on the First Tier Subcontractor Disclosure Form.

12.1 Any delegation, subcontract, assignment, or transfer without prior written consent of City shall constitute a material breach of this contract.

12.2 Any such assignment or transfer, if approved, is subject to such conditions and provisions as the City may deem necessary.

12.3 No approval by the City of any assignment or transfer of interest shall be deemed to create any obligation of the City to increase rates of payment or the Contract Sum.

12.4 Prior written approval shall not be required for the purchase by Contractor of materials, supplies or services which are incidental to the provision of services under this Contract that are necessary for the performance of the Work.

12.5 All subcontracts shall contain all requirements of this Contract, and Contractor shall be responsible for the performance of the Subcontractor.

13. Termination. This Contract may be terminated as provided in the General Conditions.

14. Governing Law; Jurisdiction. This Contract is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Contract. Any action or proceeding arising out of this Contract will be litigated solely and exclusively in the Circuit Court of Jefferson County for the State of Oregon; provided, however, if a Claim shall be brought in federal court, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon. Each party consents and submits to the jurisdiction of the state and federal courts named in the preceding sentence.

15. Notice. All notices or other communications required or permitted by this Contract must be in writing, must be delivered to the parties at the addresses below, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of mailing if deposited in the United States mail, postage pre-paid, certified mail, return receipt requested:

City:

Contractor:

**Fax:
Email:**

**Fax:
Email:**

16. Waiver. City's delay in exercising, or failure to exercise, any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise or any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

17. Attorney Fees. In the event of a default by Contractor, Contractor will pay Owner, within ten (10) days after Owner's demand, all attorney fees and costs Owner incurs to enforce the terms of this Contract whether or not Owner instituted arbitration or litigation proceedings. If any arbitration or litigation is instituted to interpret, enforce, and rescind this Contract, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

18. Severability; Amendment; Survival. Each provision contained in this Contract will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. This Contract may be amended only by a written agreement signed by each party. City has no obligation to pay or perform any of Contractor's obligations under this Contract. The termination of this Contract, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All Contractor representations, warranties, covenants, and obligations contained in this Contract (including, without limitation, Contractor's indemnity obligations) will survive the termination of this Contract.

19. Successors and Assigns. Except as provided in Section 12, Contractor will not assign this Contract to any person without City's prior written consent. Subject to the immediately preceding sentence, this Contract will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

20. Labor Provisions. This Contract is subject to the State of Oregon Prevailing Wage Rate. Contractor is responsible for adhering to State wage payment requirements and paying the Oregon prevailing wage.

21. Safety Provisions. It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that Contractor and any Subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the health and safety of such laborers or mechanics, as determined under construction safety and health standards.

23. Severability; Entire Agreement. If any provisions of this Contract are found to be unenforceable by a court of competent jurisdiction, all other provisions of this Contract shall remain in full force and effect and the Contract shall be read and interpreted without the invalid provision. This contract signed by both parties, constitutes a final written expression of all of the terms of this agreement and is the complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by Contractor or Contractor's agents that differ in any way from the terms of this written agreement shall be given no force and effect.

Contractor has read this Contract and understands this Contract, and agrees to be bound by its terms.

City of Madras

Contractor

By: _____

By: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

PERFORMANCE BOND

Bond # _____

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called
(Corporation, Partnership or Individual)

Principal and _____ hereinafter called
(Name of Surety)

Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____
DOLLARS (\$ _____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof which may be granted by the OWNER, with or without notice to the Surety and during the one-year guaranty period, and if the Principal shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which the OWNER may suffer by reason of the Principal's failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the WORK or the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____(number) counterparts, each one of which shall be deemed an original, this _____ day of _____, 2021.

ATTEST:

(Principal) Secretary

(SEAL)

(Witness as to Principal)

(Address)

ATTEST:

(Surety) Secretary

(SEAL)

(Witness as to Surety)

(Address)

(Principal)

By: _____

(Address)

(Surety)

By: _____
Attorney-in-Fact

(Address)

Name, phone number & address of agent: _____

PAYMENT BOND

Bond # _____

KNOWN ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership or Individual)

(Name and Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____
_____ DOLLARS (\$ _____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our successors, and our assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such Contract, and any authorized modification thereof, including all amounts due for materials lubricants, oil, gasoline, coal and coke, repairs of machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor performed in such WORK whether by a subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed there under of the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the Principal shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____(number) counterparts, each on of which shall be deemed an original, this _____ day of _____, 20____.

ATTEST:

(Principal) Secretary

(Principal)

(SEAL)

By: _____

(Witness as to Principal)

(Address)

(Address)

(Surety)

ATTEST:

(Witness as to Surety)

By: _____
Attorney-in-Fact

(Address)

(Address)

Agent name, phone number & address of agent: _____

FIRST-TIER SUBCONTRACTOR DISCLOSURE

Instructions for First-Tier Subcontractor Disclosure:

Bidders are required to disclose information about first-tier subcontractors who will be furnishing labor, or labor and materials, on the Project when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or materials would be greater than or equal to: (i) 5% of the project bid, but at least \$15,000, whichever is greater, or (ii) \$350,000 regardless of the percentage of the total project bid, the bidder must disclose the following information about that subcontract either in its bid submission, or within two (2) hours after bid closing:

1. The subcontractor's name;
2. The category of work that the subcontractor would be performing; and
3. 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 attached first-tier subcontractor disclosure form must be utilized. **THE CITY WILL REJECT A BID IF YOU FAIL TO SUBMIT THE DISCLOSURE FORM WITH THE REQUIRED INFORMATION BY THE STATED DEADLINE** (see OAR 137-049-036

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM
(ORS 279C.370)**

Prime Contractor Name _____
 PROJECT NAME: _____
 BID CLOSING: Date: _____ Time: _____ AM PM
 REQUIRED DISCLOSURE DEADLINE: Date: _____ Time: _____ AM PM

INSTRUCTIONS:

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two (2) working hours after the advertised bid closing time.

Unless otherwise stated in the solicitation, this document shall not be submitted by facsimile. It is the responsibility of bidders to submit this disclosure form and any additional sheets, with the project name clearly marked, at the location indicated by the specified disclosure deadline. See Invitation to Bid.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that 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).

Name	Dollar Value	Category of Work
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		

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 No.: _____

PREVAILING WAGE RATE COMPLIANCE STATEMENT

Contract is subject to the State of Oregon Prevailing Wage Rate ORS 279C.830 and OAR 839-025-0020. The Contractor is responsible for adhering to State wage payment requirements and paying the State prevailing wage on projects subject to state prevailing wage law. The bidder certifies that the provisions of ORS 279C.800 – 279C.875 (Oregon Prevailing Wage Rates) will be complied with on the **Marie Street**

Rehabilitation

COMPANY NAME _____
SIGNATURE _____
TITLE _____
DATE _____

- Applicable prevailing wage rates for BOLI Wages are those in effect at the time of bid advertisement (January 1, 2021 with April 1, 2021 amendments).
- The contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project. Every subcontractor is required to have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.836.
- If the contractor fails to pay for labor and services, the City can pay for them and withhold these amounts from payments to the contractor. ORS 279C.515; OAR 839-025-0020.
- The contractor must pay daily, weekly, weekend and holiday overtime as required. ORS 279C.520; OAR 839-025-020.
- The contractor must make prompt payment for all medical services and workers’ compensation for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker’s wages. ORS 279C.530; OAR 839-025-0020.
- The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. OAR 839-025-0020.

● **If the project is expected to exceed \$50,000 in cost then the contractor will be required to conform with the Oregon Bureau of Labor and Industry requirement for wages and payroll submittals.** Workers on the projects must be paid no less than the state prevailing rate of wage. Contractors will be required to pay the applicable state or federal prevailing rate of wage to workers on public works projects subject to state prevailing wage laws. The attention of Bidders is directed to the State requirements (ORS 279C.800 to 279C.870) and conditions of employment to be observed and minimum wage rates to be paid under the contract. The prevailing rate provisions and fees for Oregon Public Works projects are available on-line at <http://www.oregon.gov/BOLI/WHD/PWR/index.shtml>.

- **BOLI Public Works Bond**
Pursuant to ORS 279C.830(2), the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements.
- Every subcontract shall contain a provision that the subcontractor’s workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

BOLI Contact: Bureau of Labor and Industries
Wage and Hour Division
Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, OR 97232