

CONTRACT DOCUMENTS
FOR THE
CITY OF WARRENTON, OREGON
(January 15, 2010)

SOUTH WATER RESERVOIR PROJECT - 2010
SOLICITATION FOR PROPOSAL

This project is funded with federal funds from the American Recovery and Reinvestment Act of 2009 through the Safe Drinking Water Revolving Loan Fund



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PUBLIC NOTICE - SOLICITATION FOR PROPOSALS
City of Warrenton, Oregon

South Water Reservoir Project – 2010

Notice is hereby given that sealed bids will be received by the Linda Engbretson, City Recorder for the City of Warrenton, Oregon, 225 South Main Street, P.O. Box 250, Warrenton, Oregon, 97146, until the hour of **2:00 p.m. Thursday January 28, 2010** for the South Reservoir Project-2010 Project, at which time the bids will be publicly opened and read aloud. Any bids received after the time for opening will not be considered. Submit bids in a sealed envelope marked "South Reservoir Project-2010".

Bidders are required to disclose information about certain first-tier subcontractors no later than the hour of **4:00 p.m. Thursday January 28, 2010**, in a separate envelope as specified in ORS 279.027. No bid for construction will be considered unless the Bidder is registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530. It is not a requirement that the Contractor be licensed under ORS 468A.720. This Project is Subject to the "Buy American" requirements and the Contractor will be required to solicit and pursue procurements from all types of Disadvantaged Business Enterprises.

The work to be performed includes the material, labor, equipment and permits, in accordance with certain specifications, for the construction of the South Water Reservoir and amenities as shown on the project plans. Refer to bid documents for additional technical information.

The City of Warrenton is requesting sealed bids for construction services for the City's 3.5 MG Reservoir Improvement project. The invitation to bid packet, including specifications and additional information, is available in person at Warrenton City Hall's Information Desk located at 225 S. Main, Warrenton, Oregon 97146-0250, (A non-refundable fee of **\$100.00** per set of plans/specifications has been established) or on the web at <http://www.ci.warrenton.or.us/projects/>.

Each bid shall be accompanied by a cashier's check, postal money order, or bid bond made payable to the City of Warrenton in an amount not less than five percent (5%) of the amount bid. Said check or bid bond shall be given as a guarantee that the Bidder shall execute such contract as may be awarded in conformity with the bid and contract documents and shall provide surety bond or bonds as specified therein within 7 days after notification of the award of contract.

Bidders are advised that a mandatory pre-bid meeting for all prime contractors is scheduled for **10:00 a.m. on January 21, 2010**, at Warrenton City Hall. This shall be a condition of being a qualified bidder, among other conditions as may be set forth in the contract documents. Bidders that do not attend will not be considered. No plea of ignorance or conditions that exist, or that may thereafter exist, or that will be encountered in the execution of the work, as a result of the Contractors failure to make necessary examination, investigations, will be accepted as a basis for any claim for extra compensation or the extension of time.

Effective January 1, 2006, Oregon law requires that workers on projects funded in whole or in part with federal funds that require federal (Davis Bacon) prevailing wage rates will be paid the higher of either the federal Davis Bacon rates or Oregon prevailing wage rates (also called "PWR"). In addition, the project is also subject to compliance with all Bureau of Labor and Industries (BOLI) requirements. See ORS 279c.800 at <http://www.leg.state.or.us/ors/279c.html>.

Also, in addition to being registered with the Oregon Construction Contractor's Board, the selected contractor will be required to have a DUNS number and be registered with the federal Central Contractor Registration (www.ccr.gov). Each pay request will require the DUNS number and the CAGE number.

The City of Warrenton reserves the right to reject any Bid not in conformity with the Bid requirements, or the right to reject all Bids if it is in the best interest of the City of Warrenton. The City of Warrenton is an equal opportunity employer.

“Work under this contract will be funded in part with American Recovery and Reinvestment Act of 2009 (ARRA) from the Safe Drinking Water Revolving Loan Fund Program (SDWRLF)” .

Authorized by: Mr. Robert Maxfield, City Manager
Advertisement Date: **January 15, 2010**

BIDDER'S CHECKLIST

FORMS TO EXECUTE FOR SUBMISSION OF BID:

The bidder's attention is especially called to the following forms which must be executed in full before bid is submitted:

- (a) Bid Form: The bid sheet is to be filled in and signed by the bidder and returned with bid.
- (b) Bond Accompanying Bid: All bids shall be accompanied by a guarantee equal to at least five percent (5%) of the bid amount. This guarantee may be in the form of **a bond, certified check or cashier's check**. Bid bonds will be accompanied by a power of attorney bearing the same date as the bond.
- (c) If applicable, first-Tier Subcontractor disclosure form, within 2 hours of closing
- (d) Bidder Responsibility demonstration per ORS 279C 375(3)(b).
- (e) Facsimile transmissions of bids, bid security or subcontractor disclosure forms will not be accepted.

FORMS TO EXECUTE AFTER AWARD OF BID:

- (a) Contract: The agreement provided as Section 60 of this package is to be executed by the successful bidder within five days of award of the contract.
- (b) Comprehensive general liability insurance shall be combined single limit for broad form liability property damage and bodily injury, with at least the minimum limit of \$1,000,000. A copy of insurance listing the City of Warrenton as additional insured must be delivered to the City at the same time the contract is signed.
- (c) The Contractor shall furnish a performance bond and a payment bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and for the protection of claimants under ORS 279C.600.
- (d) EPA Forms 6100-3 and 6100-4.
- (e) Form of Certification with Section 1605 of ARRA.

GENERAL INSTRUCTIONS TO BIDDERS

1 GENERAL

Bids must be delivered to Linda Engbretson, City Recorder, 225 South Main Street, P. O. Box 250, Warrenton, Oregon, 97146 503-861-2233, by **2:00 p.m. Thursday January 28, 2010**. Bids will be opened at 2:00 p.m. in council chambers at the City of Warrenton.

2 SCOPE OF WORK

The work includes all labor and materials required by the contract documents to complete the work. Contractors are instructed to thoroughly familiarize themselves with all aspects of the work.

3 PROJECT DESCRIPTION

The work to be performed includes the material, labor, equipment and permits, in accordance with certain specifications, for the construction of THE South Water Reservoir as shown on the Bid Documents and Specifications. Refer to bid documents for additional technical information.

4 PUBLIC SAFETY DURING CONSTRUCTION

Pedestrian safety and traffic control shall be provided for by Contractor in accordance with the latest edition of the Manual on Uniform Traffic Control Devices.

5 STREET/SIDEWALK CLOSURE REQUIREMENTS

Street and sidewalk closures shall be kept to a minimum during construction. Access to local businesses shall be maintained at all times to pedestrian traffic. Any disruptions to pedestrian traffic to local businesses shall be coordinated between the Contractor and business owner to their mutual satisfaction. Contractor shall notify City Engineer and Emergency Services before closing any streets.

6 ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO BE OBSERVED

In compliance with ORS 279C.525, the following is a list of federal, state and local agencies, of which the City has knowledge, that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES

Department of Agriculture
Forest Service
Soil Conservation Service
Department of Defense
Army Corps of Engineers
Department of Energy
Federal Energy Regulatory Commission
Environmental Protection Agency
Health and Human Services
Department of Housing & Urban Development
Department of Interior

STATE AGENCIES

Department of Agriculture
Soil and Water Conservation
Commission
Department of Energy
Department of Environmental Quality
Department of Fish and Wildlife
Department of Forestry
Division of State Lands
Water Resources Department

Bureau of Land Management
Bureau of Reclamation
Geological Survey
U.S. Fish and Wildlife Service
Department of Labor
Occupation Safety and Health Administration
Water Resources Council

LOCAL AGENCIES

City Councils
Board of County Commissioners

Contractor must comply with the federal crosscutters as listed in Appendix F of the Program Guidelines and Applicant's Handbook For the federally-funded Safe Drinking Water Revolving Loan Fund and Drinking Water Protection Fund, July 2009.

7 ADDITIONAL CONTRACTOR RESPONSIBILITIES

- 1) Contractor is responsible for obtaining and paying for all necessary permits.
- 2) Contractor shall verify existing conditions and locations of all utilities and shall notify the Engineer of any discrepancies that may affect the work.
- 3) Contractor is responsible for contacting the utilities to have the lines relocated or repaired as necessary.

9 PRE-BID MEETING

A mandatory pre-bid meeting will be held on **January 21, 2010 at 10:00 AM** at Warrenton City Hall, Warrenton, Oregon. This shall be a condition of being a qualified bidder. Statements made by a City representative at a pre-bid meeting are not binding on City unless confirmed by written addendum.

10 INTERPRETATION OF PLANS & SPECIFICATIONS

If the bidder finds discrepancies, omissions or is in doubt as to the true meaning of any part of the contract documents, the bidder shall submit to the City Engineer a written request for a clarification or interpretation. Requests shall be submitted at least seven days prior to the date set for bid opening.

All clarification or interpretation of the contract documents or approval of equivalent products will be made by addendum. All addenda shall be considered in the bid. The City is not responsible for any explanation, clarification or interpretation given in any manner except by addendum.

11 ADDENDA

City will make changes to a solicitation document only by written addenda. An Offeror shall provide written acknowledgement of receipt of issued addenda with its offer unless the City otherwise specifies in the addenda. City will provide notice of addenda by mail or facsimile, and in a reasonable time so as to allow prospective Offerors to consider the addenda in preparing their offer. City may extend closing if City determines prospective Offerors need additional time to review and respond to addenda. City will not, except to the extent required by a countervailing public interest, issue addenda less than 72 hours before closing unless the addendum also extends closing.

12 BID SECURITY

Each bid must be accompanied by a certified check, cashier's check or bid bond amounting to at least 5% of the total bid. Facsimile transmissions of bid security will not be accepted.

13 RESIDENT BIDDER

Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279A.120.

14 ASBESTOS LICENSE

A Contractor or subcontractor need not be licensed under ORS 468A.720 (Asbestos Abatement License)

15 CONSTRUCTION CONTRACT BOARD REGISTRATION

No bid will be considered unless bidder is registered with the Oregon Construction Contractors Board.

16 EXECUTION OF BID

Bids must be made on the bid form provided to prospective bidders.

All prices must be in figures, in ink or typewritten.

No alterations in the proposal, specifications or contract will be allowed.

The bid shall be executed in the name of the firm followed by the signature of the officer authorized to sign for the firm and the printed or typewritten designation of the office head, together with certification that the bid has been authorized by the firm's controlling members.

The address of the bidder shall be typed or printed on the bid form. No bid can be withdrawn after having been opened by the City Manager.

17 PRICES - FOB DESTINATION

All prices must be FOB destination, with all transportation and handling paid by the bidder.

18 SUBMISSION OF BID

Each bid shall be sealed in a separate envelope, addressed to Linda Engbretson, City Recorder, City of Warrenton, 225 South Main Street, P. O. Box 250, Warrenton, Oregon, 97146, 503-861-2233. Date of opening and nature of bid must be plainly marked on the outside of the sealed envelope preceded by the words "sealed bid". Facsimile submissions of bids will not be accepted.

Bids received will be considered by the City Council within 14 days of opening of the bid. The successful bidder must execute a contract within 5 days from the date of notification.

Bids will be received at the place and until the time stated in the advertisement for bids.

All proposals must be made upon blank forms furnished by the City.

19 ACCEPTANCE OR REJECTION OF BID

The award of contract, or the rejection of all bids, will be made by the City within 21 calendar days of the bid opening date.

The City reserves the right in its sole discretion to reject any or all proposals and to waive any irregularities or formalities. The City may reject any proposal not in compliance with public bidding procedures and requirements, including the requirement to demonstrate the bidders responsibility under ORS 279C.375(3)(b) and may reject, for good cause, all proposals upon a finding of the City it is in the public interest to do so.

A materially unbalanced bid is defined as, "a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the City." A bid will be considered irregular and may be rejected if the City determines that any of the unit prices are significantly or materially unbalanced to the potential detriment of the City. The City will place specific emphasis on its review of bids that appear to be unbalanced, as it may be to the detriment of the City. If the City finds that a bid is a detriment to the City or not in the best interest of the public, the City will act by rejecting all such unbalanced bids.

Bids which are incomplete or which are conditioned in any way, or which contain erasures or alterations, may be rejected.

City shall return or release the bid of all unsuccessful bidders after a contract has been fully executed and all required bonds have been provided, or after all bids have been rejected. City may return the bid security of unsuccessful bidders prior to award if the return does not prejudice contract award and the security of at least the bidders with the three lowest bids is retained pending execution of a contract.

The successful bidder must enter into a contract within five days after the award of the contract, or he will be declared unresponsive and his check or bond forfeited.

20 START UP

The successful bidder must begin work on the site within five calendar days of receiving the Notice to Proceed. The contract time commences on the day the Notice to Proceed is delivered. The Contractor may, in lieu of beginning work within five days, submit a detailed schedule of the first 30 days of the contract which is acceptable to the City.

21 CERTIFIED INSURANCE

Contractor shall obtain and maintain comprehensive general liability insurance, including auto, against any and all claims for damages to persons or property which may arise out of his operations under this agreement. Insurance shall name the CITY as additional insured. Coverage shall include Contractor, subcontractors, and anyone directly or indirectly employed by either. The comprehensive general liability shall be combined single limit for broad form liability property damage and bodily injury, in the minimum amount of \$1,000,000. Such insurance shall not be canceled or its limits of liability reduced without thirty (20) days prior notice to City. A copy of an insurance certificate in a form satisfactory to City certifying the issuance of such insurance shall be furnished to City.

22 GUARANTEE

The equipment, materials, or other items proposed and delivered to the City of Warrenton job site shall be complete in every respect and ready for operation and use in accordance with the specifications, with inspection submitted at time of delivery.

23 PREVAILING WAGE RATES

The Contractor is required to pay prevailing wage rates in conformance to ORS 279C.800 thru 279C.870. A current copy of Prevailing Wage Rates for Public Works contracts in Oregon is available from the State of Oregon, Bureau of Labor and Industries and is also included in Section 40 of these specifications. Construction projects assisted in whole or in part with American Recovery and Reinvestment Act of 2009 (ARRA) from the Safe Drinking Water Revolving Loan Fund Program (SDWRLF) must be carried out in compliance with Federal Davis Bacon and Related Acts and the Oregon Bureau of Labor and Industries (BOLI) requirements. Contractor shall download U.S. Department of Labor Employee Fair Compensation Notice and post it at the work site along with a list of locally prevailing wage rates. Contractor shall prepare and submit weekly Certified Payroll Reports on forms to be supplied by Oregon Business Development Department. Contractor shall permit access to construction site in order to conduct on-site interviews with workers during working hours.

24 BOLI FEE

The City is required to pay a fee to the Bureau of Labor and Industries pursuant to the provisions of ORS 279C.825. The fee is one-tenth of one percent of the price of this contract, but not less than \$100.00 nor more than \$5,000.00, regardless of the contract price.

25 STATUTORY PUBLIC WORKS BOND

The Contractor is required to comply with 279C.836 relating to the filing of a Public Works Bond in the amount of \$30,000. Before permitting a subcontractor to begin work, Contractor must verify that the subcontractor has filed a Public Works Bond or is otherwise in compliance with ORS 279C.836.

26 PERFORMANCE AND PAYMENT BOND

Successful bidder will be required to furnish a performance bond and a payment bond in approved forms each in the amount of 100% for the full performance and payment of the terms of this contract.

27 CERTIFIED PAYROLL REPORTS

The Contractor shall provide to the City weekly certified payroll reports, with the completed statement of compliance, to the City within 10 days of the weekly wage payment.

28 FIRST-TIER SUBCONTRACTOR DISCLOSURE

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor is greater than or equal to: (i) 5% of the project bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, you must disclose the following information about that subcontract within two (2) hours of bid closing:

- a) The subcontractor's name
- b) The category of work that the subcontractor would be performing
- c) The subcontract dollar value

If you will not be using any subcontractors that are subject to the above disclosure requirements, you are required to indicate "NONE" on the accompanying form.

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

To determine disclosure requirements, the City recommends that you disclose subcontract information for any subcontractor as follows:

- 1) Determine the lowest possible contract price. That price will be the base bid amount less all alternate deductive bid amounts (exclusive of any options that can only be exercised after contract award).
- 2) Provide the required disclosure information for any first-tier subcontractor whose potential contract services (i.e., subcontractor's base bid amount plus all alternate additive bid amounts, exclusive of any options that can only be exercised after contract award) are greater than or equal to: (i) 5% of that lowest contract price, but at least \$15,000, or (ii) \$350,000 regardless of the percentage. Total all possible work for each subcontractor in making this determination (e.g., if a subcontractor will provide \$15,000 worth of services on the base bid and \$40,000 on an additive alternate, then the potential amount of subcontractor's services is \$55,000. Assuming that \$55,000 exceeds 5% of the lowest contract price, provide the disclosure for both the \$15,000 services and the \$40,000 services).

The subcontractor list shall be sealed in a separate envelope, addressed to Linda Engbretson, City, Recorder, 225 South Main Street, P. O. Box 250, Warrenton, OR, 97146, 503-861-2233, showing on the outside of the envelope the name of the bidder and the contract title preceded by the words "Subcontractor List".

Facsimile submissions of subcontractor lists will not be accepted.

First-tier subcontractor disclosure lists may be submitted with the bid at the stated bid receiving time, but must be in a separate sealed envelope as described above.

29 CERTIFICATION OF NON DISCRIMINATION

Contractor will be required to provide a certification of non discrimination in obtaining required subcontractors in accordance with ORS 279A.110 (4).

30. COMPLETION OF EPA Disadvantaged Enterprise Subcontractor Participation Form

Contractors are required to complete and EPA Forms 6100-3 and 6100-4 with their bid.

31. COMPLETION OF BID BOND

Contractors are required to complete and submit a 5% Bid Bond.

32. Bidders Responsibility Demonstration

Bidders must show that they are responsible per ORS 279C.375.

<http://www.leg.state.or.us/09orlaws/sess0300.dir/0368.pdf>

PROJECT SCHEDULE

<u>Date</u>	<u>Event and Responsibility</u>
January 15, 2009	Advertise for Bids (City)
January 21, 2010 at 10:00 AM	Job site pre-bid walk through (Bidders/City). Attendance is required to pre-qualify bidders
January 28, 2010 at 2:00 PM	Bids Received and Bid Opening at City Hall
January 28, 2010 at 4:00 PM	Subcontractor Disclosure Deadline
February 9, 2010	Warrenton City Commission to Issue intent to Award Bid
February 15, 2010	All signed paperwork back to the City Submit bonds, insurance certificates, signed Agreement and all required paperwork to City of Warrenton. (Contractor)
February 16, 2010	Copy of Signed Document delivered to the State.

BID BOND

To: City of Warrenton
225 South Main Street
P.O. BOX 250
Warrenton, OR 97146

Project: **SOUTH WATER RESERVOIR PROJECT - 2010**

Bid Date: **Thursday January 28, 2010** at Warrenton City Hall
Bid Closing Time: **2:00 PM**

We, _____ as principal, and
(Name of Principal)
_____, an _____ (Name
of Surety)
corporation, authorized to transact business in Oregon, as surety, hereby jointly and severally bind
ourselves, our respective heirs, executors, administrators, successors and assigns to pay unto the City of
Warrenton the sum of _____ Dollars (\$_____).

For Individual Bid Bond

WHEREAS, a Bid is submitted to the City of Warrenton by the principal for the purpose of furnishing:

*Furnish all equipment, materials, labor and supplies to perform: **South Water Reservoir Project – 2010** in
accordance with all Contract Documents which are made a part of this Bid Bond by reference.*

NOW, THEREFORE, if the Bid submitted by the principal is accepted, and if a Contract pursuant to the Bid
is awarded to said principal, and if the principal enters into and executes such Contract and furnishes any
performance bond required by the City of Warrenton within the time fixed by the Contract, then this
obligation shall be void; otherwise it shall remain in full force and effect.

NOW, THEREFORE, if a Bid submitted by the principal is accepted, and if a Contract pursuant to the Bid is
awarded to said principal, and if the principal enters into and executes such Contract and furnishes any
performance bond required by the City of Warrenton within the time fixed by the Contract, then this
obligation shall be void as to such accepted Bid, but shall continue in full force and effect as to pending
and subsequent Bids submitted within one-year period indicated above.

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

Dated this _____ day of _____, 2010.

(Principal) _____ (Surety)

By: _____ By: _____ (Attorney in Fact)

(Company)

(Telephone No.)

EMPLOYEE DRUG TESTING PROGRAM CERTIFICATION FORM

CONTRACTOR'S NAME: _____

PROJECT NAME: SOUTH RESERVOIR PROJECT-2010

ORS 279.312(2) provides that every public improvement contract contain a condition that the Contractor shall demonstrate that an employee drug testing program is in place. The City of Warrenton's, hereinafter referred to as the CITY, award of the contract for which this certificate is required is conditioned, in part, upon the Contractor's demonstration of compliance with the provisions of ORS 279.312. If the Contractor named above is awarded the contract, this certificate shall become a part of, and shall constitute a continuing representation and warranty under the contract.

To induce the CITY to award the contract to the Contractor, the undersigned, as the duly authorized representative of the Contractor, hereby represents and warrants, on behalf of the above named Contractor:

1. Contractor has and enforces, and at all times during the term of the contract will have and enforce, a written employee drug testing policy that, at a minimum:
 - a) Requires pre-employment drug testing;
 - b) Requires drug testing of an employee when the Contractor has reasonable cause to believe the employee is under the influence of drugs; and
 - c) Requires compliance with the Oregon Department of Transportation Commercial Drivers License drug testing regulations.

2. A copy of the Contractor's current written employee drug testing policy will be available for inspection by the CITY at any time upon the CITY's request.

3. Contractor understands and agrees that its representations and warranties herein will become a part of the contract and that breach of any of the foregoing will be sufficient grounds for disqualification under ORS 279.037(2)(d).

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

IN WITNESS WHEREOF, the Contractor has caused this document to be executed by its duly authorized representative on the date shown below.

Signature: _____

Printed Name & Title: _____

Date: _____

FIRST TIER SUBCONTRACTOR'S DISCLOSURE FORM

PROJECT NAME: SOUTH RESERVOIR PROJECT - 2010

BID CLOSING: DATE: **January 28, 2010** TIME: **2:00 PM**

FIRST TIER DISCLOSURE DEADLINE: DATE: **January 28, 2010** TIME: **4:00 PM**

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

List below the name of each subcontractor who will be furnishing labor or 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) _____	\$ _____	_____

Failure to submit form 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.: _____

SCHEDULE OF CONTRACT PRICES/BID FORM
CITY OF WARRENTON
SOUTH RESERVOIR PROJECT – 2010

Bid Item	Description	Quantity	Units	Unit Price	Total
10	General Conditions				
20	Mobilization	1	LS		
30	Supervision	1	LS		
40	Per Diem	1	LS		
50	Private Locates	1	LS		
99	Subtotal General Conditions				
100	Erosion Control				
110	Construction Entrance	1	EA		
120	Sediment Fence	3,500	LF		
125	Straw Wattle	1,800	LF		
130	Seed/Straw Cover	4	ACRE		
140	Concrete Truck Chute Washout	1	EA		
150	Construction Fence	950	LF		
160	Permanent Seeding In Ditch	1,800	SF		
199	Subtotal Erosion Control				
200	Grading				
210	Mass Excavation	1	LS		
220	Site Embankments	25	CY		
225	Haul Excavation	1	LS		
230	Mass Excavation Disposal	1	LS		
235	Re-Condition 24" free draining Depth at Tank Area	910	CY		
240	Prep Existing Road Surface for Aggregates	45,000	SF		
250	Finish Subgrades - Tank Area	12,275	SF		
260	Trench Spoils	307	TCY		
299	Subtotal Grading				
300	Aggregate Surfacing				
305	Tank Pad Aggregate Base 24" depth	1,364	SY		
310	Road Aggregate Base 12" depth	5,000	SY		
320	Road Aggregate Top Course 2" depth (3/4"-0")	5,000	SY		
330	Access Drive Aggregate Base 12" depth (1 1/2" -0")	1,667	SY		
335	Access Drive Aggregate Leveling Course 2" depth (3/4"-0")	1,667	SY		
340	3" Class C Asphalt	1,667	SY		
399	Subtotal Aggregate Surfacing				
400	Bridge				
420	Excavation for Abutments	2	EA		
425	Backfill for Abutments (1 1/2"-0" Aggregate)	5	EA		
430	12 3/4" Dia. Pile, 3/8" wall x 30' Length	6	EA		
440	Abutments, Form/Rebar/Pour/Strip	2	EA		
450	Provide & Install 15" Precast Bridge Slabs	3	EA		
455	3" Class 4000 Concrete Overlay	60	SY		

Bid Item	Description	Quantity	Units	Unit Price	Total
460	Provide & Install 2-tube x 2-beam Bridge Rail	100	LF		
465	Provide & Install Trie-Beam Railing	65.5	LF		
470	Provide & Install 3-beam Guardrail Ends & Transitions	4	EA		
475	18" Waterline Hangars, Installed	6	EA		
480	24" Waterline Hangers, Installed	6	EA		
490	Demo Existing Bridge Structure	1	LS		
599	Subtotal Bridge				
600	Waterline				
601	18" Hot tap, 18" Valve WHP1 & Tee Insertion (Detail 5/C6.2)	1	LS		
603	18" Valve WHP2 Insertion (Detail 6/C6.2)	1	LS		
605	Temporary Pumping System (Sheet C2.5)	1	LS		
610	18" Ductile Iron Waterline	464	LF		
611	18" Flexible Expansion Joint, Force Balanced Double Ball, Flex-Tend	3	EA		
615	24" Ductile Iron Waterline	3,012	LF		
616	24" Flexible Expansion Joint, Force Balanced Double Ball, Flex-Tend	3	EA		
620	18" Ductile Iron Horizontal Bends, MegaLug	6	EA		
625	24" Ductile Iron Horizontal Bends, MegaLug	15	EA		
630	18" Ductile Iron Vertical Bends, MegaLug	8	EA		
635	24" Ductile Iron Vertical Bends, MegaLug	12	EA		
640	18"x18" Tee	1	EA		
643	18"x6" Tee	1	EA		
645	18" End Cap	1	EA		
650	18" Butterfly Valve & Valve Box	1	EA		
655	24" Butterfly Valve & Valve Box	1	EA		
665	24" x 6" Blow Off Assembly	1	EA		
670	Air Release Valve	4	EA		
680	¾" Ball Valve & Valve Box	1	EA		
690	6" Gate Valve & Valve Box	1	EA		
695	Flushing, Pressure Testing, Disinfection	1	LS		
699	Subtotal Waterline				
700	Storm Drain				
710	Lynch Style Catch Basin	1	EA		
720	12" Clean Out	10	EA		
725	3" Clean Out	1	EA		
730	12" HDPE Storm Line	1590	LF		
735	12" Flexible Expansion Joint, Force Balanced Double Ball, Flex-Tend	2	EA		
740	16'x44' Planter	1	LS		
750	Rip Rap Outfall	6.25	SF		
760	12" Drain from Tank to Planter	105	LF		
763	12" Horizontal Bend	1	EA		
765	12"x12" Tee	1	EA		
767	12" Flap Valve	1	EA		
769	12" Gate Valve	1	EA		
770	4" Line from Perimeter Drain to Planter	71	LF		
780	Floor Drain	1	EA		
785	3" PVC Drain from Building to Catch Basin	100	LF		
799	Subtotal Storm Drain				

SUPPLEMENTAL PROVISIONS

SOUTH WATER RESERVOIR PROJECT – 2010

The following Supplemental Provisions modify, change, delete from, or add to the General Provisions. Where any section of the General Provisions is modified or any paragraph, subparagraph or clause modified or deleted by the following Supplemental Provisions, the unaltered provisions of that Section, paragraph, subparagraph or clause shall remain in effect.

1. Scope of Work: The Contractor shall complete all work as outlined in the specifications and drawings including furnishing all labor, materials and equipment necessary for the construction of the City's 3.5 mg reservoir, reservoir construction and site improvements including bridge replacement, private road construction, transmission pipeline, paving and fencing. The 3.5 mg reservoir construction consists of grading, pad preparation, foundation design and construction, concrete tank design and construction, piping, drainage, electrical design and construction, concrete block structure, tapping the existing 18 inch transmission line and plumbing as shown on plans. Site improvements also include private road construction, bridge replacement and coordination with adjacent property owners. The work also includes a new 10 foot by 10 foot CMU building, electrical, and instrumentation and control improvements, as indicated in the project drawings
2. Traffic Control: The Contractor shall install and maintain necessary traffic control and warning devices as may be required. Equipment, signage, and flaggers shall be operated and maintained in accordance with the Manual On Uniform Traffic Control.
3. The Contractor shall not track mud and cement onto private property, public street, highway, or into "wetlands". Contractor will install erosion control protection, as may be required, to protect wetland sensitive areas.
4. The excavated soil removed from the site will be disposed of in an approved off site location.
5. Completion Date: Completion Date shall be no later February 16, 2012.
6. Ligated Damages: The agreed upon amount of ligated damages shall be **five hundred dollars (\$500.00)** per calendar day. Ligated damages shall commence on the first calendar day after the specified completion date and shall continue thereafter each and every calendar day until all of the work is satisfactorily completed and accepted by the City.

CONSTRUCTION AGREEMENT AND GENERAL PROVISIONS

ARTICLE 1 – AGREEMENT

Between: City of Warrenton
P.O. BOX 250
225 South Main Street
Warrenton, OR. 97146

And Contractor: --
--
--

For: SOUTH WATER RESERVOIR PROJECT – 2010

Dated: _____, 2010

Contract Amount \$_____

Completion Date: _____

ARTICLE 2 – GENERAL PROVISIONS

2.1 RELATIONSHIP OF PARTIES The City of Warrenton and the Contractor agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

2.1.1 The Contractor shall furnish construction administration and management services and use the Contractor’s best efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The City of Warrenton and Contractor shall endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Contractor represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither Contractor nor any of its agents or employees shall act on behalf of or in the name of City of Warrenton except as provided in this Agreement or unless authorized in writing by City of Warrenton’s Representative.

2.2 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and each and every provision are for the exclusive benefit of the City of Warrenton and Contractor and not for the benefit of any third party except to the extent expressly provided in this Agreement.

2.3 DEFINITIONS

2.3.1 Agreement means this agreement between the City of Warrenton and Contractor, and Exhibits and Attachments made part of this Agreement upon its execution.

2.3.2 Engineer means the licensed design professional in the state of Oregon and its consultants, to perform design services for the Project.

2.3.3 A Change Order is a written order signed by the City of Warrenton and the Contractor after execution of this Agreement, indicating changes in the scope of the Work, the Contract Price and/or Contract Time, including substitutions proposed by the Contractor and accepted by the City of Warrenton.

2.3.4 The Contract Documents consist of this Agreement, General Provisions, Supplemental Provisions, the Oregon APWA 1990 Standard Specifications for Public Works Construction with current revisions, bid documents, drawings, specifications, addenda issued prior to execution of this Agreement, Public Notice-Solicitation of Proposals, approved submittals, information furnished by the City of Warrenton under Paragraph 4.2, other documents listed in this Agreement and any modifications issued after execution.

2.3.5 The Contract Price is the amount indicated in Article 1 and Article 7 of this Agreement.

2.3.6 The Contract Time is the period between the Date of Commencement and Final Completion. See Article 6.

2.3.7 The Contractor is the person or entity identified in Article 1 and includes the Contractor's Representative.

2.3.8 The term Day shall mean calendar day unless otherwise specifically defined.

2.3.9 Fee means salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices; general and administrative expenses of the Contractor's principal and branch offices other than the field office; and the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work; and profit.

2.3.10 Final Completion occurs on the date when the Contractor's obligations under this Agreement are complete and accepted by the City of Warrenton and final payment becomes due and payable, as established in Article 6. This date shall be confirmed by a Certificate of Final Completion signed by the City of Warrenton and the Contractor.

2.3.11 A Material Supplier is a person or entity retained by the Contractor to provide material and/or equipment for the Work.

2.3.12 Others mean other contractors, material suppliers and persons at the Worksite who are not employed by the Contractor or Subcontractors.

2.3.13 City of Warrenton is the entity identified in Article 1, and includes the City of Warrenton's Representative.

2.3.14 The Project, as identified in Article 1, is the building, facility and/or other improvements for which the Contractor is to perform Work under this Agreement. It may also include construction by the City of Warrenton or Others.

2.3.15 The Schedule of the Work is the document prepared by the Contractor that specifies the dates on which the Contractor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the City of Warrenton.

2.3.16 A Subcontractor is a person or entity retained by the Contractor as an independent contractor to provide the labor, materials, equipment and/or services necessary to complete a specific portion of the Work.

2.3.17 Substantial Completion of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the City of Warrenton may occupy or utilize the Project, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Contractor's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the City of Warrenton and Contractor. The term Subcontractor does not include the Engineer or Others.

2.3.18 A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.

2.3.19 Work means the construction and services necessary or incidental to fulfill the Contractor's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the City of Warrenton or Others.

2.3.19.1 Changed Work means work that is different from the original scope of Work; or work that changes the Contract Price or Contract Time.

2.3.19.2 Defective Work is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in Paragraphs 3.5 and 3.8.

2.3.20 Worksite means the geographical area at the location of the Project as identified in Article 1 where the Work is to be performed.

ARTICLE 3 – CONTRACTOR'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 The Contractor shall provide all labor, materials, equipment and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents as being necessary to produce the intended results.

3.1.2 The Contractor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences and procedures utilized, unless the Contract Documents give other specific instructions.

3.1.3 The Contractor shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable local law.

3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

3.2.1 The City of Warrenton may perform work at the Worksite directly or by others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, clean up and safety which are substantively the same as the corresponding provisions of this Agreement.

3.2.2 In the event that the City of Warrenton elects to perform work at the Worksite directly or by others, the Contractor and the City of Warrenton shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The City of Warrenton shall require each separate contractor to cooperate with the Contractor and assist with the coordination of activities and the review of construction schedules and operations. The Contract Price and Contract Time shall be equitably adjusted, as mutually agreed by the parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Contractor, City of Warrenton and Others shall adhere to the revised construction schedule until it may subsequently be revised.

3.2.3 With regard to the work of the City of Warrenton and Others, the Contractor shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the City of Warrenton or Others or cause the work of the City of Warrenton or Others to become defective, (b) afford the City of Warrenton or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Contractor's construction and operations with theirs as required by this Paragraph 3.2.

3.2.4 Before proceeding with any portion of the Work affected by the construction or operations of the City of Warrenton or Others, the Contractor shall give the City of Warrenton prompt written notification of any defects the Contractor discovers in their work which will prevent the proper execution of the Work. The Contractor's obligations in this Paragraph do not create a responsibility for the work of the City of Warrenton or Others, but are for the purpose of facilitating the Work. If the Contractor does not notify the City of Warrenton of patent defects interfering with the performance of the Work, the Contractor acknowledges that the work of the City of Warrenton or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Contractor of defects, the City of Warrenton shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.3 RESPONSIBILITY FOR PERFORMANCE

3.3.1 In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work the Contractor shall examine and compare the drawings and specifications with information furnished by the City of Warrenton pursuant to Paragraph 4.2, relevant field measurements made by the Contractor and any visible conditions at the Worksite affecting the Work.

3.3.2 If in the course of the performance of the obligations in Subparagraph 3.3.1 the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the City of Warrenton. It is recognized, however, that the Contractor is not acting in the capacity of a licensed design professional, and that the Contractor's examination is to facilitate construction and does not create an affirmative

responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. Following receipt of written notice from the Contractor of defects, the City of Warrenton shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

3.4.1 The Contractor shall provide competent supervision for the performance of the Work. Before commencing the Work, Contractor shall notify City of Warrenton in writing of the name and qualifications of its proposed superintendent(s) and project manager so City of Warrenton may review the individual's qualifications. If, for reasonable cause, the City of Warrenton refuses to approve the individual, or withdraws its approval after once giving it, Contractor shall name a different superintendent or project manager for City of Warrenton's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.4.2 The Contractor shall be responsible to the City of Warrenton for acts or omissions of parties or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.4.3 The Contractor shall permit only skilled persons to perform the Work. The Contractor shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the City of Warrenton determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Contractor shall immediately reassign the person on receipt of the City of Warrenton's written notice to do so.

3.4.4 The Contractor's authorized representative shall be identified to the City of Warrenton within five (5) days of Contractor's execution of this Agreement. The Contractor's Representative shall possess full authority to receive instructions from the City of Warrenton and to act on those instructions. The Contractor shall notify the City of Warrenton in writing of a change in the designation of the Contractor's Representative.

3.5 WORKMANSHIP The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.6 MATERIALS FURNISHED BY THE OWNER OR OTHERS In the event the Work includes installation of materials or equipment furnished by the City of Warrenton or Others, it shall be the responsibility of the Contractor to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Contractor shall be the responsibility of the Contractor and may be deducted from any amounts due or to become due the Contractor. Any defects discovered in such materials or equipment shall be reported at once to the City of Warrenton. Following receipt of written notice from the Contractor of defects, the City of Warrenton shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.7 TESTS AND INSPECTIONS

3.7.1 The Contractor shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work

related to the Project. The Contractor shall give proper notice to all required parties of such tests, approvals and inspections. If feasible, the City of Warrenton and Others may timely observe the tests at the normal place of testing. The City of Warrenton shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents, except as provided in Subparagraph 3.7.3 or elsewhere in the Contract Documents, and which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the City of Warrenton or its designee. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Contractor and promptly delivered to the City of Warrenton.

3.7.2 If the City of Warrenton or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the Contractor shall arrange for the procedures and give timely notice to the City of Warrenton and Others who may observe the procedures. Costs of the additional tests, inspections or approvals are at the City of Warrenton's expense except as provided in Subparagraph 3.7.3.

3.7.3 If the procedures described in Subparagraphs 3.7.1 and 3.7.2 indicates that portions of the Work fail to comply with the Contract Documents, the Contractor shall be responsible for costs of correction and retesting.

3.8 WARRANTY

3.8.1 The Contractor warrants to the City of Warrenton and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor warrants that materials and equipment provided by the Contractor will be suitable for the intended purpose of the Work.

3.8.2 The warranty period relating to faulty products and workmanship will begin on the date appearing on the Certificate of Substantial Completion, or if a Certificate of Substantial Completion is not issued, on the date appearing on the final certificate for payment to the Contractor, whichever is earlier. The City of Warrenton's occupancy or use of the project will not alter the warranty period as defined in this subparagraph.

3.8.3 Warranties for specific components or constituents of the Work as stated in the Specifications are in addition to warranties described in other provisions of the Contract Documents.

3.8.4 Materials that are provided by the Contractor in connection with the Work will be subject to the warranties provided by ORS 72.3120, 72.3130, 72.2140, and 72.3150.

3.8.5 Descriptions of materials and affirmations of qualities contained in documents submitted by the Contractor will constitute express warranties.

3.8.6 Standard warranties of manufacturers of Materials and Equipment provided by the Contractor will apply to the extent that they enhance warranty protection for the City of Warrenton, but any provisions in manufacturers' warranties that purport to limit warranties will not affect the Contractor's obligations under the Contract Documents.

3.8.7 If any work covered by warranty fails to function properly within the warranty period, the Contractor shall correct the defect immediately, at no cost to the City of Warrenton, within ten (10) days after notice from the City of Warrenton. Should any other damage be incurred, either as a direct result of the subject defect, or as a result of the Contractor's failure to detect the defect promptly, then the Contractor shall also correct the resulting damage to the City of Warrenton's satisfaction, at no additional cost, whether or not said damage is to Work provided under this Contract. If delay in correction of a defect covered by warranty can reasonably be expected to create a risk of significant future damage, contingent expenses, or danger to persons or property, and if the Contractor does not act with promptness commensurate to such risk, or if the City of Warrenton cannot contact the Contractor after making a reasonable effort, then the City of Warrenton may at its option, have the defect corrected and the Contractor shall pay all related costs suffered or incurred by the City of Warrenton.

3.8.8 With respect to any portion of Work first performed after Substantial Completion, the Contractor's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.8.9 The Contractor shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall be listed in an attached Exhibit to this Agreement. Contractor's liability for such warranties shall be limited to the one-year correction period referred to in Paragraph 3.9. After that period Contractor shall assign them to the City of Warrenton and provide reasonable assistance to the City of Warrenton in enforcing the obligations of Subcontractors or Material Suppliers.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the City of Warrenton shall promptly notify the Contractor in writing. Unless the City of Warrenton provides written acceptance of the condition, the Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the City of Warrenton discovers and does not promptly notify the Contractor or give the Contractor an opportunity to test and/or correct Defective Work as reasonably requested by the Contractor, the City of Warrenton waives the Contractor's obligation to correct that Defective Work as well as the City of Warrenton's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Contractor.

3.9.3 If the Contractor fails to correct Defective Work within a reasonable time after receipt of written notice from the City of Warrenton prior to final payment, the City of Warrenton may correct it in accordance with the City of Warrenton's right to carry out the Work in Paragraph

11.2. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City of Warrenton.

3.9.4 If after the one-year correction period but before the applicable limitation period the City of Warrenton discovers any Defective Work, the City of Warrenton shall, unless the Defective Work requires emergency correction, promptly notify the Contractor. If the Contractor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) days of its receipt of notice from the City of Warrenton. The Contractor shall complete the correction of Work within a mutually agreed time frame. If the Contractor does not elect to correct the Work, the City of Warrenton may have the Work corrected by itself or others and charge the Contractor for the reasonable cost of the correction. City of Warrenton shall provide Contractor with an accounting of correction costs it incurs.

3.9.5 If the Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, the Contractor shall be responsible for the cost of correcting the destroyed or damaged construction.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Contractor's other obligations under the Contract Documents.

3.9.7 Prior to final payment, at the City of Warrenton's option and with the Contractor's agreement, the City of Warrenton may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted.

3.10 CORRECTION OF COVERED WORK

3.10.1 On request of the City of Warrenton, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the City of Warrenton's inspection. The City of Warrenton shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the City of Warrenton or Others. If the uncovered Work proves to be defective, the Contractor shall pay the costs of uncovering and replacement.

3.10.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the City of Warrenton, a portion of the Work is covered, the City of Warrenton, by written request, may require the Contractor to uncover the Work for the City of Warrenton's observation. In this circumstance the Work shall be replaced at the Contractor's expense and with no adjustment to the Contract Time.

3.11 SAFETY OF PERSONS AND PROPERTY

3.11.1 SAFETY PRECAUTIONS AND PROGRAMS The Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 3.11 establishes the responsibility for safety between the City of Warrenton and Contractor, it does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.11.2 The Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.11.2.1 its employees and other persons at the Worksite;

3.11.2.2 materials and equipment stored at on-site or off-site locations for use in the Work; and

3.11.2.3 property located at the site and adjacent to Work areas, whether or not the property is part of the Work.

3.11.3 **CONTRACTOR'S SAFETY REPRESENTATIVE** The Contractor's Worksite Safety Representative shall be designated by the Contractor within five (5) days of its execution of this Agreement. Such Worksite Safety Representative shall act as the Contractor's authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 3.11.2. If no individual is identified pursuant to this Paragraph 3.11, the authorized safety representative shall be the Contractor's Representative. The Contractor shall report immediately in writing to the City of Warrenton all recordable accidents and injuries occurring at the Worksite. When the Contractor is required to file an accident report with a public authority, the Contractor shall furnish a copy of the report to the City of Warrenton.

3.11.4 The Contractor shall provide the City of Warrenton with copies of all notices required of the Contractor by law or regulation. The Contractor's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.11.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent of the negligence attributed to acts or omissions of the Contractor, or anyone for whose acts the Contractor may be liable, shall be promptly remedied by the Contractor.

3.11.6 If the City of Warrenton deems any part of the Work or Worksite unsafe, the City of Warrenton, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the Work or take corrective measures satisfactory to the City of Warrenton, or both. If the Contractor does not adopt corrective measures, the City of Warrenton may perform them and deduct their cost from the Contract Price. The Contractor agrees to make no claim for damages, for an increase in the Contract Price or for a change in the Contract Time based on the Contractor's compliance with the City of Warrenton's reasonable request.

3.11.7 **EMERGENCIES** In an emergency, the Contractor shall act in a reasonable manner to prevent personal injury or property damage. Any change in the Contract Price and/or Contract Time resulting from the actions of the Contractor in an emergency situation shall be determined as provided in Article 8.

3.12 HAZARDOUS MATERIALS

3.12.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal and/or cleanup. The Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed,

rendered or determined to be harmless by the City of Warrenton as certified by an independent testing laboratory and approved by the appropriate government agency.

3.12.2 If after the commencement of the Work Hazardous Material is discovered at the Worksite, the Contractor shall be entitled to immediately stop Work in the affected area. The Contractor shall report the condition to the City of Warrenton, the Engineer, and, if required, the government agency with jurisdiction.

3.12.3 The Contractor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.12.4 The City of Warrenton shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures and/or remedial action. Such measures shall be the sole responsibility of the City of Warrenton, and shall be performed in a manner minimizing any adverse effects upon the Work. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.12.5 If the Contractor incurs additional costs and/or is delayed due to the presence or remediation of Hazardous Material, the Contractor shall be entitled to an equitable adjustment in the Contract Price and/or the Contract Time.

3.12.6 To the extent not caused by the negligent acts or omissions of the Contractor, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, the City of Warrenton shall defend, indemnify and hold harmless the Contractor, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the City of Warrenton.

3.12.7 MATERIALS BROUGHT TO THE WORKSITE

3.12.7.1 Prior to commencement of the Work, the Contractor shall notify the City of Warrenton of any Hazardous Chemicals that are covered by ORS 654.750 or OAR 435, Division 155 that the Contractor will bring onto the Premises. The Contractor shall provide the City of Warrenton with Material Safety Data Sheets for the chemicals, label information, and instructions for precautionary measures that the City of Warrenton should implement for protection of the City of Warrenton's employees. If the City of Warrenton determines that the hazardous chemicals that the Contractor proposes to use will create an unreasonable risk of injury or illness for the City of Warrenton's employees or other persons who use or occupy the City of Warrenton's facilities, the City of Warrenton shall have the right to require the Contractor to use other, less harmful chemicals. The Contractor shall defend and indemnify the City of Warrenton from all Third-Party Claims resulting from the use of such Hazardous Chemicals.

3.12.7.2 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors, the City of Warrenton or Others, shall be maintained at the Worksite by the Contractor and made available to the City of Warrenton, Subcontractors and Others.

3.12.7.3 The Contractor shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.12.7.4 To the extent not caused by the negligent acts or omissions of the City of Warrenton, its agents, officers, directors and employees, the Contractor shall defend, indemnify and hold harmless the City of Warrenton, its agents, officers, directors and employees, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Contractor.

3.12.8 The terms of this Paragraph 3.13 shall survive the completion of the Work and/or any termination of this Agreement.

3.13 SUBMITTALS

3.13.1 The Contractor shall submit to the City of Warrenton, and, if directed, to its Engineer, for review and approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. The Contractor shall be responsible to the City of Warrenton for the accuracy and conformity of its submittals to the Contract Documents. The Contractor shall prepare and deliver its submittals to the City of Warrenton in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the City of Warrenton and Others. When the Contractor delivers its submittals to the City of Warrenton, the Contractor shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Contractor submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the City of Warrenton specifically authorizing such deviation, substitution or change. Further, the City of Warrenton shall not make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Contractor. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Contractor agrees upon request to submit in a timely fashion to the City of Warrenton for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the City of Warrenton.

3.13.2 The City of Warrenton shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.13.3 The Contractor shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not authorization to Contractor to perform Changed Work, unless the procedures of Article 8 are followed. Approval does not relieve the Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved Shop Drawings.

3.13.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Project site and available to the City of Warrenton upon request: drawings, specifications, addenda, Change Order and other modifications, and required submittals including product data, samples and shop drawings.

3.13.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Contractor obtains approvals required under the Contract Documents for substitutions.

3.13.6 The Contractor shall prepare and submit to the City of Warrenton final marked up as-built drawings.

3.14 **PROFESSIONAL SERVICES** The City of Warrenton, through its Engineer, shall provide all professional services required for the completion of the Work, except any professional services described in the bid documents or elsewhere in this Contract Documents. The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless the Contractor needs to provide such services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures, or unless such services are specifically called for by the Contract Documents. If professional services are required of the Contractor, the City of Warrenton shall indicate all performance and design criteria to be satisfied. The Contractor shall not be responsible for the adequacy of such performance and design criteria. The Contractor shall obtain professional services and any design certifications required from design professionals licensed in the state of Oregon. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the City of Warrenton and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. The Contractor shall not be required to provide such services in violation of existing laws, rules, and regulations in the jurisdiction where the Project is located.

3.15 **WORKSITE CONDITIONS**

3.15.1 **WORKSITE VISIT** The Contractor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.15.2 **CONCEALED OR UNKNOWN SITE CONDITIONS** If conditions are encountered at the Worksite which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an extremely unusual nature, then the Contractor shall give written notice to the City of Warrenton and Engineer promptly before conditions are disturbed and in no event later than seven days after the first observance of the conditions. The City of Warrenton and the Engineer will promptly investigate such conditions and the City of Warrenton will decide whether they will

cause an increase or decrease in the Cost of the work or the time required for performance of the Work and whether Contractor is entitled to relief under the provisions of this subparagraph. The City of Warrenton will notify the Contractor of the City of Warrenton's decision. If the Contractor does not agree with the City of Warrenton's decision, the disagreement will be subject to Article 12 of this Agreement. No increase to the Contract Sum or Contract Time shall be allowed if the Contractor knew or should have known of the concealed conditions prior to its executing the Contract. The Contractor will not be entitled to recover damages or an increase in the Contract Sum based on physical conditions at the Work Site or any form of "differing site conditions" unless: the Claim is allowed by ORS 279C.525 or other Applicable Laws; or the Claim is based on the negligence of the City of Warrenton, including material deficiency or inaccuracy of contract documents provided by the City of Warrenton that should have been detected by the City of Warrenton with reasonable effort. The Contractor shall provide the City of Warrenton with written notice of any claim as a result of unknown conditions within the time period set forth in Paragraph 8.4.

3.16 PERMITS AND TAXES

3.16.1 Contractor shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the City of Warrenton pursuant to Paragraph 4.6, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work. Contractor shall provide to City of Warrenton copies of all notices, permits, licenses and renewals required under this Agreement.

3.16.2 Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Contractor.

3.16.3 The Contract Price and/or Contract Time shall be equitably adjusted by Change Order for additional costs resulting from any changes in laws, ordinances, rules and regulations enacted after the date of this Agreement, including increased taxes.

3.17 CUTTING, FITTING AND PATCHING

3.17.1 The Contractor shall perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the City of Warrenton or Others.

3.17.2 Cutting, patching or altering the work of the City of Warrenton or Others shall be done with the prior written approval of the City of Warrenton. Such approval shall not be unreasonably withheld.

3.18 CLEANING UP

3.18.1 The Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.18.2 If the Contractor fails to commence compliance with cleanup duties within forty-eight (48) hours after written notification from the City of Warrenton of non-compliance, the City of Warrenton may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Contractor.

3.18.3 ACCESS TO WORK The Contractor shall facilitate the access of the City of Warrenton, Engineer and Others to Work in progress.

ARTICLE 4 – CITY OF WARRENTON’S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Any information or services to be provided by the City of Warrenton shall be provided in a timely manner so as not to delay the Work.

4.2 WORKSITE INFORMATION Except to the extent that the Contractor knows of any inaccuracy, the Contractor is entitled to rely on Worksite information furnished by the City of Warrenton.

4.3 CITY OF WARRENTON’S REPRESENTATIVE The City of Warrenton's authorized representative shall be identified to the Contractor within five (5) days of the City of Warrenton’s execution of this Agreement. The representative shall be fully acquainted with the Project, and shall have authority to bind the City of Warrenton in all matters requiring the City of Warrenton's approval, authorization or written notice. If the City of Warrenton changes its representative or the representative's authority as listed above, the City of Warrenton shall immediately notify the Contractor in writing.

4.4 OWNER'S RIGHT TO CLEAN UP In case of a dispute between the Contractor and Others with regard to respective responsibilities for cleaning up at the Worksite, the City of Warrenton may implement appropriate cleanup measures and allocate the cost among those responsible.

4.5 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the City of Warrenton or Others and not to the Contractor, the City of Warrenton may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Contractor incurs additional costs and/or is delayed due to such loss or damage, the Contractor shall be entitled to an equitable adjustment in the Contract Price and/or Contract Time.

4.6 PERMITS The City of Warrenton will obtain land use and building permits for the Project.

ARTICLE 5 – SUBCONTRACTS

5.1 SUBCONTRACTORS The Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Within five days after notice of the award of the Contract, the Contractor shall furnish in writing to the City of Warrenton through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the work. The Contractor shall document the qualifications of a proposed Subcontractor, Subsubcontractor, or supplier as directed by the Engineer. The City of Warrenton may reject a proposed Subcontractor, Subsubcontractor, or Supplier for any of the reason stated in ORS 279C.395 with respect to disqualification of bidders. The City of Warrenton will reject a Subcontract or Subsubcontract that merely provides a labor force for the Work. The Contractor

will be notified of the City of Warrenton's decision regarding a proposed Subcontractor, Subsubcontractor, or supplier within seven days after the City of Warrenton receives all documents required by this section. Failure of the City of Warrenton to reply promptly shall constitute notice of no reasonable objection. No action or inaction of the City of Warrenton or Engineer in response to receipt of the names of the proposed Subcontractors shall constitute approval of any Subcontractor or of its performance. The Contractor shall not propose or contract with any subcontractor other person or organization included in the United States Department of Housing and Urban Development Consolidation List of Debarred, Suspended, and Ineligible Contractors and Grantees.

5.2.2 If the City of Warrenton has reasonably and promptly objected as provided in Subparagraph 5.2.1, the Contractor shall not contract with the proposed subcontractor or material supplier, and the Contractor shall propose another acceptable to the City of Warrenton.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Contractor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

5.3.1 Each Subcontract and Materials Contract shall require that the subcontracted portion of the work be performed and materials to be supplied in accordance with the requirements of the Contract Documents.

5.3.2 Each subcontract must include a provision requiring the Subcontractor or Sub-subcontractor to carry the same liability insurance and workers' compensation coverage that the Contractor is required to carry under this Agreement.

5.3.3 Each subcontract must state that the Subcontractor or Sub-subcontractor will defend and indemnify City of Warrenton and its officers, employees, and agents for all Third-Party Claims arising out of the Subcontractor's or Sub-subcontractor's negligence, breach of the Subcontract, or other wrongful acts and omissions of the Subcontractor or Sub-subcontractor.

5.3.4 No Subcontractor or Sub-subcontractor will be allowed to perform any Work at the Work Site until the City of Warrenton's representative receives and approves proof of liability insurance and proof of workers' compensation coverage for the Subcontractor or Sub-subcontractor that conforms to the Contract Documents.

5.3.5 No Subcontractor, or Sub-subcontractor, or supplier will be deemed to have any contractual relationship with the City of Warrenton nor deemed to be a third-party beneficiary of this contract. Notwithstanding ORS 279C.515, the City of Warrenton will have no obligation to pay or to assure the payment of any moneys due any Subcontractor, Sub-subcontractor, or Supplier, and the Contractor shall defend and indemnify City of Warrenton from any claims asserted by a subcontractor, Sub-subcontractor, or Supplier who has not received payment when due.

5.3.6 Upon the City of Warrenton's request, the Contractor shall provide the City of Warrenton with a copy of any Subcontract, Sub-subcontract or Materials Contract.

5.3.7 The Contractor shall comply with requirements of ORS 279C.580. Pursuant thereto, each Subcontract must include a clause that obligates the Contractor to pay the subcontractor amounts that are included in any Progress Payment to the Contractor for Work satisfactorily performed by

the Subcontractor within 10 days after the Contractor received payment together with interest as specified in that statute.

5.3.8 Pursuant to ORS 279C.5380, the Contractor shall require each Subcontractor and Sub-subcontractor to include in each Sub-subcontract a payment clause and an interest penalty clause.

5.3.9 If the City of Warrenton concludes that any portion of the work subcontracted by the Contractor is not being prosecuted in accordance with the Contract documents, the Contractor shall upon request of the City of Warrenton, remove the Subcontractor performing such Work. Such removal shall not relieve the Contractor of its responsibility for the performance of the work or complying with all of the requirements of the contract within the Contract Sum and Time.

5.3.10 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors. No subcontracting of any of the work shall relieve the Contractor from its responsibility for the performance or any other of its obligations under the Contract documents.

ARTICLE 6 – CONTRACT TIME

6.1 PERFORMANCE OF THE WORK

6.1.1 **DATE OF COMMENCEMENT** The Date of Commencement is the date of this Agreement as first written in Article 1 unless otherwise set forth in the Contract Documents.

6.1.2 **TIME** Substantial Completion of the Work shall be achieved in the number of days from the Date of Commencement set forth in the Contract Documents. Unless otherwise specified in the Certificate of Substantial Completion, the Contractor shall achieve Final Completion within thirty (30) days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.1.3 Time limits stated in this Agreement are of the essence of this Agreement.

6.1.4 Unless instructed by the City of Warrenton in writing, the Contractor shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Contractor and City of Warrenton.

6.2 SCHEDULE OF THE WORK

6.2.1 Within ten days after issuance of the Notice to Award of the Contract, the Contractor shall submit a preliminary Schedule of the Work. Within thirty days after issuance of the Notice to Proceed, and before any progress payment need be made, the Contractor, after consultations with its Subcontractors, shall submit six copies of a Progress Schedule to the Engineer and one copy to the City of Warrenton. Within 10 days after receipt by the Engineer, two copies of the Progress Schedule will be returned to the Contractor with comments, following review by the City of Warrenton. Review by the City of Warrenton and Engineer of the Contractor's progress Schedule shall not constitute an approval or acceptance of the Contractor's construction means, methods, or sequencing, or its ability to complete the work in a timely manner.

6.2.2 The Progress Schedule shall be in a "Gantt" or bar chart form.

6.2.3 During the course of the Work, and not less often than monthly, the Contractor shall submit to the City of Warrenton and the Engineer a current, updated Progress Schedule reflecting all changes and revisions to the original schedule. The Contractor shall adhere to the Progress Schedule as it may be adjusted by Change Order or Interim Directed Change.

6.2.4 The Contractor shall utilize and comply with the Progress Schedule. For the purposes of whether any Change Orders or Interim Directed Changes extend the contractual dates for Substantial Completion and Final Completion, any unused "float" or "slack" time for the whole or any part of the work as provided by the approved Progress Schedule, shall belong to the City of Warrenton. The Contractor shall not be entitled to any adjustment in the Contract Time, the Progress Schedule, or the Contract Sum, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Progress Schedule.

6.2.5 Should the Contractor fail to meet any scheduled date as shown on the current Progress Schedule, the Contractor shall, upon request, be required at its own expense to submit within ten days of the request an updated Progress Schedule. If the Contractor's progress indicates to the City of Warrenton that the Work will not be Substantial Completed within the Contract Time, the Contractor shall, at its own expense, accelerate the Work by increasing its work force, adding shifts, and if necessary allowing overtime and performance of Work on days other than Working Days to bring the actual completion dates of the activities into conformance with the Progress Schedule.

6.2.6 The Contractor shall, within seven days of the event, notify the City of Warrenton and Engineer in writing of any proposed changes in the Progress Schedule or the Contract Time and of any event which could delay performance or supplying of any item of the work and shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being taken to correct the delay situation. CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE WRITTEN NOTIFICATION WILL BE DEEMED A WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM OR CAUSED BY SUCH DELAY. Without relieving the Contractor of any liability for failure to perform or for any delay in performance, in the event of delays in progress of the work that are not excusable delays under the Contract Documents that might cause a delay or delays in completion of the Work as required by the Contract, the Contractor shall utilize, with no increase in the Contract Time or Contract Sum and at no additional cost to the City of Warrenton, such work forces, equipment, and overtime and shall take such additional steps as are necessary in order effectively to eliminate or minimize such delays and to comply with the Progress Schedule.

6.2.7 The Contractor shall attain Final completion of the Work in accordance with the contract within 30 days after the date of Substantial Completion.

6.2.8 During the period commencing with the issuance of Notice to Proceed and ending with the date of final Completion of the Work, the Contractor shall attend and participate in and ensure applicable Subcontractors attend and participate in:

6.2.8.1 Weekly Project status meetings scheduled by the City of Warrenton or by the Engineer to review progress of the work, to discuss the Contractor's progress reports, to obtain necessary City of Warrenton's or Engineer's approvals, and generally to keep the City of Warrenton and Engineer informed and involved in the progress of the Project and

6.2.8.2 Regular on-site meetings scheduled by the City of Warrenton or by the Engineer to review progress of the work and other pertinent matters.

6.2.9 The Contractor shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Engineer reasonable time to review submittals.

6.2.10 The City of Warrenton may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The City of Warrenton may require the Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the City of Warrenton or Others. To the extent such changes increase Contractor's time and costs the Contract Price and Contract Time shall be equitably adjusted.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the City of Warrenton or Engineer, or of an employee of either, or of a separate contractor employed by the City of Warrenton, or by changes ordered in the Work, or by industry-wide labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the City of Warrenton pending dispute resolution, or by other causes which the City of Warrenton determines may justify delay, then the Contract time shall be extended by Change Order for such reasonable time as the City of Warrenton may determine. No extension of time for completion will be allowed for delays or suspensions to the extent caused by or contributed by the fault or negligence of the Contractor, Subcontractors or anyone for whom the Contractor is responsible.

6.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 8.4.

6.3.3 The Contractor may assert a Claim to obtain damages for a delay only if such damages are caused by an unreasonable delay that result directly and solely from the wrongful acts or omissions of the City of Warrenton. If the City of Warrenton must make a decision regarding the Work or the Contract Documents, any delay resulting from lack of a quorum of the governing body of the City of Warrenton or the requirements of the Oregon Public Meetings Law will be deemed reasonable, so long as the City of Warrenton endeavors in good faith to meet as soon as practicable. Delays resulting from the actions of the Engineer, another contractor, or any other person or entity will not be attributable to the City of Warrenton unless the person or entity is acting under the direction of the City of Warrenton. If the Contractor is entitled to recover damages for unreasonable delay caused by the City of Warrenton, the **Contractor will be limited to liquidated damages of \$500 per day**. The Contractor will not in any event be entitled damages arising out of alleged loss of efficiency, morale, fatigue, attitude, constructive acceleration, home office overhead, expectant underrun, trade stacking, reassignment of workers, concurrent operations, dilution of supervision, learning curve, logistics, ripple, season change, extended overhead, profit on damages for delay, impact damages, or similar costs.

6.3.4 Completion of the work within the Contract time is critical. If substantial Completion is delayed beyond the expiration of the contract Time, the City of Warrenton will suffer substantial inconvenience and monetary damage, including damage arising out of delay but ascertaining the actual loss sustained by the City of Warrenton will be difficult. In the absence of liquidated

damages, the City of Warrenton will not have an adequate remedy if the Contractor delays substantial Completion. Contractor shall pay to the City of Warrenton liquidated damages in the amount set forth in the Contract Documents for each calendar day from the expiration of the Contract Time through Substantial Completion. By submitting its bid, the Contractor waives any contention or Claim that the liquidated damages constitute a penalty.

The agreed upon amount of liquated damages shall be **five hundred dollars (\$500.00)** per calendar day. Liquidated damages shall commence on the first calendar day after the specified completion date and shall continue thereafter each and every calendar day until all of the work is satisfactorily completed and accepted by the City.

6.3.5 The provisions in the Contract Documents for liquidated damages are intended to be in lieu of the liability of the Contractor for special incidental, and consequential damages (such as cost of capital and loss of profits, use and revenue) sustained by the City of Warrenton for delay, but will not relieve or release the Contractor from liability for any and all damages suffered by the City of Warrenton due to other breaches of the contract or suffered by separate contractors.

6.3.6 NOTICE OF DELAYS In the event delays to the Work are encountered for any reason, the Contractor shall provide prompt written notice to the City of Warrenton of the cause of such delays after Contractor first recognizes the delay. The City of Warrenton and Contractor agree to undertake reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If the Contractor requests an equitable extension of Contract Time and/or an equitable adjustment in Contract Price as a result of a delay described in Subparagraph 6.3, the Contractor shall give the City of Warrenton written notice of the claim in accordance with Paragraph 8.4. If the Contractor causes delay in the completion of the Work, the City of Warrenton shall be entitled to recover its additional costs subject to Paragraph 8.2. The City of Warrenton shall process any such claim against the Contractor in accordance with Article 8.

ARTICLE 7 – CONTRACT PRICE

As full compensation for the performance by the Contractor of the Work in conformance with the Contract Documents, the City of Warrenton shall pay the Contractor the Contract Price as set forth in the Contract Documents, which shall be subject to increase or decrease as provided in Article 8.

ARTICLE 8 – CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, and Interim Directed Change.

8.1 CHANGE ORDER

8.1.1 The Contractor may request and/or the City of Warrenton may order changes in the Work or the timing or sequencing of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order. Any such requests for a change in the Contract Price and/or the Contract Time shall be processed in accordance with this Article 8.

8.1.2 The City of Warrenton and the Contractor shall negotiate in good faith an appropriate adjustment to the Contract Price and/or the Contract Time and shall conclude these negotiations

as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price and/or Contract Time shall not be unreasonably withheld.

8.2 INTERIM DIRECTED CHANGE

8.2.1 The City of Warrenton may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Contractor on the adjustment, if any, in the Contract Price and/or the Contract Time.

8.2.2 The City of Warrenton and the Contractor shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price and/or the Contract Time arising out of Interim Directed Change. As the Changed Work is performed, the Contractor shall submit its costs for such work with its application for payment beginning with the next application for payment within thirty (30) days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the City of Warrenton, the City of Warrenton shall pay the Contractor thirty five percent (35%) of its estimated cost to perform the work. In such event, the parties reserve their rights as to the disputed amount, subject to the requirements of Article 12.

8.2.3 When the City of Warrenton and the Contractor agree upon the adjustment in the Contract Price and/or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order. The Change Order shall include all outstanding Interim Directed Changes issued since the last Change Order.

8.3 DETERMINATION OF COST

8.3.1 An increase or decrease in the Contract Price and/or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

8.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

8.3.1.2 a mutually accepted, itemized lump sum;

8.3.1.3 costs calculated on a basis agreed upon by the City of Warrenton and Contractor plus a Fee (either a lump sum or a Fee based on a percentage of cost) to which they agree; or

8.3.1.4 if an increase or decrease cannot be agreed to as set forth in Clauses 8.3.1.1 through .3 above, and the City of Warrenton issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. If there is a net increase in the Contract Price, the Contractor's Fee shall be adjusted accordingly. In case of a net decrease in the Contract Price, the Contractor's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the City of Warrenton or the Contractor, such unit prices shall be equitably adjusted.

8.3.3 If the City of Warrenton and the Contractor disagree as to whether work required by the City of Warrenton is within the scope of the Work, the Contractor shall furnish the City of Warrenton with an estimate of the costs to perform the disputed work in accordance with the City of Warrenton's interpretations. If the City of Warrenton issues a written order for the Contractor to proceed, the Contractor shall perform the disputed work and the City of Warrenton shall pay the Contractor thirty five percent (35%) of its estimated cost to perform the work as the work is performed. In such event, both parties reserve their rights as to whether the work was within the scope of the Work, subject to the requirements of Article 12. The City of Warrenton's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Contractor's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in Subparagraph 6.3.2 and Paragraph 6.4 for any claim for an increase in the Contract Price and/or the Contract Time, the Contractor shall give the City of Warrenton written notice of the claim within fourteen (14) days after the occurrence giving rise to the claim or within fourteen (14) days after the Contractor first recognizes the condition giving rise to the claim, whichever is earlier. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Contract Price and/or the Contract Time resulting from such claim shall be authorized by Change Order.

8.5 RECORDS The Contractor shall maintain books, records, documents, and other evidence pertaining to the costs incurred by the Contract in connection with the Contract (the "records") to such extent and in such detail as will properly reflect and fully support all cost charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor shall preserve such records for a period of three (3) years following the date of final payment under the Contract and for such longer periods as may be required by any other provision of the Contract. The Contractor agrees to make available at the office of the Contractor at all reasonable times all records for inspection, audit and reproduction by the City of Warrenton. These requirements shall be applicable to and include in each Subcontract and purchase order issued with respect to the Work, except fixed-price Subcontracts or where the price is \$25,000 or less. The City of Warrenton reserves the right to audit the Contractor's books and records at any time with respect to the cost of changes in the work. If the audit determines that the Contractor has billed or has been paid one hundred and two percent (102%) or more of the amount due under the Contract Documents for such changes, the Contractor shall reimburse the City of Warrenton for the cost of the audit.

ARTICLE 9 – PAYMENT

9.1 SCHEDULE OF VALUES If the bid price in the Contract Documents is a lump sum, within ten (10) days from the date of execution of this Agreement, the Contractor shall prepare and submit to the City of Warrenton, and if directed, the Engineer, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the Contract Price.

9.2 PROGRESS PAYMENTS

9.2.1 APPLICATIONS The Contractor shall submit to the WHPacific on behalf of the City of Warrenton, and if directed, it's Engineer, a monthly application for payment no later than the 5th day of the calendar month for the preceding thirty (30) Days. Contractor's applications for

payment shall be itemized and supported by the Contractor's unit prices or schedule of values, as the case may be, and any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The City of Warrenton shall pay the amount otherwise due on any payment application, in the manner and with the time required by ORS 279C.570. The City of Warrenton may deduct from any progress payment amounts as may be retained pursuant to Subparagraph 9.2.3. In addition to the foregoing, applications for payment must be supported by such data substantiating the Contractor's right to payment as the City of Warrenton or Engineer may require, including: (a) proof of compliance with ORS 279A.120 with the first Application for payment; (b) copies of requisitions and invoice from Subcontractors and suppliers; and (c) certified statements regarding payment of prevailing wage rates as required by ORS 279C.800 when those documents are due.

9.2.2 STORED MATERIALS AND EQUIPMENT If approved by the City of Warrenton, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored on-site or off-site including applicable insurance, storage and transportation costs to the Worksite. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by the Contractor of bills of sale and proof of applicable insurance, or such other procedures satisfactory to the City of Warrenton to establish the proper valuation of the stored materials and equipment, the City of Warrenton's title to such materials and equipment, and to otherwise protect the City of Warrenton's interests therein, including transportation to the site.

9.2.3 RETAINAGE Pursuant to ORS 279C.555, the City of Warrenton will reserve 5% retainage from the moneys the Contractor earns on estimates during the progress of the Work, to be retained as a trust fund for the protection and payment of any person or persons, mechanic, subcontractors, or material suppliers who performs any labor on the Contract or the doing of said Work, and all persons who supply such person or persons or subcontractors with provisions and supplies for the carrying on of such Work. The moneys reserved may, at the option of the Contractor, be: (a) retained in a fund by the City of Warrenton until 30 days following Final Acceptance; or (b) Deposited by the City of Warrenton in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until 30 days following final Acceptance, with interest to the Contractor; or (c) placed in escrow with a bank or trust company until 30 days following the Final Acceptance by the City of Warrenton's joint check to the bank or trust company and the Contractor, to be converted into bonds and securities chosen by the Contractor, approved by the City of Warrenton, and held in escrow, with interest on the bonds and securities paid to the Contractor as it accrues. The City of Warrenton hereby approves all obligations of the United States Government or its agencies or corporations it wholly owns, indebtedness of the federal national Mortgage Association, and time deposits in commercial banks, provided that any such investment must mature within the Contract time. All other proposed bonds or securities require specific written City of Warrenton approval. Shares of corporations will in no case be approved.

The Contractor may withhold payments of not more than 5% as retainage from the money earned by any Subcontractor or supplier, provided that the Contractor pays interest to the Subcontractor or supplier at the same interest rate it receives from its reserved funds. Subcontractors may withhold retainage from payments to Subsubcontractors and Suppliers subject to the same conditions imposed on the Contractor.

9.3 ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION The City of Warrenton may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the City of Warrenton from loss or damage based upon the following, to the extent that the Contractor is responsible therefor under this Agreement:

9.3.1 the Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 loss or damage for which the City of Warrenton may be liable arising out of or relating to this Agreement and caused by the Contractor to the City of Warrenton or to Others;

9.3.3 the Contractor's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the City of Warrenton;

9.3.4 Defective Work not corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time, and

9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work.

The City of Warrenton shall give written notice to the Contractor at the time of disapproving or nullifying an application for payment of the specific reasons therefor. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

9.4 ACCEPTANCE OF WORK Neither the City of Warrenton's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 SUBSTANTIAL COMPLETION

9.5.1 The Contractor shall notify the City of Warrenton and, if directed, it's Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved. The City of Warrenton, with the assistance of its Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the City of Warrenton without excessive interference in completing any remaining unfinished Work by the Contractor. If the City of Warrenton determines that the Work or designated portion has not reached Substantial Completion, the City of Warrenton shall promptly compile a list of items to be completed or corrected so the City of Warrenton may occupy or utilize the Work or designated portion for its intended use. The Contractor shall promptly complete all items on the list.

9.5.2 When Substantial Completion of the Work or a designated portion is achieved, the Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the City of Warrenton and Contractor for interim items such as security, maintenance, utilities, insurance and damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion

shall be submitted by the Contractor to the City of Warrenton for written acceptance of responsibilities assigned in the Certificate.

9.5.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

9.5.4 Upon acceptance by the City of Warrenton of the Certificate of Substantial Completion, the City of Warrenton shall pay to the Contractor the remaining retainage held by the City of Warrenton for the Work described in the Certificate of Substantial Completion less a sum equal to two hundred percent (200%) of the estimated cost of completing or correcting remaining items on that part of the Work necessary to achieve final completion. Uncompleted items shall be completed by the Contractor in a mutually agreed upon time frame. The City of Warrenton shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

9.6 PARTIAL OCCUPANCY OR USE The City of Warrenton may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work.

9.7 FINAL COMPLETION AND FINAL PAYMENT

9.7.1 Upon notification from the Contractor that the Work is complete and ready for final inspection and acceptance, the City of Warrenton with the assistance of its Engineer shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.7.2 When Final Completion has been achieved, the Contractor shall prepare for the City of Warrenton's acceptance a final application for payment stating that to the best of the Contractor's knowledge, and based on the City of Warrenton's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.7.3 Final payment of the balance of the Contract Price shall be made to the Contractor within thirty (30) days after the Contractor has submitted a complete and accurate application for final payment, including submissions required under Subparagraph 9.7.4, and a Certificate of Final Completion has been executed by the City of Warrenton and the Contractor. Final payment must be requested within 90 days after February 16, 2012, or 90 days after actual construction completion, whichever is earlier.

9.7.4 Final payment shall be due on the Contractor's submission of the following to the City of Warrenton:

9.7.4.1 an affidavit declaring any indebtedness connected with the Work, *e.g.* payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the City of Warrenton's property;

9.7.4.2 as-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

9.7.4.3 release of any bond claims or other liens, conditioned on final payment being received;

9.7.4.4 consent of all sureties; and

9.7.4.5 any outstanding known and unreported accidents or injuries experienced by the Contractor or its Subcontractors at the Worksite.

9.7.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Contractor, the City of Warrenton shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Contractor shall submit to the City of Warrenton, and, if directed, the Engineer, the written consent of all sureties to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by these final payment provisions.

9.7.6 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to bond claims or similar encumbrances, warranties, Defective Work, and latent defects.

9.7.7 ACCEPTANCE OF FINAL PAYMENT Unless the Contractor provides written identification of unsettled claims with an application for final payment, acceptance of final payment constitutes a waiver of such claims.

ARTICLE 10 – INDEMNITY, INSURANCE, AND BONDS

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold the City of Warrenton, the City of Warrenton's officers, directors, members, consultants, agents and employees, the Engineer and Others harmless from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Subparagraph 10.2., that may arise from the performance of the Work, but only to the extent of the negligent acts or omissions of the Contractor, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Contractor shall not be required to defend, indemnify or hold harmless the City of Warrenton, the Engineer or Others for any negligent acts, omissions of the City of Warrenton, the Engineer or Others.

10.1.2 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold the City of Warrenton, the City of Warrenton's officers, directors, members, consultants, agents and employees, the Engineer and Others harmless from Third-Party Claims arising out of: (a) defects in the Work; (b) occurrences at the Work Site while the work is in progress that are attributable in whole or in part to the acts or omissions of the Contractor, Subcontractors, or the principals, officers, employees, or agents of the Contractor or a Subcontractor; or (c) any violation of Applicable Law, including Environmental Laws, that occurs during the performance of the work at the Work site.

10.1.3 In claims against any person or entity indemnified under this Subparagraph 10.1 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or

anyone for whose acts they may be liable, the indemnification obligations shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

10.2 INSURANCE

10.2.1 Before commencing the Work and as a condition of payment, the Contractor shall purchase and maintain such insurance as will protect it from the claims arising out of its operations under this Agreement, whether such operations are by the Contractor or any of its Subcontractors, Material Suppliers, etc. at every tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

10.2.2 The Contractor shall maintain at least the following insurance with a company satisfactory to the City of Warrenton:

Workers' Compensation	Statutory Limits
Employer's Liability Insurance	\$1,000,000 each occurrence
Commercial or Comprehensive General Liability Insurance	
Each Occurrence Limit	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Comprehensive Automobile Liability Insurance	
Combined Single Limit	\$1,000,000 each occurrence
Bodily Injury & Property Damage	\$1,000,000 aggregate
	<i>Or</i>
Bodily Injury	\$1,000,000 each Person
	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence

Commercial General Liability insurance required under this Paragraph shall include, but not be limited to, coverage for Products/Completed Operations (extending two (2) years after completion of the Work), Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion deleted, Blanket XCU, Incidental Malpractice, Host Liquor Liability, and Blanket Contractual Liability insurance applicable to Contractor's indemnity obligations and other contractual indemnities assumed by Contractor under this Agreement. The Comprehensive General Liability and Commercial General Liability insurance policies shall provide aggregate limits per project. Comprehensive Automobile Liability insurance required under this Paragraph shall also include coverage for all owned, hired, leased, and non-owned automobiles.

Contractor shall maintain in effect all insurance coverage required under this Paragraph at Contractor's sole expense and with insurance companies acceptable to the City of Warrenton. The City of Warrenton expressly reserves the right to disapprove of any insurance company(ies) proposed to be used by Contractor and to require that an acceptable company write Contractor's policies. The City of Warrenton may not, however, arbitrarily or unreasonably withhold its acceptance of a proposed insurance company. In the event Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the City of Warrenton may purchase

such coverage and charge the expense thereof to Contractor. The City of Warrenton's approval, purchase, or maintenance of any insurance under this Agreement shall not constitute a limitation on Contractor's liability.

Contractor's insurance policies (other than professional liability insurance) must be written on an occurrence basis, with no "sunset" clauses, and shall not contain coverage exclusions for explosion, building collapse, or damage to underground facilities. Contractor's insurance policies that insure against claims for damages to or destruction of property must also insure against claims for the loss of use of such property. In addition, insurance policies provided by Contractor shall contain an endorsement that specifically provides primary coverage for the benefit of Contractor when it is alleged that Contractor has "borrowed" a servant from the City of Warrenton, or from the City of Warrenton's contractors, consultants, subconsultants, or subcontractors, and the City of Warrenton is allegedly liable because of the "Borrowed Servant Doctrine".

Except for Worker's Compensation insurance policies, Contractor shall endorse all policies to name the City of Warrenton (including its employees and Commissioners) as additional insureds with respect to liability arising out of (a) operations performed for the City of Warrenton by Contractor, (b) acts or omissions of the City of Warrenton in connection with general supervision of Contractor's operations, and (c) claims for bodily injury or death brought against the City of Warrenton by Contractor's employees, or employees of Contractor's consultants, subconsultants, or subcontractors of any tier, however caused, related to the performance of operations under this Agreement. Such insurance afforded to the City of Warrenton as additional insureds under Contractor's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by Contractor or Owner.

If owners of Contractor perform work on or in connection with the Project, they shall each elect coverage for themselves under the applicable workers' compensation law and insurance policies.

10.2.3 The Contractor shall require its consultants, subconsultants, and subcontractors to maintain workers compensation insurance, as well as Commercial General Liability and Comprehensive Automobile Liability coverage with a company or companies satisfactory to the Contractor and with limits acceptable to the City of Warrenton.

10.2.4 **REQUIRED CERTIFICATES OF INSURANCE AND ENDORSEMENT FORMS** Prior to commencement of the Work, or within five (5) days from the date of execution of this Agreement, whichever is sooner, and as a condition precedent to payment for the Work, Contractor shall provide City of Warrenton with Certificates of Insurance in a form acceptable to City of Warrenton which shall provide satisfactory evidence that Contractor has complied with all insurance requirements of this Agreement. At City of Warrenton's sole option, it may require, in addition to Certificates of Insurance, properly completed and executed insurance endorsement forms, in a form acceptable to City of Warrenton, evidencing the required insurance coverage and/or certified copies of policies. Such Certificates of Insurance and/or endorsement forms shall include a provision that the coverages afforded thereunder shall not be cancelled, nor non-renewed, nor restrictive modifications added, unless at least thirty (30) days' prior written notice is given to City of Warrenton, unless a longer period is specifically required by the Contract Documents, in which case the longer period shall apply. If the Certificate of Insurance includes language to the effect that – "This certificate is issued as a matter of information only and confers no rights upon the certificate holder" – such language shall be deleted.

10.2.5 WAIVER OF SUBROGATION The City of Warrenton and Contractor waive all rights against each other and Subcontractors and Subsubcontractors for loss or damage to the extent covered by property or equipment insurance, except such rights as they may have to the proceeds of such insurance. The Contractor shall require similar waivers from its Subcontractors and Sub-subcontractors.

10.3 ROYALTIES, PATENTS AND COPYRIGHTS The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the City of Warrenton harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The City of Warrenton agrees to defend, indemnify and hold the Contractor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the City of Warrenton and Engineer.

10.4 BONDS The Contractor shall provide a performance bond, and a labor and materials payment bond that each conforms to ORS 279C.380. Both must be issued by a responsible surety company licensed to do business in the State of Oregon. Each bond must be in a form approved by the City of Warrenton's attorney and in an amount equal to the contract Price. In lieu of a surety bond, the Contractor may submit a cashier's check or certified check in an amount equal to 100 percent of the contract Price. The City of Warrenton will negotiate the check and retain the moneys until the time limitation for claims against a bond expires or until all Third-Party Claims against the moneys are resolved. The City of Warrenton will not pay the Contractor interest on the moneys.

ARTICLE 11 – SUSPENSION, NOTICE TO CURE, AND TERMINATION OF THE AGREEMENT

11.1 SUSPENSION BY CITY OF WARRENTON FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should the City of Warrenton order the Contractor in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the City of Warrenton and not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor may be liable, then the Contractor shall immediately suspend, delay or interrupt that portion of the Work as ordered by the City of Warrenton. The Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension.

11.1.2 Any action taken by the City of Warrenton that is permitted by any other provision of the Contract Documents and that result in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 11.1.

11.2 NOTICE TO CURE A DEFAULT If the Contractor persistently refuses or fails to supply enough properly skilled workers, proper materials, and/or equipment, to maintain the approved Schedule of the Work in accordance with Article 6, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Contractor may be deemed in default. If the Contractor fails within seven (7) working days after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the City of Warrenton without prejudice to any other rights or remedies may:

11.2.1 supply workers and materials, equipment and other facilities as the City of Warrenton deems necessary for the satisfactory correction of the default, and charge the cost to the Contractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

11.2.2 contract with Others to perform such part of the Work as the City of Warrenton determines shall provide the most expeditious correction of the default, and charge the cost to the Contractor;

11.2.3 withhold payment due the Contractor in accordance with Paragraph 9.3; and

11.2.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 11.2.1 and 11.2.2 without first giving written notice to the Contractor, but shall give prompt written notice of such action to the Contractor following commencement of the action.

11.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 TERMINATION BY OWNER FOR DEFAULT If, within seven (7) days of receipt of a notice to cure pursuant to Paragraph 11.2, the Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the City of Warrenton may notify the Contractor that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen additional days. After the expiration of the additional three (3) day period, the City of Warrenton may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to City of Warrenton under Paragraph 11.2. If the City of Warrenton's cost arising out of the Contractor's failure to cure, including the cost of completing the Work and reasonable attorneys' fees, exceeds the unpaid Contract Price, the Contractor and its surety shall be liable to the City of Warrenton for such excess costs. If the City of Warrenton's costs are less than the unpaid Contract Price, the City of Warrenton shall pay the difference to the Contractor. In the event the City of Warrenton exercises its rights under this Paragraph 11.3, upon the request of the Contractor the City of Warrenton shall furnish to the Contractor a detailed accounting of the cost incurred by the City of Warrenton.

11.3.2 USE OF CONTRACTOR'S MATERIALS, SUPPLIES AND EQUIPMENT If the City of Warrenton or Others perform work under this Paragraph 11.3, the City of Warrenton shall have the right to take and use any materials, supplies, and equipment belonging to the Contractor and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to the Contractor in substantially the same condition as when they were taken, reasonable wear and tear excepted.

11.3.3 If the Contractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Contractor or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurance that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.4 TERMINATION BY OWNER FOR CONVENIENCE

11.4.1 Upon written notice to the Contractor, the City of Warrenton may, without cause, terminate this Agreement. The Contractor shall immediately stop the Work, follow the City of Warrenton's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

11.4.2 If the City of Warrenton terminates this Agreement pursuant to this Paragraph 11.4, the Contractor shall be paid for the Work performed to date plus its proven demobilization costs.

11.5 If the City of Warrenton terminates this Agreement pursuant to Paragraphs 11.3 or 11.4, the Contractor shall:

11.5.1 execute and deliver to the City of Warrenton all papers and take all action required to assign, transfer and vest in the City of Warrenton the rights of the Contractor to all materials, supplies and equipment for which payment has or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

11.5.2 exert reasonable effort to reduce to a minimum the City of Warrenton's liability for subcontracts, orders and commitments that have not been fulfilled at the time of the termination;

11.5.3 cancel any subcontracts, orders and commitments as the City of Warrenton directs; and

11.5.4 sell at prices approved by the City of Warrenton any materials, supplies and equipment as the City of Warrenton directs, with all proceeds paid or credited to the City of Warrenton.

11.6 **WRONGFUL EXERCISE** If the City of Warrenton wrongfully exercises any option under this Paragraph 11, the City of Warrenton shall be liable to Contractor solely for the reasonable value of Work performed by Contractor prior to the City of Warrenton's wrongful action, and reasonable demobilization costs, less prior payments made.

11.7 **CONTRACTOR'S RIGHT TO TERMINATE** Upon seven (7) days' written notice to the City of Warrenton, the Contractor may terminate this Agreement if the Work has been stopped for a sixty (60) day period through no fault of the Contractor for any of the following reasons:

11.7.1 under court order or order of other governmental authorities having jurisdiction;

11.7.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials required for the Work are not available; or

11.7.3 suspension by City of Warrenton for convenience pursuant to Paragraph 11.1.

11.8 **OBLIGATIONS ARISING BEFORE TERMINATION** Even after termination pursuant to Article 11, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

ARTICLE 12 – DISPUTE RESOLUTION

12.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If the Contractor continues to perform, the City of Warrenton shall continue to make payments in accordance with this Agreement.

12.2 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives, who shall have the authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute, the senior executives of the parties, who shall have the authority to settle the dispute, shall meet within twenty-one (21) days after the dispute first arises. If the dispute is not settled within seven (7) days from the referral of the dispute to the senior executives, the parties shall submit the dispute to mediation in accordance with Paragraph 12.3.

12.3 MEDIATION If the dispute cannot be settled pursuant to Paragraph 12.2, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other dispute resolution procedures. Once one party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Such mediation shall occur in Clatsop County, Oregon and the mediation fees and mediator's expenses shall be shared equally by the parties. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the party's representative to the other party's representative and the mediator.

12.4 SUIT OR ACTION. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

ARTICLE 13 – MISCELLANEOUS PROVISIONS

13.1 POWER OF ENGINEER Unless the City of Warrenton notifies the Contractor otherwise in writing, the Engineer is not authorized by the City of Warrenton to make any decision concerning administration of the Contract that will increase or decrease the Contract Time or the Contract Sum. Any "decisions" of the Engineer under the Contract Documents that affect material rights and obligations of the Contractor or the City of Warrenton that are beyond the scope of authority delegated to the Engineer by the City of Warrenton will be deemed "recommendations" or "advice" by the Engineer that are subject to approval of the City of Warrenton. The preceding sentence will apply to every provision in the Contract Documents regardless of whether there is a discrete supplementary provision modifying the provision.

Buy American Requirement

13.1.1 The Contractor acknowledges to and for the benefit of the City of Warrenton ("Purchaser") and the State of Oregon (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) (or are being made available for a project being funded with monies made available by the federal ARRA) and such law contains provisions commonly known as "Buy American" that require all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contactor pursuant to this Agreement. The

Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or documentation of a waiver and information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or the Environmental Protection Agency, as the case may be, or any damages or indemnification owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Contractor will incorporate Buy American requirements in substantially the form of the above paragraph in all subcontracts.

13.2 Contractor, where applicable, shall comply with the requirements of all applicable laws, rules, regulations and orders of any government authority (as they may be amended from time to time) that relate to this Project funded under the Safe Drinking Water Revolving Loan Fund. These requirements are identified and contained in the Financial Assistance Award Contract between Oregon Business Development Department and the City of Warrenton, dated September 28, 2009, generally under, but not limited to, Section 6.A., Compliance with Laws; Section 6.B., Disadvantaged Business Enterprises; and Section 6.O., ARRA Representations, Warranties and Covenants. Among these requirements are:

13.2.1 Conflict of Interest

Contractor shall comply with State conflict of interest requirements for public contracts.

13.2.2 Disadvantaged Business Enterprises

Contractor will ensure a good faith implementation of the six good faith efforts for procurement from all types of Disadvantaged Business Enterprises ("DBE"). Recipient's solicitation of all contractors providing construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract must comply with Appendix G of the SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Loan Fund & Drinking Water Protection Loan Fund. Contractor will ensure

that each procurement contract (prime plus all subcontractor contracts) includes the following term and condition:

“Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

13.2.3 Data Universal Numbering System (DUNS) number must be obtained

(<http://fedgov.dnb.com/webform/> or call 1-866-705-5711.)

13.2.4 Central Contractor Registry (CCR) number must be obtained

<http://www.ccr.gov>

13.2.5 Contract Provision regarding Reporting

Contractor is required to comply with the reporting requirements established for ARRA funding.

13.2.6 Whistleblowers

Contractor receiving ARRA funds shall under or through this contract to, post notice of the rights and remedies provided to whistleblowers under Section 1553 of ARRA.

13.2.7 Future ARRA Requirements

Contractor acknowledges that as of the Effective Date of this Contract the federal government has not issued all of the ARRA requirements, especially including reporting requirements that may be applicable to Contractor under this Contract. Contractor agrees that it will comply with all such future requirements provided by State.

13.2.8 Inspection; Information

Contractor shall permit State, the federal government and any party designated by State (“Inspecting Party”) to examine, visit and inspect, at any and all reasonable time, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as Inspecting Party may reasonably require in connection therewith.

Contractor agrees to allow, and to cause its subcontractors to allow, any appropriate representative of the EPA Office of Inspector General to (1) examine any records of Contractor or its subcontractors that pertain to, and involve transactions relating to, the

Project and the Loan, and (2) interview any officer or employee of the Contractor, or its subcontractors, regarding such transaction.

13.3 APPLICABLE LAWS The parties will comply with all applicable Laws regardless of whether the laws are cited or stated verbatim in the Contract Documents. In addition, the following provisions of Oregon Revised Statutes shall be adhered to:

If the Contractor is a non-resident bidder, the Contractor shall submit reports to the Oregon Department of Revenue as required by ORS 279A.120.

13.3.1 Pursuant to ORS 279C.505, the Contractor shall: (a) make payment promptly, as due, to all persons providing to the Contractor labor or material for the work; (b) pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractor incurred in the performance of the Work; (c) not permit any lien or claim to be filed or prosecuted against the City of Warrenton on account of any labor or Material furnished; and (d) pay to the Department of Revenue all sums withheld from employees' wages pursuant to ORS 316.167.

13.3.2 Pursuant to ORS 279C.515, if the Contractor fails, neglects, or refuses to make prompt payment of any Third-Party Claim for Work furnished to the Contractor or a Subcontractor by any person in connection with this Contract when due, the City of Warrenton may pay such Third-Party Claim to the person furnishing the Work and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The City of Warrenton may make payments by check or warrant naming both the Contractor and the person or entity entitled to payment under ORS 279C.515. The payment of a Third-Party Claim in the manner authorized in this subsection will not relieve the Contractor or the Contractor's surety from the Contractor's obligations with respect to any unpaid Third-Party Claims.

13.3.3 Pursuant to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person or entity that furnishes medical, surgical or hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

13.3.4 Pursuant to ORS 279C.540, unless the Contractor is a party to a valid, existing collective bargaining agreement with a labor organization which provides otherwise, no person shall be employed for the Work for more than 10 hours any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires and in such cases, except for persons who provide personal services as defined in ORS 279A.055, the employee shall be paid at least time-and-a-half pay for: (a) all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; (b) all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (c) all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

13.3.5 The Contractor and all Subcontractors who perform construction work must be registered with the Construction Contractors Board pursuant to ORS 701.035 to 701.055.

13.3.6 Any landscape contractor who performs work described in ORS 671.502(2) must hold a valid landscape contractor's license issued under ORS 671.710.

13.3.7 Pursuant to ORS 279C.510, the Contractor shall salvage or recycle construction and demolition debris if feasible and cost-effective.

13.3.8 Except as provided in the Specifications, the Contractor shall use recycled Materials to the extent feasible.

13.3.9 The Contractor shall not provide or offer to provide, in connection with this Contract, any appreciable pecuniary or material benefit to any officer or employee of the City of Warrenton in violation of ORS Chapter 244.

13.4 PAYMENT OF PREVAILING WAGES

The **Contractor** shall pay the wage rate and fringe benefits listed in the publication "General wage Determinations Issued Under the Davis-Bacon and Related Acts" from the U.S. Secretary of Labor, unless a higher wage and fringe benefits are required according to ORS 279C.838, as provided in the Oregon Bureau of Labor and Industries (BOLI) publication, titled, "Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the State PWR and federal Davis-Bacon Act", which are incorporated herein by reference. See the Project Wage Rates page included with the Special Provisions for the web site address where these publications are available.

For Federal-Aid projects, the **Contractor** shall comply with the provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts", and ORS 279C.520 (see (a) of this Subsection) and ORS 279C.540

With regard to overtime pay, the **Contractor** shall comply with the provision affording the greatest compensation.

13.4.1 Pursuant to ORS 279C.825, the City shall pay a fee to the Bureau of Labor and Industries equal to one-tenth of one percent of the Contract Price, but not less than \$100 nor more than \$5,000 regardless of the Contract Price. The fee shall be paid on or before the first Progress Payment or 60 days from the date the Work begins, whichever comes first.

13.4.2 The Contractor is urged to review the applicable statutes prior to commencement of the Work. This requirement to pay the prevailing wage rate will apply to all workers employed on the project by the prime Contractor, Subcontractors, or other person doing or contracting to do the whole or any part of the Work required for the project. The Contractor shall incorporate this provision in all Subcontracts for the Work.

13.4.3 The Contractor and any Subcontractor engaged in the Work shall keep the prevailing wage rates for the Work posted in a conspicuous and accessible place in or about the Work Site.

13.4.4 The Contractor or the Contractor's surety and every Subcontractor or the Subcontractor's surety shall file certified statements with the City of Warrenton in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed for performance of the work and further certifying that no worker employed on the Work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wages specific in the Contract Documents. A true copy of each certified statement must also be filed with the Commissioner of the Bureau of Labor and Industries. The certified statement must comply with

all applicable provisions of ORS 279C.845. Certified statements must be submitted as follows: If the duration of the project will exceed 90 days (from the date of award of contract to the date of completion of work under the contract) the statements must be submitted once before the first payment is made, and at 90-day intervals thereafter, and once before final payment is made.

13.4.5 Statutory Public Works Bond. The Contractor shall have a Public Works bond on file with the Construction Contractors Board before starting work on the project, unless exempt under the terms of ORS 279C.836. Contractor shall include a provision in every subcontract requiring the subcontractor to have a public works bond on file with the Construction Contractors Board before starting work on the project, unless exempt under the terms of ORS 279C.836.

13.4.6 Certified Payroll Reports. The Contractor or Contractor's surety and every subcontractor or subcontractor's surety shall file certified payroll reports with the City in conformance with ORS 279C.845. The City is required to withhold 25% of amounts earned by Contractors if certified payroll reports are not submitted as required.

13.4.7 There is no representation on the part of the City of Warrenton or the Engineer that labor can be obtained at the hourly rates required by this contract. It is the responsibility of the Contractor to inform itself as to local labor conditions and perspective changes or adjustments of wage rates. No increase in the Contract Sum will be allowed or authorized on account of a payment of wages rates in excess of the prevailing wage rates.

13.4.8 Each Subcontract shall include the provisions of this section and wages rates applicable to the Work performed under the Subcontract.

13.5 ASSIGNMENT Neither the City of Warrenton nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both parties, their partners, successors, assigns and legal representatives. Neither party to this Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other party.

13.6 ENTIRE AGREEMENT This Agreement is intended by the parties to be the final expression of their agreement and is the complete and exclusive statement of the terms thereof notwithstanding any representation, statements, or agreements to the contrary heretofore made.

13.7 MODIFICATIONS Any modification of this Agreement or additional obligation assumed by any party to this Agreement in connection with this Agreement shall be binding only if evidenced in a writing signed by the party or an authorized representative of the party against whom or which the modification is asserted.

13.8 SEVERABILITY If a term, condition, or provision of this Agreement or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this Agreement shall be unaffected and shall remain valid and fully enforceable.

13.9 NONWAIVER Any right, power, or remedy provided under this Agreement to any party hereto shall be cumulative and in addition to any other right, power, or remedy provided under this Agreement or now or hereafter existing at law or in equity. No course of dealing between or among the parties hereto or any delay or failure on the part of any party in exercising any rights hereunder or at law or in

equity shall operate as a waiver of any rights of such party, except to the extent expressly waived in writing by such party.

13.10 FUTURE ASSURANCES Each of the parties shall, upon request of any other party, execute and deliver such additional documents as may be necessary or convenient for the purpose of evidencing or perfecting any rights or interests arising under this Agreement.

13.11 THIRD PARTIES Nothing in this Agreement, whether express or implied, is intended to offer or confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective agents, officers, sureties, etc., nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any rights of subrogation or action over against any party to this Agreement.

13.12 SUCCESSORS AND ASSIGNS This Agreement shall inure to the benefit of and shall be binding upon each of the parties and their successors, assigns, personal representatives, heirs, and beneficiaries, as the case may be.

13.13 NUMBER, HEADINGS, AND GENDER In this Agreement, the singular shall include the plural and the plural the singular. The masculine and neuter shall include the masculine, feminine, and neuter, as the context requires. The section and paragraph headings contained in this Agreement are intended solely for convenience of reference and shall in no way limit or expand the meaning or interpretation of this Agreement. In the interest of brevity, this Agreement may omit modifying terms such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

13.14 SOURCE DOCUMENT A substantial portion of the language of this Agreement is based upon AGC Document No. 200 – Standard Form of Agreement and General Conditions Between Owner and Contractor Copyright 2000, The Associated General Contractors of America. All rights reserved. This language is reproduced here under the grant of a license provided to subscribers of the AGC DocuBuilder Contract Document Software.

13.15 COUNTERPARTS This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

13.16 RIGHTS AND REMEDIES The parties rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

13.17 CHOICE OF LAW It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement, and all suits, actions, and proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Oregon (without regard to the law of conflict of laws), and that, in any suit, action, or proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Oregon shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any suit, action, or proceeding may be instituted.

13.18 VENUE If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the federal or state courts in Clatsop County, Oregon.

13.19 PRECEDENCE In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to Subparagraph 14.1.2 the drawings, specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the City of Warrenton; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency.

ARTICLE 14 – CONTRACT DOCUMENTS

14.1 INTERPRETATION OF CONTRACT DOCUMENTS

14.1.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Contractor shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

14.1.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the City of Warrenton for clarification. The City of Warrenton's clarifications are final and binding on all parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 6 and 7 or dispute resolution in accordance with Article 12.

14.1.3 Where figures are given, they shall be preferred to scaled dimensions.

14.1.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

ARTICLE 15 – CERTIFICATION OF COMPLIANCE WITH TAX LAWS

As required by ORS 305.385(6), Contractor certifies under penalty of perjury that the Contractor, to the best of Contractor's knowledge, is not in violation of any of the tax laws described in ORS 305.380(4).

This Agreement is entered into as of the date entered in Article 1

THE CITY OF WARRENTON

CONTRACTOR

By: _____

By: _____

Name: _____

Name: _____

Title: Mayor

Title: _____

Certification Regarding Lobbying

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed (Contractor)

Title / Firm

Date

FORM OF CERTIFICATION OF COMPLIANCE WITH SECTION 1605 OF THE ARRA

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the Purchaser’s bid solicitation and Section 1605 of the federal American Recovery and Reinvestment Act of 2009 (ARRA), the Bidder certifies that this bid reflects the Bidder’s best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
2. Verification of U.S. Production: The Bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Purchaser of the U.S. production of each component so identified.
3. Documentation Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any component or components that are not American-made and are so identified in this bid, the Bidder has included in or attached to this bid one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;
 - b. Verifiable documentation sufficient to the Purchaser, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.
4. Information and Detailed Justification Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any such component or components that are not so available, the Bidder has also provided in or attached to this bid information, including but not limited to the verifiable documentation and a full description of the bidder’s efforts to secure any such American-made component or components, that the Bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under Section 1605 with respect to such component or components. The Bidder further agrees that, if this bid is accepted, it will assist the Purchaser in amending, supplementing, or further supporting such information as required by the Purchaser to request and, as applicable, implement the terms of a waiver with respect to any such components.

Signed

Date