

City of John Day  
(Greenhouse Design-Build Construction Project)

**REQUEST FOR PROPOSALS**

**PROPOSALS DUE:**

**Tuesday, April 10, 2018  
5:00 p.m. at John Day City Hall  
450 E. Main Street, John Day, Oregon 97845**

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**City of John Day**  
**Notice of Request for Proposals – Greenhouse Design-Build Construction Project**

City of John Day (“City”) is requesting competitive proposals from qualified and experienced contractors to provide design-build services for an approximately 5,000 to 6,000 square foot greenhouse to be located at 60835 Hwy 26, John Day, Oregon 97845. The work includes, without limitation, a design-build contract for a custom greenhouse and a project budget not to exceed \$400,000.

Sealed proposals must be received by Nick Green, City Manager, at the John Day City Hall, 450 East Main Street, John Day, Oregon 97845, no later than **5:00 p.m., Pacific Time, on Tuesday, April 10, 2018** (the “Closing”), at which time and place the will be proposals opened and the names of the proposers read. No proposal will be accepted after the Closing. Each proposal must be submitted in a sealed envelope and marked: City of John Day Greenhouse Construction Project. Proposals may be withdrawn at any time, prior to opening, in accordance with the Request for Proposals (“RFP”).

Addenda, proposal documents, and notifications of proposal results for this project may be viewed and/or acquired at John Day City Hall, 450 East Main Street, John Day, Oregon. Addenda, proposal documents, and notifications may also be viewed, printed, and/or downloaded at City’s website <http://www.cityofjohnday.com/>. Proposers are responsible for checking with City for the issuance of any addenda prior to submitting a bid. Each contractor submitting a proposal is responsible for all addenda/changes to the documents and will be considered non-responsive if the proposal does not reflect those addenda/changes.

Technical questions regarding the project, or requests for clarification or changes to the project, or protests, must be in writing and directed to:

Nick Green,  
City Manager, City of John Day  
450 East Main Street,  
John Day, Oregon 97845  
Phone (541) 575-0028

Technical questions, requests for clarification or change, and/or protests of the RFP, must be received by **5:00 p.m., Pacific Time, on Tuesday, April 3, 2018.**

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

The project is a public works project subject to the state prevailing wage rates under ORS 279C.800 to 279C.870, the federal prevailing wage rates under the Davis Bacon Act (40 U.S.C. 3141 et seq.), or both. No proposal will be received or considered unless the proposal contains a statement that the proposer agrees to be bound by and will comply with ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148, as applicable. The prevailing wage rates will also be included in the contract specifications. The wage rates may also be found at [http://egove.oregon.gov/BOLI/WHDPWR/pwr\\_state.shtml](http://egove.oregon.gov/BOLI/WHDPWR/pwr_state.shtml).

No proposal will be received or considered unless the proposer is licensed by the Construction Contractors Board as required by ORS 701.055, or by the State Landscape Contractors Board, as applicable, as required by ORS 671.530. This work does not require a licensed asbestos abatement contractor. If the proposer is not an Oregon-licensed design professional (e.g., architect or engineer), the proposer must disclose in its proposal that it is not an Oregon-licensed and/or certified design professional and identify the Oregon-licensed design professional(s) who will provide the design services for the work. The successful proposer will file with City, at the time of execution of the contract, a Performance Bond and a Payment Bond, each in an amount not less than the contract price.

City may reject any proposal not in compliance with all prescribed public contracting procedures and requirements, including, without limitation, the requirement to demonstrate each proposer's responsibility under ORS 279C.375(3)(b), and may reject for good cause all proposals upon a finding by City that it is in the public interest to do so.

**City of John Day**  
**Request for Proposals – Greenhouse Design-Build Construction Project**

This Request for Proposals (“RFP”) consists of the following sections:

- A. Background; Project Overview; Budget.
- B. Conditions of Work.
- C. Project Description; Scope of Work.
- D. Proposal Documents.
- E. Instructions to Proposers.
- F. Proposal Submission Requirements.
- G. Proposal Evaluation.
- H. Requests for Change; Protests; Addenda.
- I. Anticipated Schedule.

A. Background; Project Overview; Budget.

1. Background.

The City of John Day (“City”) is a historic timber community located in the mountains of eastern Oregon. City’s population grew rapidly in the 1940s and 1950s, doubling in size in the postwar years. City grew again from the 1970s to the 1990s as timber boomed and global demand for raw materials intensified, but increased regulation and conflicting priorities for land use ultimately led to three decades of population decline that continues today.

To address the need for new commercial and industrial growth, On May 9, 2017 City announced its intention to create an 80-acre innovation center in the heart of John Day. A former mill property known as Oregon Pine will be reclaimed and revitalized. In the future, it will become the John Day Rural Innovation Gateway, a location that integrates community, technology, education and commerce with a focus on rural innovation and rural value creation.

The complex is bisected by the John Day River, the third longest free-flowing river in the contiguous United States, and is surrounded by over two million acres of national forest and public lands in Grant County, ideal for hunting, fishing, outdoor recreation and business retreats.

The Innovation Gateway will house City's new wastewater treatment plant, a proposed water reclamation facility that will reclaim up to 80 million gallons of nutrient-rich effluent annually. Reclaimed water will be used to create botanical gardens and greenways along the John Day River, and for hydroponic cash crops grown in commercial-scale greenhouses.

City is currently accepting proposals (each a “Proposal” collectively the “Proposals”) from contractors to provide design and construction services for the first multipurpose greenhouse with hydroponic farming systems (the “Project”). The Project will generate roughly 1,200 pounds of fresh produce per week with multiple crop types (leafy greens, fruits and herbs), resulting in just over thirty-one tons of produce per year to be purchased by local grocers. The Project will also function as an academic research facility for secondary and post-secondary students and various community supported agriculture initiatives.

The Project will be owned and operated by City as a division of City's Public Works Department. Assets from the City Sewer Fund (reclaimed water) will become inputs to the greenhouse, and revenue (sales) from the greenhouse will accrue to the Sewer Fund to offset its operating expenditures and ultimately the cost of wastewater treatment – all while delivering fresh, locally grown produce for City residents and academic research opportunities for City students.

2. The greenhouse will be located at 60835 Hwy 26, John Day, Oregon 97845 (13S31E22D Willamette Meridian, Tax lot 300) (see Figure 1). The greenhouse will be sited on the southeast quadrant of the property within a 2.17-acre area as shown in Figure 2 (below). City is providing an initial layout for reference, but each Proposal must include a conceptual design that meets City's unique project requirements and production needs, and is also energy efficient.

Figure 1:

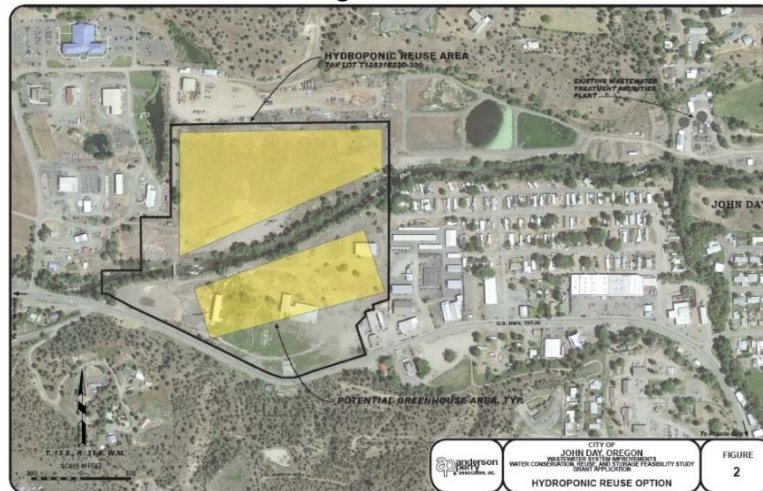


Figure 2:



3. City's anticipated total current budget for the Project is approximately \$400,000. This budget includes engineering, structural materials, glazing, farming systems, and construction/installation of the greenhouse and associated growing systems, including, without limitation, hydroponic grow systems, grow lights, mechanical systems, HVAC, and fertigation and peripheral equipment. Electricity and water will be installed on site by City. As discussed in more detail below, City will perform site preparation and other activities upon completion of the design phase and prior to the installation/construction of the greenhouse.

4. After the award of a contract, the successful contractor (the "Design-Build Contractor") and City will establish a work schedule consistent with this RFP. It is anticipated that City will execute the design-build contract in April 2018 (the "Contract") and that design work will be completed in May 2018. Site preparation for and construction of the greenhouse is estimated to commence in July 2018 and be completed by September 2018. City anticipates a first harvest of lettuce (or similar crop) by October 2018 and tomato by April 2019.

B. Conditions of Work.

1. Each contractor responding to this RFP (each a "Proposer", collectively the "Proposers") must inform him/herself of the conditions relating to the execution of the work, and make him/herself thoroughly familiar with all the Contract documents. Failure to do so will not relieve the successful Proposer of his/her obligation to enter into a contract and complete the contemplated work in strict accordance with the Contract documents.

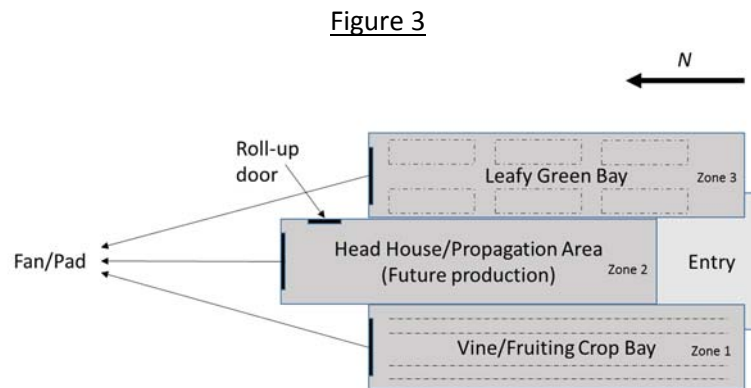
2. Before submitting a Proposal in response to this RFP, each Proposer should arrive at a clear understanding of the conditions under which the work is to be done. By submitting a Proposal, the Proposer represents and warrants that the Proposer has had the opportunity to compare the site with the Proposal Documents (as defined below) and has satisfied him/herself as to the conditions of the site, existing construction, subsurface conditions, the actual elevations, and any other conditions affecting the performance of the work.

3. Each Proposer must inform him/herself of all federal, state, and local laws, rules, regulations, and/or ordinances relevant to the execution of the work, the employment of labor, protection of public health, access to the work, and other requirements related to the Project

C. Project Description; Scope of Work. The Project and work to be performed under this RFP include, without limitation, providing preliminary engineering, final design documents, construction (including, without limitation, all material, labor, and equipment), installation, and testing services necessary for the construction and installation of the greenhouse (collectively, the "Work"). The Work will be divided into two phases: "Phase 1," engineering and design; and "Phase 2," construction and administration. Phase 2 is contingent upon the satisfactory completion of Phase 1 work. The scope of work outlined below is provided as a general guide and is not intended to be a comprehensive list of all work necessary to complete the Project. Proposers may suggest a modified scope of work as a part of their Proposal.

1. Design – Phase 1. The successful Proposer will provide all design and engineering necessary for the construction of the greenhouse in accordance with the construction requirements listed below. The greenhouse will include three different zones (see example depiction in Figure 3). Zone 1 will be designated for growing vine and fruiting crops. Zone 2 will be used as a headhouse (i.e.,

cold storage, packaging), propagation/germination area, and research area. Zone 2 may also be used for crop production in the future. Therefore, Zone 2 must meet the same standards as the other zones. Zone 3 will be designated for leafy greens and herbs grown in shallow growing ponds. Both Zone 1 and Zone 3 will have doors only into Zone 2 in order to minimize contamination between Zones 1 and 3.



Note: Figure 3 is intended for illustrative purposes only. City expects that each Proposer will prepare design concepts to meet the broad range of potential uses while having an attractive appearance so as to encourage residents and visitors to visit the site and learn more.

2. Approval of Design Work; Site Preparation. Commencement of Phase 2, the construction work, will be contingent upon the Design-Build Contractor's satisfactory completion of the design work, as determined by City. City will review and approve the Design-Build Contractor's design work, including, without limitation, applicable plans and specifications prior to authorizing the commencement of Phase 2. In addition, upon satisfactory completion of the design work, City will perform site preparation, including, without limitation, installing concrete footings, and providing electrical, water, and sewer utilities and infrastructure to the site. City will provide temporary power to the site during construction. City will provide the Design-Build Contractor with a notice to proceed upon City's completion of the site preparation.

3. Construction – Phase 2. The construction work to be performed by the Design-Build Contractor will generally require installation of a greenhouse structure (including, without limitation, associated interior work, interior utility service components) and fertigation system, and generally comply with the specifications identified below.

a. Greenhouse Structure. The greenhouse structure will need to be designed to meet local building code which include, without limitation, the following: (a) ground snow load- 25 psf; (b) basic wind load- 110 mph Exposure "B"; and (c) building code- IBC 2015 / ASCE 7-98. Production needs include, without limitation, at least 750 fruiting and vine crop plant spaces and at least three ponds consisting of at least 1,000 square feet of shallow water ponds for leafy greens and herbs.

b. Greenhouse Glazing. For the roof covering, City anticipates 8mm twin wall polycarbonate. If a Proposer has other recommendations, such as corrugated polycarbonate or 4mm tempered glass, please provide optional pricing and reasoning for the alternative. For the side wall and



end wall covering City anticipates using 8mm twin wall polycarbonate. Should a Proposer recommend a different material, please provide option pricing and reasoning in the Proposal. For the partition walls between the bays City anticipates 8mm polycarbonate or better. Two large windows will be installed on the south end of the growing bays, in the entry area, to act as an external viewing area and capitalize on agritourism.

c. Doors. City anticipates that exterior doors will include the following: (1) one 96"x96" manual roll up door; (2) one 72"x84" French door; and (3) one 36"x84" man door for the head house. City anticipates that the French door will be installed on the south wall of the head house and the roll up door and man door will be located on the north end. Interior doors will include two 36"x84" man doors which will go in the head house for access into the growing areas. Notwithstanding the foregoing, City expects that the final design, including, without limitation, door specifications, will accommodate functional ingress and egress into the Proposer's unique design proposal.

d. Horizontal Airflow Fans. Per vendor specification.

e. Vertical Airflow Fans. Per vendor specification

f. Insect Netting. Per vendor specification

g. Evaporative Cooling System. Evaporative fan and pad cooling system.

h. Hydronic Radiant Heat System. For heating City desires to use an overhead/perimeter heating system with on demand hot water heaters, rather than a boiler. The hot water heaters will need to be fueled by liquid propane.

i. Propane Estimates. The Design-Build Contractor will work with local propane company, Ed Staub & Sons, in order to estimate propane usage and install appropriately-sized tank.

j. Electricity Estimates. Identify in each Proposal the electricity consumption estimates for all equipment. Single phase primary will be on site.

k. Shade System and Energy Retention System. Per vendor specification.

l. Ventilation System. Automated exhaust fans with shutters and variable speed motors.

m. CO2 Enrichment System. Either automated system or CO2 burners.

n. Grow Systems. For the fruiting/vine crops zone, City anticipates using a bato-bucket/cultivation gutter type system with the ability to grow a minimum of 750 plants. The leafy greens/herbs zone should have a minimum of 1,000 square feet of shallow water ponds. City anticipates using multiple ponds in order to grow different varieties of each crop. Ponds should allow for walk ways throughout the greenhouse. Proposers must specify necessary components for an active shallow-water growing system and whether air bubblers, water chillers, and circulation pumps are necessary.

o. Production Estimates. Provide yield estimates for the grow systems. In the first year, City anticipates growing tomatoes, cucumbers, and peppers in one bay; lettuce and fresh herbs will be grown in the other.

p. Foundation. City anticipates a perimeter foundation around the entire greenhouse. There should be at least one walkway in each growing zone and a full slab in the headhouse. As discussed above, City will perform all site preparation work, including, without limitation, installing the foundation. However, the foundation and walkway designs will be included in the design of the greenhouse and addressed in each Proposal.

q. Propagation and Germination. Ebb and flow benches will be used for propagation and germination. Provide optional pricing for other options, such as a germination chamber.

r. Fertigation System. Automated Fertigation system.

s. Day Storage Tank. Per vendor recommendation. Address whether water storage capability is needed.

t. Plumbing. City water will be on site. Plumbing for the fertigation, growing and heating systems will need to be engineered and installed. There will need to be at least one hose valve in each growing bay and headhouse. The headhouse will also need a commercial grade sink for sanitation and harvest; sink size will need to be sufficient for greenhouse sanitation and production yields.

u. Environmental Controls. Computer based software integrated monitoring and controls for the heating and cooling, HAF/VAF, weather station, grow lights, and irrigation system. The software should allow remote monitoring and controlling of temperature, humidity, CO2, PH, EC, and water temperature. Possible integration of cameras for remote viewing and crop monitoring is being considered.

v. Technical Assistance. Per vendor specification.

w. Warranty. City requires at least one year of warranty on the greenhouse structure provided by the vendor and manufactures warranty on equipment and supplies from other companies.

x. Installation. Installation, provided by a certified greenhouse contractor or vendor, must be addressed in the Proposal.

4. Additional Considerations.

a. Walk-In Refrigerator. Depending on vendor size recommendation, a commercial cooler or walk-in refrigerator may be placed in the headhouse, the Public Works Shop, or outside the greenhouse. Proposers may include a range (by quality and pricing) of options for a commercial cooler or walk-in refrigerator. Proposers must include refrigerator options as a separate item as City will not include the price of refrigerators as a part of the price evaluation criteria.

b. Grow Lights. City anticipates using grow lights in the leafy greens and herbs zone although we believe we could also install them in the fruiting and vine crop zone. Provide option pricing for both zones. Proposers may include a range (by quality and pricing) of options for grow lights. Proposers must include grow-light options as a separate item(s) as City will not include the price of grow lights as a part of the pricing evaluation criterion.

c. Entryway. (Optional). Proposal may address, in the design concept, a design for the entryway frontage and an access and/or entryway path. City will create an access and/or entryway path in the future and will provide the labor and materials to construct the entryway and frontage. This option does not require pricing and will not be scored in the proposal evaluation.

D. Proposal Documents. The proposal documents include the Notice of Request for Proposals, this RFP, the Proposal form, Contract, General Conditions, Performance Bond, Payment Bond, and any addenda issued prior to the Closing (collectively, the "Proposal Documents"). All requirements and obligations of the Proposal Documents are hereby incorporated by reference into the Contract and are binding on the successful Proposer upon award of the Contract. Each Proposer assumes full responsibility for errors, omissions, and/or misinterpretations resulting from the use of incomplete sets of Proposal Documents. The Proposal Documents are provided to Proposers only for the purpose of obtaining Proposals on the work and do not confer a license or grant for any other use.

E. Instructions to Proposers.

1. Alternative Contracting Method. The design-build project delivery method is an alternative contracting method. Pursuant to ORS 279C.335, City held a public hearing on February 13, 2018 and the use of this alternative contracting method was subsequently approved by the Local Contract Review Board (i.e., city council).

2. No Pre-Proposal Meeting. City will not hold a pre-Proposal meeting. Proposers with non-technical, pre-Proposal inquiries may contact Nick Green at (541) 575-0028 or by email at [green@grantcounty-or.gov](mailto:green@grantcounty-or.gov), Aaron Lieuallen at (541) 575-0028 or by email at [lieuallen@grantcounty-or.gov](mailto:lieuallen@grantcounty-or.gov), and/or Matthew Manitsas at (541) 575-0028 or by email at [manitsasm@grantcounty-or.gov](mailto:manitsasm@grantcounty-or.gov).

3. Additional Requirements.

a. The Design-Build Contractor will be required to obtain a City business license and maintain active business license status while conducting work within the City. The Design-Build Contractor will have, obtain, and maintain all applicable permits and licenses required by Grant County, City, and the State of Oregon, pertaining to the Project.

b. This RFP does not obligate City to award a contract and/or to procure the services described herein. Proposers responding to this RFP do so at their own expense and City is not responsible for any costs and/or expenses associated with the preparation and/or submission of any Proposal.

c. Failure of City to insist on strict performance will not constitute a waiver of any of the provisions of this RFP or the resulting Contract, or of any other default of the Proposer.

4. Confidential Information.

a. Any Proposal submitted may be subject to public information requests as permitted by Oregon Public Records Law. City will attempt to maintain the confidentiality of materials marked "Confidential" to the extent required under Oregon Public Records Law. If it is necessary to submit trade secrets and/or other confidential information in order to comply with the terms and conditions of this RFP, each Proposer must label any information that it desires to protect from disclosure to third parties as a trade secret under ORS 192.501(2) and/or confidential under ORS 192.501(4) with the following: "This material constitutes a trade secret under ORS 192.501(2) [and/or confidential information under ORS 192.501(4)] and is not to be disclosed except as required by law." Each page containing the trade secret and/or other confidential information must be so marked.

b. City will take reasonable measures to hold in confidence all such labeled information, but in no event will City be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise, and will also be immune from liability for disclosure or release of information as provided under ORS 646.473(3).

c. In submitting a Proposal, each Proposer agrees that City may (a) reveal any trade secret and/or other confidential materials contained in the Proposal to City staff and to any City consultant, and (b) post the Proposal on City's intranet or internal network for purposes related to its evaluation and ranking. By responding to this RFP, each Proposer agrees to defend, indemnify, and hold harmless City each City officer, employee, representative, and agent from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Proposer has designated as a trade secret and/or as confidential information. Any Proposer that designates its entire Proposal as a trade secret may be disqualified.

5. BOLI/Prevailing Wage Requirements. In performing construction work on the Project, the Design-Build Contractor and each of its subcontractors will abide by the latest determination of the minimum wage rates as scheduled and published for this region by the U.S. Department of Labor and the Oregon Bureau of Labor and Industries and will abide by all amendments, decisions, and related regulations of these agencies, including, without limitation, the following:

a. The Design-Build Contractor is required to pay workers not less than prevailing wage rates for Region #12 throughout the contract period. OAR 839-025-0020(5)(a).

b. If the Design-Build Contractor fails to pay for labor and services City may pay and withhold these amounts from payments to the Design-Build Contractor.

c. The Design-Build Contractor is required to pay weekly, holiday (including weekends), and daily overtime as required.

d. The existing 'prevailing rate of wage' as published by the Oregon Bureau of Labor and Industries are the January 1, 2018 Prevailing Wage Rates for Public Works Contracts in Oregon, which rates are incorporated herein and may be accessed at the following website: [http://www.oregon.gov/boli/WHDPWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHDPWR/Pages/pwr_state.aspx).

6. Performance, Payment, and Public Works Bonds.

a. Performance and Payment Bonds. Pursuant to ORS 279C.380, the Design-Build Contractor will, at the time of execution of the Contract, furnish bonds covering the faithful performance of the Contract (the "Performance Bond") and payment of obligations arising thereunder (the "Payment Bond"), each of not less than the Contract price, on the forms furnished by City (or acceptable to City). The Performance Bond will include the preparation and completion of design and related personal services specified in the Contract. Bonds must be obtained through a company that is authorized and licensed by the Oregon Insurance Commissioner. The bonding company must be listed on the most current US Government Treasury list, Department Circular 570 or approved prior to Proposal submission by City. The cost of the Bond will be included in the contract price. In addition, the Design-Build Contractor will submit certificates evidencing insurance coverage required by the Contract naming City as an additional insured.

b. Public Works Bond. Contractors who work on public works projects, subject to the prevailing wage law, are required to file a \$30,000 public works bond to be used exclusively for unpaid wages determined to be due by BOLI (each a "Public Works Bond"). Proof of this bond must be provided to City prior to Contract signing, after the award of this RFP. The Design-Build Contractor is required to verify that each subcontractor has filed a Public Works Bond before permitting a subcontractor to start work on the Project. Certain exemptions from the bond requirements exist for certified disadvantaged, minority, women or emerging small business enterprises. It is the Design-Build Contractor's responsibility to notify City if an exemption applies to the Design-Build Contractor (or a subcontractor). The Public Works Bond will be furnished by a surety company authorized to do business in Oregon

7. Foreign Contractor. If the Design-Build Contractor is a foreign contractor, the Design-Build Contractor will promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the contract price, terms of payment, contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report will be forwarded to City. City will satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

8. Certified Payroll Withholding. If the Design-Build Contractor does not file certified payroll as required (at least once per month), City will withhold 25% of amounts due to the Design-Build Contractor, in addition to any other required retainage. If a first-tier subcontract does not file certified payroll reports as required, the prime contractor will withhold 25% of amounts due the first-tier subcontractor. Once certified payroll reports are submitted, City or prime contractor are to pay amounts withheld within fourteen (14) days. City is not required to verify the accuracy of the contents of the certified payroll reports.

9. Public Contracting Provisions. The Design-Build Contractor will understand and agree to comply with all applicable public contracting provisions required by Oregon law, including, without limitation, the provisions contained in OAR 137-049-0200(1)(c).

10. Insurance.

a. The Design-Build Contractor will be responsible to City for acts and omissions of the Design-Build Contractor's employees, subcontractors and their agents and employees, and other

persons or entities, including, without limitation, the Design-Build Contractor's architect/engineer and other design professionals, performing any portion of Contractor's obligations under the Contract Documents. In addition to any other insurance required under the Contract, Design-Build Contractor will require that the Design-Build Contractor's architect/engineer and other design professionals maintain professional liability, errors and omissions insurance covering any damages caused by any negligent error, omission, or any other negligent act affecting the Project, its plans, drawings, specifications and/or project manual, and all related work product of the architect/engineer. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional liability insurance to be will have a combined single limit of not less than \$1,000,000 per claim, incident or occurrence, and a \$2,000,000 annual aggregate.

b. The Design-Build Contractor will furnish City with appropriate documentation evidencing the following insurance coverage (and provisions) Contractor is required to obtain under the Contract upon Contractor's execution of this Contract and at any other time requested by City:

<u>Kind</u>	<u>Limits</u>
1. Employer Insurance	
a. Workers' Compensation covering all employees who are engaged in any work under the contract	Statutory
b. Employers' Liability including bodily injury caused by disease	Statutory
2. Commercial General Liability*:	\$1,000,000 each person \$2,000,000 each occurrence
a. Bodily injury (including death) and Personal Injury	\$1,000,000 each accident
b. Property Damage and Broad Form Property Damage	\$1,000,000 aggregate
3. Comprehensive Automobile Liability including Owned, Non-owned and Hired Vehicles:	\$1,000,000 each person \$2,000,000 each occurrence
a. Bodily injury (including death)	\$1,000,000 each accident
b. Property damage	\$1,000,000 each accident

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

c. Each liability insurance policy required under the Contract will be in form and content satisfactory to City, will list City and City's Representatives as an additional insured(s), and will contain a

severability of interest clause. The insurance the Design-Build Contractor is required to obtain under the Contract may not be materially changed and/or cancelled without thirty (30) days' prior written notice to City. The Design-Build Contractor's insurance will be primary and any insurance carried by City will be excess and noncontributing. The Design-Build Contractor will furnish City with appropriate documentation (including additional insured endorsements) evidencing the insurance coverage (and provisions) Design-Build Contractor is required to obtain under the Contract upon the Design-Build Contractor's execution of the Contract and at any other time requested by City. If the Design-Build Contractor fails to maintain insurance as required under the Contract, City will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by the Design-Build Contractor immediately upon City's demand.

F. Proposal Submission Requirements.

1. Deadline. One original Proposal and five copies of the Proposal must be received by Nick Green, City Manager, at the John Day City Hall, 450 East Main Street, John Day, Oregon 97845, no later than **5:00 p.m., Pacific Time, on Tuesday, April 10, 2018** (the "Closing"), at which time and place the Proposals will be opened. No Proposal will be received after the Closing. (Contents of Proposals submitted will not be available for review until after City has executed a contract.) Each Proposal will be submitted in a sealed envelope and marked: City of John Day Greenhouse Construction Project. Proposers are solely responsible for ensuring that City receives their Proposal at the required delivery location prior to Closing. Misdelayed, late, and/or faxed submittals will be considered nonresponsive.

2. Modifications or Withdrawal of Proposal. Proposals may be withdrawn prior to the scheduled time for the opening of the Proposals either by telephone, written request, or in person. No Proposal may be withdrawn after the time scheduled for the opening of Proposals. Proposals may be modified only as allowed by OAR 137-049-0320.

3. Receipt, Opening, and Recording of Proposals. City will electronically or mechanically time-stamp or hand-mark each Proposal and any modification upon receipt. City's official Proposal time clock is located in City Hall. In the event a Proposal is too large to be time stamped a separate piece of paper will be time stamped and attached to the Proposal or the envelope will be marked by hand with the date and time received. City will not be responsible for the premature opening or failure to open a Proposal that is not properly addressed and/or identified. Proposals will be opened and recorded. The number of Proposals received and/or the contents of any Proposal will not be disclosed to the public until all Proposals have been evaluated, negotiations completed if required, and a recommendation for award has been published.

4. Proposal Format. Please submit written Proposals in compliance with the page limitation identified below (one page is considered to measure 8-1/2 x 11, with 11-point font size minimum) and labeled and organized in accordance with the following sections:

Contents

Introductory Letter and Required Content  
Project Schedule and Approach  
Professional Qualifications of Project Team  
Conceptual Plans  
Understanding of Requested Services  
Quality and Control Procedures

References  
Contract Price

Each Proposal must not exceed thirty (30) pages, excluding the signed Proposal form and any tabs or indexes.

5. Required Contents. Proposers must respond to each of the evaluation criterion in a clear and concise manner. Proposers should pay attention to specific requests for information. Each Proposer is solely responsible for accuracy and completeness of its Proposal. Proposals are to be limited to the number of pages indicated in the "Proposal Format" section above, but must include the content listed below. Concise Proposals without needless duplication are encouraged. The following minimum requirements as to the form and manner of submitting Proposals must be strictly observed; variance from these minimum required qualifications will result in rejection of the Proposal as unresponsive.

a. General. Each Proposer must sign its Proposal (on City's proposal form). Proposals made by corporations or partnerships must contain names and addresses of the principal officers or partners. If a corporation makes the Proposal, it must be signed by one of the corporation's principal officers. If made by a partnership or limited liability company, it must be signed by one of the partners or members, clearly indicating that he/she is signing as a partner or member of the firm. In the case of a Proposal made by a joint venture, each of the joint venturers must sign the Proposal in his/her individual capacity. Each blank in the Proposal must be completed. Each Proposal must be submitted in a separate sealed envelope, marked as specified in this RFP so as to indicate its contents and allow identification of the Proposer without opening, and in the hands of Nick Green, City Manager, City of John Day, at the time and place specified for Proposal opening. A Proposal will contain no modifications, deletions, exceptions, reservations or conditions, which in any way conflict with or purport to alter any provision contained in the Proposal Documents. Any such Proposals may be rejected pursuant to OAR 137-049-0440.

b. Introductory Letter. Include an introductory letter expressing interest in the Project. Include full name of firm, RFP contact person, email address, mailing address, and telephone number. The letter must be signed by person authorized to bind the firm.

c. Proof of Licensure and Bonding. Each Proposal must demonstrate that the Proposer (a) has all valid applicable Oregon licenses, including, without limitation, identification of the Oregon-licensed design professional(s) who will provide the design services for the work, and (b) is in good standing with the state.

d. Insurance. The Proposal must demonstrate the Proposer's compliance with the insurance requirements identified in this RFP.

6. Proposal Content. The Proposal form must be completed and submitted with the Proposal. In addition, Proposers must provide a reply to each of the items listed below. All proposals that meet the minimum required qualifications will be evaluated on the following criteria and must be in the same order as presented below:

a. Project Schedule and Approach (30 Points Possible). The Project schedule must comply with the dates established in this RFP. The Project schedule should clearly identify Project



milestones for design, submissions, permits, construction work, and other work completion. Describe the approach of the Proposer in providing the requested services and work.

b. Professional Qualifications of Project Team (30 points Possible). Provide a firm overview and qualifications for providing the design-build services required under this RFP. Clearly define the roles and responsibilities of each member of Proposer's design-build team, as well as the role of City. Provide an overview of the design-build team experience. Identify key personnel who will be assigned to the Project, their qualifications and experience on the team, and their specific responsibilities on the team including, without limitation, project management, facilitation, design, and construction supervision. Provide professional qualifications and experience for all personnel identified.

c. Conceptual Plans (20 Points Possible). Each Proposer's conceptual plans and specifications for the Project (the "Conceptual Plans") must include, without limitation, site plans and floor plans. The Conceptual Plans should clearly demonstrate RFP compliance relevant to functional requirements, and Project scope understanding including, without limitation, the specifications identified in Section C(3). The Conceptual Plans will also be scored on the Proposer's innovation and aesthetic approach to the Project.

d. Understanding of Requested Services (10 Points Possible). Each Proposal should demonstrate a clear understanding of the Project requirements based on the information provided in this RFP.

e. Quality and Control Procedures (10 Points Possible). Clearly describe the design-build process and how your team will ensure quality and control costs in the construction process.

f. References (10 Points Possible). Each Proposal must list references from three (3) projects with a budget of at least \$400,000 (and/or three (3) projects of similar scope) that the Proposer or Proposer's design services consultant designed. List references from three (3) projects with a budget of at least \$400,000 (and/or three (3) projects of similar scope) that Proposer constructed. List up to three (3) projects which the Proposer team completed together as a design-build team, if not already included. Clearly identify references with valid contact information.

g. Contract Price (20 Points Possible). Include a contract price for all work to be completed under the Contract. The contract price must identify two lump sum amounts: (a) one amount for work to be completed during the design phase; and (b) one amount for work to be completed during the construction phase. Where this RFP requests and/or requires alternate pricing, please indicate and clearly delineate the alternate pricing.

#### G. Proposal Evaluation.

1. Evaluation Committee. City will establish a committee of at least five individuals to review, score and rank Proposals according to the evaluation criteria set forth in this RFP. City may appoint to the evaluation committee consultants, City employees, and/or employees of other public agencies with experience in architectural, engineering, photogrammetric mapping, transportation planning or land surveying, related services, construction services, and/or public contracting. At least one member of the evaluation committee must be a City employee. City will designate one of its employees, who is also a member of the evaluation committee, as the evaluation committee

chairperson. The evaluation committee will provide the city council the results of the scoring and ranking for each Proposer.

2. Evaluation Criteria. City will score each Proposal by reviewing and evaluating the Proposal content requirements outlined above. The following table indicates how the total points in the scoring will be assigned by required Proposal item. Failure to meet minimum requirements for any individual item may disqualify the Proposal regardless of the total points scored for the other items. Each item will be evaluated as follows:

<u>Requirement</u>	<u>Maximum Points</u>
Project Schedule and Approach	30
Professional Qualifications of Project Team	30
Conceptual Plans	20
Understanding of Requested Services	10
Quality and Control Procedures	10
References	10
Contract Price	20
<b>Total</b>	<b>130 maximum points</b>

Pricing will be compared among all responsive Proposals submitted. The lowest overall priced Proposal (by total contract price) will receive the full points available. All other Proposal pricing scores will be weighted against the lowest price Proposal (lowest price scores the highest).

3. Evaluation. The evaluation committee will conduct references and may seek outside expertise, including, without limitation, input from technical advisors, to assist in evaluating Proposals. The committee will score and rank the Proposals based on the information submitted according to the evaluation criteria and point factors. The committee may choose to recommend the preferred team based solely on the written Proposal evaluation or select a short list of teams for interviews. If interviews are determined to be necessary, the scores for the written Proposals will be considered preliminary. Final scores will be determined following the interviews (if conducted). If the evaluation committee conducts interviews, the interview process will be used to supplement and clarify the information contained in the Proposal. Based upon Proposal scoring, as modified by the interview, and the results of reference checks, the firms will be given final ranking by the evaluation committee. Such interviews and any presentation materials will be at the Proposer's expense.

4. Selection; Negotiation.

a. City will award the contract to the highest ranked, responsive and responsible Proposer, who's Proposal will best serve the interests of City and is in compliance with applicable law. City reserves the right to reject any or all Proposals, cancel this RFP, and/or to waive minor informalities and errors in such Proposals, each in accordance with Oregon law. A responsive Proposer means a Proposer who has submitted a Proposal which conforms, in all material respects to the Proposal Documents. A responsible Proposer means a Proposer who has the capability, in all respects, to fully perform the Contract requirements, and the integrity and reliability which will ensure good-faith performance. Responsibility will be determined in accordance with the standards set forth in ORS 279C.375 and OAR 137-049-0390. City will document its determination of the successful Proposer's responsibility on the Responsibility Determination Form substantially as set forth in ORS 279C.375(3)(c).

b. If City does not cancel the RFP after it receives the results of the scoring and ranking of each Proposal, city will begin, after the expiration of any protest period, negotiating a contract with the highest-ranked Proposer. Contract negotiations with the highest-ranked Proposer will be directed toward obtaining written agreement on (a) the Proposer's performance obligations and a performance schedule, (b) the payment methodology and contract price that is fair and reasonable to City, as determined by City, taking into account the estimated value, scope, complexity and nature of the Work, and (c) any other provisions City believes to be in City's best interest to negotiate. City reserves the right to negotiate and execute a final contract that is in the best interest of City.

c. If negotiations with the highest-ranked Proposer fail to result in a contract, City reserves the right to formally terminate negotiations and enter into negotiations with the second-ranked Proposer and, if necessary, the third-ranked Proposer and so on, until the negotiations result in a contract. If the subsequent rounds of negotiations fail to result in a contract within a reasonable amount of time, as determined by City, the RFP may be formally terminated.

5. Notice of Intent to Award. City will provide a written Notice of Intent to Award ("NOI") to all Proposers at least seven (7) calendar days before the award of a Contract, unless City determines that circumstances require prompt execution of the Contract. City's award will not be final until the latter of the following: (a) seven (7) calendar days after the date of the NOI; or (b) until City provides written response to all timely filed protests denying the protest(s) and affirming the award.

#### H. Requests for Change; Protests; Addenda.

##### 1. Request for Clarification/Change; Solicitation Protests; Award Protest.

a. Solicitation Protest; Request for Change. Proposers may submit to City questions and/or requests for clarification and/or additional information, including, without limitation, inquiries related to substantive portions of the RFP, questions regarding the intent of the Work, and/or questions concerning technical aspects of the Work, Project, and/or Proposal Documents. A Proposer may request in writing a change to the RFP and/or Contract terms and conditions on or before seven (7) days prior to the Closing. All requests for change must comply with OAR 137-049-0260(2). A Proposer may protest the specifications or Contract terms and conditions by delivering a written protest on those matters to City on or before seven (7) days prior to the Closing. All protests of specifications or Contract terms and conditions must be in writing, and must comply with OAR 137-049-0260(3). All questions, requests, and/or protests must be submitted, in writing, either by mail to Nick Green, City Manager, City of John Day, 450 East Main Street, John Day, Oregon 97845 or email to [green@grantcounty-or.gov](mailto:green@grantcounty-or.gov) and must clearly reference, "City of John Day Request for Proposal – Greenhouse Construction Project."

b. Right to Protest Award. A Proposer may submit to City a written protest of City's intent to award within seven (7) days after City's issuance of the NOI. A Proposer may submit a protest of the award only as allowed by, and only in compliance with, OAR 137-049-0450(4). All award protests must be submitted in writing either by mail to Nick Green, City Manager, City of John Day, 450 East Main Street, John Day, Oregon 97845 or email to [green@grantcounty-or.gov](mailto:green@grantcounty-or.gov). All protests must clearly reference, "City of John Day Request for Proposal – Greenhouse Construction Project."

2. Addenda. Changes to the Proposal Documents, whether in response to requests for clarification or change or a solicitation protest, or to issue supplemental instructions, may only be made by written addenda. City will not mail notice of any addenda to the Proposers, but will publish notice of

any addenda on City's website and each Proposer should frequently check said website until Closing. No addenda, with the exception of addenda withdrawing this RFP or extending the Proposal period, will be issued less than 24 hours prior to the Closing. All addenda so issued will become part of the Proposal Documents. No other oral or written statements to Proposers will be binding on City unless reduced to written addendum.

3. RFP Cancellation. Notwithstanding anything contained in this RFP to the contrary, if in City's best interest, City reserves the right to amend and/or revise this RFP in whole or in part, cancel this RFP, extend the submittal deadline for responses to this RFP, and/or reject any or all Proposals for any reason and/or without indicating reasons for rejection. Further, City reserves the right to (a) seek clarification(s) from each Proposer and/or require supplemental information for any Proposer, (b) waive and/or correct any irregularities in Proposals after prior notice to the Proposer, and/or (c) negotiate with alternate Proposers, if initial contract negotiations are unsuccessful.

I. Anticipated Schedule.

RFP Issued	March 7, 2018
Requests/RFP Protest Deadline	April 3, 2018
Proposal Due Date	April 10, 2018
Opening	April 11, 2018
Review and Scoring	April 17, 2018
Evaluation Interviews (if needed)	April 24, 2018
Notice of Intent to Award (approx.)	April 24, 2018
Award Protest Deadline (approx.)	May 1, 2018
Negotiations	May 1 – May 8, 2018
Council Approval – Notice of Award (approx.)	May 8, 2018

## PROPOSAL

To: City Manager  
Project Name: Greenhouse Design-Build Project  
450 East Main Street,  
John Day, Oregon 97845

The undersigned, hereinafter "Proposer," declares that the only persons or parties interested in this Proposal are those named herein; that this Proposal is, in all respects, fair and without fraud; that it is made without collusion with any official of City of John Day, Oregon ("City"); and that this Proposal is made without any connection or collusion with any person making another Proposal on this Contract.

Proposer further declares that Proposer has carefully examined the project site and the Contract documents; is satisfied as to the conditions of work involved; and that this Proposal is made according to the provisions and under the terms of the Contract documents, which documents are hereby made a part of this Proposal. Proposer acknowledges that Proposer has read and understands the terms and conditions of the Proposal Documents, and accepts and agrees to be bound by the terms and conditions of the Proposal Documents.

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

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

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

Construction Contractors Board Registry Number: \_\_\_\_\_.

Proposer agrees that if this Proposal is accepted, Proposer will, within ten (10) days after notification of acceptance, execute a contract with City substantially in the form of Contract attached to the Request for Proposals; and will, at the time of execution of the Contract, deliver to City the Performance Bond, Payment Bond and Certificate(s) of Insurance naming City as an additional insured as required herein; and will, to the extent of this Proposal, furnish all materials necessary to complete the work in the manner, in the time, and according to the methods as specified in the Contract documents.

The Proposer agrees to commence work upon the issuance of a "Notice to Proceed" by City and fully complete the project according to the times specifically set forth in the Contract documents.

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

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

NOTE:

This Proposal will be irrevocable and open for acceptance for a period of sixty (60) days from the Closing. If notified in writing by City of the acceptance of this Proposal within sixty (60) days of the Proposal closing date, subject to such other period as may be specified in the Proposal Document, the Proposer will execute the Contract between City and Proposer.

The name of the Proposer who is submitting this Proposal is:

Firm Name: \_\_\_\_\_  
Printed Name of Individual: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Address: \_\_\_\_\_

All communications concerning this Proposal and with the Contract will be sent to Proposer at the above address, fax number or e-mail address. The names of the principal officers of the corporation submitting this Proposal, or of the partners or members of the partnership or limited liability company submitting this Proposal, or of all persons interested in this Proposal as principals, are as follows:

_____	_____
_____	_____
_____	_____

**(IF SOLE PROPRIETOR, PARTNERSHIP OR LIMITED LIABILITY COMPANY)**

IN WITNESS HERETO, the undersigned has set his/her (its) hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

**(IF CORPORATION)**

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

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

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

## Design-Build Contract

This Design-Build Contract (this "Contract") is made and entered into effective on \_\_\_\_\_, 2018 (the "Effective Date") between City of John Day ("City"), an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845, and \_\_\_\_\_ ("Contractor"), whose address is \_\_\_\_\_.

### RECITALS:

A. Design and construction of a greenhouse with hydroponic farming systems (the "Project"), as more particularly described in City issued Request for Proposals Greenhouse Design-Build Project dated \_\_\_\_\_, 2018 (the "RFP").

B. Subject to the terms and conditions contained in this Contract, Contractor will perform the work necessary to complete the Project.

### AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Contract Documents. The following documents form the Contract and all are as fully a part of the Contract as if attached to this Contract or repeated herein (collectively, the "Contract Documents"): (a) this Contract; (b) the Request for Proposals; (c) Contractor's Proposal; (d) Conditions of the Contract (General, Supplementary, and other Conditions); (e) Drawings and Specifications; (f) the Payment and Performance Bonds; (g) Approved Submittals; and (h) Addenda issued prior to, and all Modifications and Change Orders issued after, execution of this Contract.

2. Contractor Services; Work.

2.1 General. Contractor will furnish all labor, tools, equipment, and services necessary to perform the design, construction, and related services provided or to be provided by Contractor to fulfill Contractor's obligations to complete the Project pursuant to the Contract (collectively, the "Work"). The Work will be conducted in two phases: (a) the "Design Phase" culminating with the production of the construction documents (drawings and specifications); and (b) the "Construction Phase." Contractor will perform the Work in strict accordance with and as required by the Contract Documents and in accordance with any instructions issued by City.

2.2 Design Services.

a. Contractor will provide the following design services for and on behalf of City: (a) those design services set forth on the attached Schedule 2.2; (b) those design services described in Contractor's Proposal dated \_\_\_\_\_, 2018, attached hereto as Exhibit A; and (c) any other necessary or appropriate services customarily provided by design professionals in connection with the



performance of those services set forth on the attached Schedule 2.2 and Exhibit A. Contractor will: (w) consult with and advise City on all matters concerning the design services reasonably requested by City, (x) communicate all matters and information concerning the design services, and report directly, to the city manager, (y) devote such time and attention to the performance of the design services as City and Contractor deem necessary or appropriate, and (z) perform the design services to the best of Contractor's ability. When required by applicable law, Contractor will provide the design services required by the Contract Documents through duly licensed and qualified persons or entities. City understands and agrees that the services performed by Contractor's architect/engineer and Contractor's other design professionals and consultants are performed in the sole interest, and for the benefit, of Contractor. The agreements between Contractor and its architect/engineer or other design professionals will be in writing. These agreements, including, without limitation, services and financial arrangements with respect to the Project, will be promptly and fully disclosed to City upon City's written request.

b. Contractor will provide to City, for City's review and written approval, design documents sufficient to establish the size, quality, and character of the Project; its architectural and structural systems; and the materials and such other elements of the Project to the extent required by the Contract Documents. Deviations, if any, from the Contract Documents must be disclosed in writing. Upon City's prior written approval of the design documents submitted by Contractor, Contractor will provide construction documents for review and written approval by City. The construction documents will set forth in detail the requirements for construction of the Project and will include, without limitation, drawings and specifications that establish the quality levels of materials and systems required. Deviations in the construction documents from the Contract Documents, if any, will be disclosed in writing. Construction documents may include, without limitation, drawings, specifications, and/or other documents and electronic data setting forth in detail the requirements for construction of the Work, and will be consistent with the City approved design documents, provide information for the use of trade subcontractors, and include documents customarily required for governmental approvals. Notwithstanding anything contained in this Contract to the contrary, commencement of the construction portion of the Project will be subject to Contractor's satisfactory performance of the design services and City's prior written approval of the construction documents, all as determined by City in City's sole discretion.

c. Contractor (or Contractor's design professional) will perform the design services to the best of Contractor's ability, diligently, in good faith, in a professional manner, and consistent with the level of care and skill ordinarily exercised by other architects, engineers, and/or other design professionals under similar circumstances at the time the design services are performed. Contractor will perform the design services consistent with the terms and conditions contained in this Contract. The design services will be performed in accordance with the Laws (as defined below). Contractor will be solely responsible for the design services. Contractor will make all decisions called for promptly and without unreasonable delay. All materials and documents prepared by Contractor will be accurate, complete, unambiguous, prepared properly, and in compliance with the Laws.

2.3 City-Performed Work. City will perform the preliminary construction work shown on the attached Exhibit B [or insert description of services here] (the "City-Performed Work"). It is anticipated that the City-Performed Work will be completed prior to the Construction Phase. If, however, any City-Performed Work will be performed during the Construction Phase, Contractor will cooperate and coordinate Contractor's activities with the activities of City's forces, as if such forces were operating under separate contracts (as described in Article 8 of the General Conditions).

2.4 Construction Work. Upon issuance of a Notice to Proceed (as identified in Section 6), Contractor will commence the construction portion of the Work, which will be completed in accordance with and subject to the terms and conditions of the Contract Documents.

3. Compensation; Contract Sum. City will pay Contractor for the performance of the Work, subject to additions and deductions by written change order(s) (subject to and in accordance with the General Conditions), the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Contract Sum"). The Contract Sum is allocated to the Design Phase, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), and to the Construction Phase of the work, if commenced, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

4. Relationship.

4.1 Independent Contractor. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Work, subject only to the right of City to specify the desired results. This Contract does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City. Contractor has the authority to hire other persons to assist Contractor in performing the Work (and has the authority to fire such persons).

4.2 Taxes; Licenses. City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from Contractor's performance of the Work, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Work.

5. Representations; Warranties; Covenants.

In addition to any other Contractor representation, warranty, and/or covenant made in this Contract, Contractor represents, warrants, and covenants to City as follows:

5.1 Authority; Binding Obligation; Conflicts. Contractor has full power and authority to sign and deliver this Contract and to perform all of Contractor's obligations under this Contract. This Contract is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Contract by Contractor and the performance by Contractor of all of Contractor's obligations under this Contract will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

5.2 Insurance. Contractor will be responsible to City for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities, including, without limitation, Contractor's architect/engineer and other design professionals, performing any portion of Contractor's obligations under the Contract Documents. In addition to any other insurance required under this Contract and the Contract Documents, Contractor will require that

Contractor's architect/engineer and other design professionals maintain professional liability, errors and omissions insurance covering any damages caused by any negligent error, omission, or any other negligent act affecting the Project, its plans, drawings, specifications and/or project manual, and all related work product of the architect/engineer. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional liability insurance to be will have a combined single limit of not less than \$1,000,000 per claim, incident or occurrence, and a \$2,000,000 annual aggregate. Each liability insurance policy required under this Contract will be in form and content satisfactory to City, will list City (and City's Representatives (as defined below)) as an additional insured(s), and will contain a severability of interest clause. Contractor will provide City with proof of coverage for Contractor's architect/engineer and other design professionals.

5.3 Compliance With Laws. Contractor and Contractor's design professional will comply, and perform the Work in accordance, with the Laws. Without otherwise limiting the generality of the immediately preceding sentence and notwithstanding anything contained in this Contract to the contrary, Contractor will comply with every obligation applicable to Contractor and/or this Contract under ORS 279B.220, 279B.225, 279B.230, and 279B.235, which statutes are incorporated herein by reference. Prior to the Effective Date, Contractor obtained all licenses, approvals, and/or certificates necessary or appropriate to perform and complete the Work. For purposes of this Contract, the term "Law(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning, whether directly or indirectly, Contractor, this Contract, and/or the Work, including, without limitation, all applicable City ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

6. Time of Commencement and Completion. The Design Phase will be commenced on the date stipulated in a written notice issued to Contractor by City (a "Notice to Proceed"), and subject to authorized adjustments, Substantial Completion (as defined in the General Conditions) will be achieved according to the schedule set forth in the specifications. Contractor acknowledges and agrees that a separate Notice to Proceed will be issued for the Construction Phase of the Work, and only upon (a) successful completion of the Design Phase by Contractor, as determined by City in City's sole discretion, and (b) the completion of the City-Performed Work. Promptly after execution of this Contract, Contractor will prepare and submit for City's approval the Contractor's schedule for the Work. The schedule will (v) not exceed time limits, and will be in such detail, as required under the Contract Documents, (w) be revised at appropriate intervals as required by the conditions of the Work and Project, (x) be related to the entire Project to the extent required by the Contract Documents, (y) provide for expeditious and practicable execution of the Work, and (z) include allowances for periods of time required for the City's review and for approval of submissions by Contractor and authorities having jurisdiction over the Project.

7. Term. Subject to the terms and conditions contained in this Contract, the term of this Contract commenced on the Effective Date and will remain in full force and effect until completion of the Work (but in no event later than \_\_\_\_\_) unless sooner terminated as provided in this Contract. This Contract may be extended by the parties' mutual written agreement.

8. Miscellaneous.

8.1 Severability; Assignment; Binding Effect. Each provision contained in this Contract will be treated as a separate and independent provision. The unenforceability of any one

provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Contractor will not assign this Contract to any person without City's prior written consent. Subject to the immediately preceding sentence, this Contract will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

8.2 Governing Law; Venue. This Contract is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Contract. Any action or proceeding arising out of this Contract will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

8.3 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Contract are part of this Contract. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Contract, the provisions of this Contract will control. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Contract. All notices or other communications required or permitted by this Contract must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation or delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

8.4 Waiver; Entire Agreement. No provision of this Contract may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Contract will be deemed a waiver of other provisions or conditions hereof. This Contract (including the Contract Documents) contains the entire agreement and understanding between the parties with respect to the subject matter of this Contract and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Contractor has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Contract.

8.5 Person; Interpretation; Execution. For purposes of this Contract, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Contract. The parties may execute this Contract in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the

parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

IN WITNESS WHEREOF, the undersigned have caused this Contract to be executed and made effective for all purposes as of the Effective Date.

**CITY:**

City of John Day,  
an Oregon municipal corporation

**CONTRACTOR:**

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

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

**CITY OF JOHN DAY  
GENERAL CONDITIONS**

Contractor's services under this Contract will be subject to the provisions of these General Conditions, and both parties agree to comply therewith, as they may be modified by special conditions (if any) identified in the Contract as one of the Contract Documents.

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GENERAL CONDITIONS 5-1

REQUEST FOR PROPOSALS GREENHOUSE DESIGN-BUILD PROJECT

{15264175-00919084;4}

**ARTICLE 1**  
**Definitions**

A. For the purposes of this Contract, the following terms have the meanings hereinafter set forth:

“Architect/Engineer” means the person, firm, or corporation that prepared the drawings and specifications, or acts as a consultant during the project, whether it be an architect or engineer.

“Drawings of Record” means those annotated drawings submitted by the Contractor to the Owner during progress of construction illustrating how various elements of the work were actually installed.

“Contract” means the design-build agreement signed by the parties thereto, these General Conditions, and all other documents and exhibits listed as “Contract Documents” in the agreement signed by the parties.

“Contract Change Order(s)” means a document prepared by the Owner or Contractor as a change to the Contract incorporating approved Contractor’s proposals for changes in the Work. Contract Change Orders will be numbered consecutively in chronological order and will refer to the field change order(s) covered.

“Contract Sum” means the amount payable to Contractor under the Contract.

“Contract Time” means the date of substantial completion indicated in Contractor’s schedule.

“Contractor” means the person, firm, or corporation responsible for the execution of the work contracted for by Owner.

“Days,” unless expressly stated otherwise, means calendar days.

“Field Change Order” means an order issued to the Contractor by the Owner’s Construction Representative, to carry out minor revisions in the Work. Such Field Change Orders will be numbered consecutively, in chronological order.

“Owner” means City of John Day.

“Owner Request for Proposal (Owner RFP)” means a request by the Owner for a proposal on contemplated changes in the Work. Such Owner RFPs will be numbered consecutively, in chronological order.

“Owner’s Construction Representative (OCR)” means the Owner’s agent, designated by Owner. The OCR coordinates the activities of the Contractor, Owner’s consultants (if any), and all aspects of the project.

“Punch list” means a list, prepared by the Owner, of the Contractor’s uncompleted or uncorrected work.

“Separate contract” means a contract between Owner and a contractor, other than the Contractor under this Contract, for the construction or furnishing of a portion of the Project.

“Subcontractor” means, without limitation, any firm, corporation, or person working directly or indirectly for the Contractor that furnishes or performs a portion of the work, labor, or material, according to the drawings and/or specifications.

“Substantial completion” means the completion of the work to the extent that the Owner may have uninterrupted occupancy and use of the facility or specified portion thereof for the purpose for which intended.

“Work,” unless otherwise specified, indicates all items and services to be furnished, performed and paid for by Contractor and its consultants and subcontractors, and includes all materials, tools, methods, labor, overtime labor, standby labor, equipment services, transportation, power, fuel, water, and other items and facilities of every kind necessary to complete

“Work in place” means work, which has been installed in accordance with the drawings and specifications, but does not include equipment or material that has been delivered to the job site and not yet installed.

B. Capitalized terms not otherwise defined herein have the meanings given to the terms in the Contract signed by the parties.

## **ARTICLE 2**

### **General Provisions**

A. The Contract will be deemed to have been made in, and will be construed under, the laws of the State of Oregon.

B. Contractor will direct all communications to the designated OCR.

C. Contractor will perform services under this Contract including the Work in a skillful and competent manner in accordance with good practice standards of the construction industry. Contractor will be responsible to Owner for errors or omissions in construction and failure to perform this Contract, and will correct or remove any defective work.

D. Contractor and the Work will comply with all applicable laws, regulations, ordinances, building codes, and/or requirements of federal, state, and/or local government authorities and agencies having jurisdiction over the facility to be constructed, including those of any utility companies, and will give all notices and obtain all licenses and permits required.

E. Contractor and the Work will comply with construction procedures contained in the Contract Documents.



F. Time is of the essence with respect to Contractor's performance of its obligations under this Contract.

G. Contractor will maintain an efficient and accurate accounting system for all work in connection with this Contract. Contractor's accounts and records covering these charges and all invoices, payments, correspondence, memoranda, and other writings, on account of this Contract, will, at all reasonable times during the term of this Contract, and for two (2) years thereafter, be open to inspection and copying by Owner or its authorized representatives.

H. Contractor will pay for all drawings and specifications required by Contractor for the performance of the Work.

I. Upon acceptance of this Contract, Contractor will execute and deliver separate Performance and Payment Bonds (the "Bonds"), each in an amount equal to the total Contract Sum, and fully executed by a Surety Company authorized to do business in the State of Oregon and approved by Owner. In the event of any increases in the total Contract Sum, Contractor will increase the Performance and Payment Bonds so that each equals the new total Contract Sum. Contractor will pay the costs of all Bonds.

J. Contractor agrees to immediately remove any liens, claims, or encumbrances which, because of any act or default of Contractor, or of Contractor's subcontractors or sub-subcontractors, or material suppliers, are made against the Owner or the Project; and to defend, indemnify, and save Owner harmless against and from all resulting loss and expenses, including, without limitation, attorney's fees.

K. In carrying out any of the provisions hereof or in exercising any authority granted by the Contract, there will be no personal liability imposed upon any public official or employee of Owner.

### **ARTICLE 3**

#### **Intent of the Contract Documents**

A. The intent of the Contract Documents is to include all of the Work for the Contract Sum and within the Contract Time. The drawings and specifications are to be considered complementary, and all work necessary for the execution of the Work if shown on the drawings and not described in the specifications, and all work described in the specifications and not shown on the drawings, or any work which is obviously necessary to complete the Work within the limits established by the drawings and specifications, will be considered part of the Contract, and will be executed by Contractor in the same manner and with the same quality of material as other portions of the Contract without extra compensation.

B. Unless expressly stipulated otherwise, Contractor will provide and pay for all services, labor, overtime labor, standby labor, methods, materials, equipment, transportation, power, fuel, water, and all other facilities and services, including operating costs incurred in checking out equipment, and all other items and facilities of every kind necessary to complete the intent of the Contract for the Contract Sum within the Contract Time.

C. Words describing material or work which have a well-known technical or trade meaning unless otherwise specifically defined in the contract, will be construed in accordance with such well-known meaning, recognized by architects, engineers and tradesmen.

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

#### **ARTICLE 4**

##### **Substitutions**

A. Throughout the specifications, manufacturer's name and catalog number may specify types of material in order to establish standards of quality and performance and not for the purpose of limiting competition. Unless specifically specified otherwise, Contractor may assume the phrase "or approved equal" except that the burden is upon Contractor to prove such equality. If Contractor elects to prove such equality, Contractor must request the Owner's approval in writing to substantiate equality, with supporting data and samples, if required, to permit a fair evaluation of the proposed substitute with respect to quality, serviceability, warranty, and cost. Such supporting data will include the basic specifications of the specified item(s), and the specifications, characteristics and other information concerning the proposed substitution demonstrating its equality to the specified items(s), and the effect of the substitution on the schedule and cost, if any.

B. After award of the Contract, proposed substitutions will be considered only if Owner receives the advantage of lesser cost with no decrease in quality, or earlier completion date, or both. In any event, a request for substitution will be made sufficiently in advance of Project needs to permit sufficient time for evaluation by Owner without jeopardizing the construction schedule.

C. In the event that Owner approves a substitution, Contractor will assume all risk and costs for redesign and adjustment of Work affected by the substitution and its effect on adjoining Work, and any delays occasioned by its use.

#### **ARTICLE 5**

##### **Architect's/Engineer's Status**

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

#### **ARTICLE 6**

##### **Contractor's Superintendent**

A. Contractor will provide the services of a competent on-site representative, as approved in writing by Owner, from the commencement of construction to final completion and acceptance of the Work. Contractor's on-site representative will represent Contractor at the Work, and all directions, instructions, or notices given to the on-site representative by will be as binding as if given to Contractor.

B. Contractor's on-site representative will be in charge of the Work at all times and will have authority to furnish estimates and to approve Field Change Orders. Contractor will provide on-site representative with such assistants as are necessary to properly execute and coordinate all phases of the Work.

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

## **ARTICLE 7**

### **Subcontractors**

A. Contractor, upon notification of selection as apparent successful Proposer, and prior to award of Contract, will submit to Owner, for approval, a list of proposed subcontractors and suppliers for each of the major items of the Work. Owner reserves the right to reasonably reject any subcontractor or supplier that has not been qualified by Owner in writing prior to award of Contract, without additional cost to Owner. Where Owner rejects any subcontractor or supplier that has been prequalified by Owner in writing, the Contract Sum will be adjusted by Contract Change Order pursuant to provisions of this Contract for pricing additional or deleted work. Contractor will advise Owner of Contractor's selection of approved subcontractors and suppliers prior to commencement of Work by the subcontractors and suppliers.

B. To the extent the specifications have been divided into separate headings or sections to cover the principal trades or subtrades represented in the Work, it is done for convenience. This arrangement will not limit Contractor in the extent of the Work included in each of the various subcontracts, nor will the use of the term "subcontractor" relieve Contractor of responsibility for seeing that all of the Work of the Contract is performed properly, whether or not specifically called for in a particular section.

C. All contracts concerning the Work entered into by Contractor with subcontractors will include the terms and conditions governing Contractor. No provisions of this Contract or of any contract between the Contractor and subcontractors will be construed as an agreement between Owner and subcontractors. Contractor will be as fully responsible to the Owner for the acts and omissions of a subcontractor, of the persons employed by a subcontractor, or of firms and/or subcontractors engaged by a subcontractor, as Contractor is for the acts or omissions of its own employees.

## **ARTICLE 8**

### **Separate Contracts**

A. Owner reserves the right to let separate contracts in connection with the Work. Contractor will afford such other firms, contractors, or subcontractors adequate opportunity for the introduction and storage of their material and the execution of their work, and will properly connect and coordinate its work with such other firms, contractors, or subcontractors.

B. Contractor will cooperate with other firms, contractors, or subcontractors on the Work and with Owner so that all portions of the Work may be completed in the least possible time within normal working hours. Contractor will furnish other firms, contractors, or subcontractors, whose work is fitted into Contractor's, detail and erection drawings giving full information regarding the fabrication and assembly of Contractor's work. When possible, drawings will show checked field measurements.

C. Should Contractor cause damage to any separate firm, contractor, or subcontractor on the Work, Contractor agrees to use its best efforts to negotiate a settlement with such firm, contractor or

subcontractor. Contractor will defend, indemnify and save Owner harmless from all claims, losses, liability, or actions arising therefrom, even if Contractor was not negligent in causing the damage. Contractor's indemnification obligation provided in this Article 8 will be in addition to any other indemnification obligation contained in this Contract.

## **ARTICLE 9**

### **Allocation of Risk**

A. All reports giving the results of soil investigations or borings conducted by Owner, if any, may be examined at Owner's offices. Any investigations or borings were carried out and retained for design purposes only, and are not considered adequate for construction.

B. Contractor represents that prior to submitting its proposal for the Work, Contractor acquainted (and/or had the opportunity to acquaint) Contractor with the site and all other conditions relevant to the Work, and made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work.

C. Owner does not warrant the correctness of any soil investigations or borings, or of any interpretations, deductions or conclusions given in any report relative to subsurface conditions. Soil investigations or borings are not warranties of conditions between soil borings nor are they guaranteed to represent all conditions that may be encountered. Contractor has made and will make its own deductions and conclusions as to the nature of the materials to be excavated, the difficulties of making and maintaining the required excavation, the difficulties which may arise from subsurface conditions, and of doing any other work affected by the subsurface conditions, and will accept full responsibility therefore.

D. During construction, and until acceptance by Owner, Contractor will be responsible for the premises and for the Work and will bear the risk of loss for all damage thereto, however caused, and regardless of whether any damage is the fault of Contractor.

## **ARTICLE 10**

### **Indemnification**

To the fullest extent permitted by law, Contractor will defend, indemnify and hold Owner and each present and future Owner employee, officer, agent, and representative (collectively, "Owner's Representatives), harmless from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising from, related to, or caused by the performance of the Work by Contractor, or its subcontractors, agents, and employees. This obligation will survive acceptance of the Work and completion of the Contract. In any and all claims against Owner or its agents or employees, these indemnification obligations will not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors' or workers' compensation acts, disability acts or other employee benefit acts. Contractor will carry sufficient insurance to defend, indemnify and hold Owner harmless as provided in this provision.

**ARTICLE 11**  
**Contractor's Insurance**

A. Contractor will furnish City with appropriate documentation evidencing the following insurance coverage (and provisions) Contractor is required to obtain under this Contract upon Contractor's execution of this Contract and at any other time requested by City:

<u>Kind</u>	<u>Limits</u>
1. Employer Insurance	
a. Workers' Compensation covering all employees who are engaged in any work under the contract	Statutory
b. Employers' Liability including bodily injury caused by disease	Statutory
2. Commercial General Liability*:	\$1,000,000 each person \$2,000,000 each occurrence
a. Bodily injury (including death) and Personal Injury	\$1,000,000 each accident
b. Property Damage and Broad Form Property Damage	\$1,000,000 aggregate
3. Comprehensive Automobile Liability including Owned, Non-owned and Hired Vehicles:	\$1,000,000 each person \$2,000,000 each occurrence
a. Bodily injury (including death)	\$1,000,000 each accident
b. Property damage	\$1,000,000 each accident

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

Each liability insurance policy required under this Contract will be in form and content satisfactory to Owner, will list Owner and Owner's Representatives as an additional insured(s), and will contain a severability of interest clause. The insurance Contractor is required to obtain under this Contract may not be materially changed and/or cancelled without thirty (30) days' prior written notice to Owner. Contractor's insurance will be primary and any insurance carried by Owner will be excess and noncontributing. Contractor will furnish City with appropriate documentation evidencing the insurance coverage (and provisions) Contractor is required to obtain under this Contract upon Contractor's execution of this Contract and at any other time requested by City. If Contractor fails to maintain insurance as required under this Contract, Owner will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Contractor immediately upon Owner's demand.

B. When the construction is to be accomplished within a public or private right-of-way requiring special insurance coverage, Contractor will conform to the particular requirements and provide the required insurance. Contractor will include in its liability policy all endorsements that the applicable government authority may require for the protection of the authority, its officers, agents, and employees. Contractor will provide insurance coverage for special conditions, when required.

C. Contractor will maintain the above insurance at all times until acceptance of the Work.

D. Maintenance of insurance by Contractor as specified in this Article will in no way be interpreted as relieving Contractor of any responsibility and Contractor may carry, at its own expense, such additional insurance as Contractor deems necessary.

E. Contractor will require all subcontractors (unless otherwise approved by the Owner) to carry insurance at least equal to that required by Paragraph A of this Article.

## **ARTICLE 12**

### **Safety**

A. Contractor will take all necessary precautions for the safety of its employees, Owner's employees, and the public, and protection of the Work and of adjoining property, and will comply with all applicable provisions of federal, state and local safety laws and building codes and Owner's fire insurance carrier's requirements to prevent accidents, injury to persons, loss of life and damage to property.

B. Contractor will not permit any structure to be loaded excessively.

C. For work at an existing facility operated by Owner, Contractor will obtain approval, from Owner, as to time and duration of activities prior to blasting, welding, torch cutting, building of fires, or making changes in the process water, city water, or fire protection systems.

D. Contractor will properly erect and maintain all necessary safeguards for the protection of workers, Owner, Owner's employees, and the public. Contractor will post danger signs and markers warning against hazards created by features of the construction.

D. Safety and accident reports will be submitted in accordance with federal, state, and local regulations. Contractor will inform Owner of any accidents within three (3) days of occurrence.

F. Owner, Owner's Representatives, and OCR are not responsible for safety, safety procedures, safety analysis of any condition on the project, or coordinating any safety efforts or programs of any contractor or subcontractor.

## **ARTICLE 13**

### **Royalties and Patents**

Contractor will pay all royalties and license fees. Contractor will defend all suits or claims for infringement of any patents and will save Owner harmless from loss on account thereof except the

Owner will be responsible for all such loss when a particular process or product is specified by it unless Contractor will have information that a particular process or product infringes a patent, in which event, Contractor will be responsible for loss on account thereof unless Contractor promptly provides such information to Owner.

#### **ARTICLE 14**

##### **Ownership of Documents**

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

#### **ARTICLE 15**

##### **Methods of Carrying on the Work**

A. Contractor will be responsible for the design and construction means, methods, techniques, sequences, procedures, coordination, orderly scheduling, and management of all Work by its design consultants, employees, and subcontractors.

B. Contractor will confine its equipment, apparatus, materials, and operations of workers and subcontractors within limits allowed by Owner and will not unnecessarily encumber the premises. Contractor will be responsible for all materials and equipment stored by Contractor or its subcontractors.

C. Contractor will use the premises only for purposes necessary to the performance of this Contract. Contractor will not make use of any existing structures on Owner's property or any facilities therein without prior approval from Owner.

D. Whenever Contractor receives materials, equipment, and/or personal property from any person having a contract with Owner for storage, erection, or installation, Contractor will give to such person, or Owner, written receipt for the items delivered and will be responsible for the proper care, storage, or replacement of items received.

E. All manufactured articles, materials, and equipment will be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by Contractor as directed by the manufacturer unless otherwise specified.

F. Contractor will maintain one complete copy of the Contract documents at the job site, with all Owner RFPs, change orders, reviewed shop drawings, observation reports and other documents necessary to the prosecution of the Work. All Contract documents will be kept up to date with legible markings.

**ARTICLE 16**  
**Surveys, Permits and Regulations**

- A. This Contract does not constitute a land use permit, nor does acceptance of this Contract by Contractor constitute approval of any legislative or quasi-judicial action required as a condition precedent to use of the land for the intended purpose.
- B. Contractor will employ a licensed or registered land surveyor who will be responsible for all surveys, measurements and layouts required for the proper execution of the Work.
- C. Contractor will compare and continually check for changing conditions, all dimensions, elevations, lines, grades and other information appearing on the drawings with the work of other contractors and with the actual dimensions, elevation lines grades and site conditions. Contractor will report in writing to the Owner any discrepancies in the prevailing conditions before proceeding with the Work. Contractor will be responsible for any cost or expense, which results from its failure to so compare and report.
- D. Contractor will furnish, set and maintain grade stakes and temporary markers and will be fully responsible for the accuracy thereof.
- E. Contractor will obtain and pay for all permits, licenses, certificates, inspections and other approvals required, both temporary and permanent. Any such fees will be included in the Contract Sum. Prior to Contractor's application for a building permit, Contractor will secure Owner's approval of the Project value to be used for permit purposes.
- F. When construction crosses highways, railroads, streets, watercourses, and/or utilities under the jurisdiction of a state, county, city or other public agency, public utility or private entity, Contractor will conform to the permits, licenses, regulations and conditions of such authorities. Contractor is responsible for the knowledge of all underground utilities present on the site.

**ARTICLE 17**  
**Materials, Employees and Workmanship**

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



**ARTICLE 18**  
**Connecting the Work**

- A. Contractor will do all cutting, fitting, and patching that may be required to make the several parts of the Work come together properly and to fit Contractor's Work to receive or be received by the work of other firms as shown upon or reasonably implied by the drawings and specifications. After others have finished their work, Contractor will promptly complete and finish the Work as Owner may direct.
- B. Contractor will not endanger, cut, or alter the work of any other firm without the consent of Owner.
- C. Requirements for additional cutting, fitting, and patching resulting from Contractor's defective or untimely Work will not be a basis for additional cost to Owner.
- D. If any part of the Work depends for proper execution or maximum durability upon the work of any other firm, Contractor or its subcontractor(s) will inspect said work before commencing its own Work and will make known, for approval by Owner, any departures from the drawings and specifications. Failure of Contractor to observe these requirements will bar Contractor from claiming thereafter that defects in its own Work are due to defects in the work of others, unless Contractor submits clear and convincing evidence that a thorough inspection of said other work was made before Contractor's Work went forward and that tests which were reasonable and customary failed to disclose the defects which later appeared.
- E. Where it is necessary to connect to existing facilities, Contractor will not interrupt Owner's operations to make such connections, but the Work will be done according to a schedule convenient to, and approved in writing by, Owner. Any overtime, necessary for such connections will be at Contractor's expense.

**ARTICLE 19**  
**Protection of Work, Property, and Persons**

- A. Contractor will protect the Work, its employees and equipment, Owner's property, adjacent property and the public from personal injury, loss, or property damage from any cause whatsoever.
- B. Contractor will be responsible for any injury, loss, or damage to any presently existing improvements on the premises caused by Contractor or its employees, agents, or subcontractors and in the event of such injury, loss, or damage, Contractor will promptly make such repairs or replacements as required by Owner without additional cost to Owner.
- C. Contractor will provide and erect all planking, bridges, bracing, shoring, sheet piling, lights, and warning signs necessary for the protection of streets, adjacent property and the public. Contractor will provide scaffolds, tarpaulins, and similar items as required to protect Owner's equipment and employees. Contractor will, if necessary, seal off its Work from Owner's work so as not, to interfere with Owner's operations.

D. During the progress of the Work, Contractor will protect all finished Work as soon as same is erected and will maintain such protection until no longer required.

E. The completed Work will include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by federal and/or state industrial authorities, including, without limitation, OSHA, and applicable local and national codes. Further, any features of the Work subject to such safety regulations will be fabricated, furnished, and installed in compliance with their requirements. Contractor will be held responsible for compliance with the requirements included herein.

F. Contractor will preserve and protect existing vegetation such as trees, lawns and shrubs which may be impacted by the Work and which are not to be removed. Contractor will consult with Owner concerning trees to remain adjacent to the construction area. Contractor will protect trees from stockpiling, vehicle driving and parking beneath tree canopies, dumping of refuse or chemically injurious materials or liquids, and continual puddling or running water. Contractor will not remove more than six inches of existing soil or fill more than two inches over existing soil within six feet of trees to be saved. Contractor will be permitted to remove interfering branches and roots only where absolutely necessary and without injury to trunks, and will employ a qualified tree surgeon to remove branches or roots and to treat cuts.

## **ARTICLE 20**

### **Inspections and Tests**

A. Contractor will permit and facilitate observation or inspection of the Work by Owner, Owner's representatives, and governmental authorities having jurisdiction, at all times when the Work is in preparation or progress.

B. The costs for inspections or tests not required by the specifications, but which Owner requests, will be borne by Owner, except where Contractor's Work fails any inspection, Contractor will pay the costs of that inspection. All inspection requests of Owner will be complied with.

C. All tests will be performed by a testing agency approved by Owner and will be in accordance with the current standards of the American Society for Testing and Materials, unless otherwise specified by Owner. Contractor will furnish Owner with two (2) copies of the test procedures used.

D. Acceptance by Owner of test data or inspections of any portion of the Work by Owner will not relieve Contractor of its obligation to perform the Work as required by the Contract.

E. Operating equipment and systems will be performance tested in the presence of OCR to demonstrate compliance with the specified requirements. Performance testing will be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by OCR. Contractor will schedule such testing with OCR at least one (1) week in advance of the planned date for testing. All costs of performance testing will be borne by Contractor.

F. Failure of Owner, during the progress of the Work, to discover or reject defective Work or Work not in accordance with the drawings and specifications will not be deemed an acceptance thereof or a

waiver of Owner's right to proper execution of the Work. No partial or final payment or partial or entire occupancy of the premises by Owner will be construed to be an acceptance of Work or materials which are not strictly in accordance with the Contract, or a waiver of Owner's rights.

G. If any Work is covered up without approval of Owner, it will be uncovered for examination, and, after examination, Contractor will perform all re-work required to correct defective work and restore it to the condition called for by the Contract. In such case, the cost of uncovering the Work and of all re-work involved will be borne by Contractor.

H. If Owner must perform re-inspections due to failure of the Work to comply with requirements of the Contract Documents during final inspection, Owner may deduct its costs and any consultant's fee for such additional services from the final payment due Contractor.

I. Contractor will furnish, without charge, samples of materials or products as requested by Owner, whether or not specifically called for in the Contract. Contractor will not incorporate any such material or product into the Work until after Owner has approved the samples submitted in writing. The samples will be submitted to give Owner ample time for review, selection or approval so as to not delay the Work.

## **ARTICLE 21**

### **Additional or Deleted Work**

A. Within twenty-four (24) hours after receipt of a Field Change Order and within five (5) days after receipt of an Owner RFP for changes in the Work not covered by agreed-upon "unit Prices," Contractor will submit to Owner a lump sum proposal, itemized by cost code, stating the amount to be added to or deducted from the Contract Sum and the effect, if any, on the schedule by reason of such changes. The amount for additional or deleted Work not covered by "unit prices" will be determined as follows:

1. For additional Work to be performed by Contractor's subcontractors, Contractor will add an amount equal to each subcontractor's direct costs for labor, materials, equipment rental, and transportation, plus ten percent (10%) thereof to cover all other charges for or in connection with such work. The costs for materials will include taxes, if any. The percentage fee includes, without limitation, layout, supervision (field and home office), small tools and related items, general expenses, overhead, and profit of Contractor and its subcontractors.

2. For additional Work to be performed by Contractor's own forces, Contractor will add an amount equal to Contractor's direct costs for labor, materials, equipment rental, and transportation, plus ten percent (10%) thereof to cover all other charges for or in connection with such work. The costs for materials will include taxes, if any. The percentage fee includes, without limitation, all charges for layout, supervision (field and home office), small tools and related items, general expenses, overhead, and profit.

3. For work to be deleted, Contractor will deduct an amount equal to the direct cost savings for labor, material, equipment, transportation, and taxes deleted from the work, plus ten percent (10%), to cover all other savings from, or in connection with, such deleted work. The costs for materials will include taxes if any. The percentage fee includes only those charges for layout,

supervision (field and home office), small tools and related items, general expenses, overhead, and profit attributable to the deleted work.

B. No fee or other markup of any kind will be applicable to any premium portion of wages, taxes, or related benefits.

C. If Contractor's proposal, submitted in response to a Field Change Order or Owner RFP, is acceptable to Owner, OCR will issue a Contract Change Order consistent with Contractor's proposal.

D. If Owner and Contractor are unable to agree upon change order terms, or if in the opinion of Owner the Work must proceed before an agreement can be negotiated, Owner will issue a written order to Contractor to proceed with the changes, and the Contractor will comply. In such event, Contractor will keep daily records as to all labor employed concerning the changes. Contractor's records will itemize costs for labor, materials, equipment rental, and transportation. Contractor will submit the records for approval by the OCR. If Contractor fails to keep such records, all Work will be deemed to have been performed at Contractor's own expense. Owner and Contractor will attempt to negotiate fair and reasonable adjustments to the Contract for changes in the Work. Contractor will submit to Owner all evidence in support of Contractor's proposal. In the absence of an agreement to the contrary, the changed work will be priced in accordance with Paragraphs A & B of this Article 21.

E. When a schedule of unit prices for additions or deletions to the Work is made a part of the Contract, and in the event Owner issues a Field Change Order or Owner RFP for additional or deleted Work to which unit prices are applicable, no percentage fee or other mark-up will be applied to scheduled unit prices. Owner will have the right to establish verification procedures for all Work performed under unit price Contract provisions.

F. In the event of addition and deletion of like items in a Field Change Order or Owner RFP, the like item quantity will be summed and the unit prices or the percentage fee will be applied to the total.

G. In no event will Contractor proceed with changes in the Work without a written order from Owner to so proceed. Owner will be under no obligation to pay for unauthorized extra, additional or changed Work performed by Contractor without a written Change Order or written order to proceed executed by Owner.

## **ARTICLE 22**

### **Schedule**

A. Contractor will submit, to Owner, a schedule of the Work (the "Schedule") within ten (10) days after execution of the Contract and will maintain the schedule on a current basis until the Work is completed. Time limits set forth in the Contract for substantial completion, final completion, or any other project milestones, will govern, and the schedule must be adjusted to comply. Contractor will perform the Work in accordance with the schedule as well as within the dates specified in the Contract.

B. Periodically as required by Owner, Contractor will report to Owner on the status of the Work on duplicate marked copies of the current schedule. Contractor will indicate in the status report any Work that is not proceeding according to the current schedule or to modify the schedule. Any modifications

to Contractor's schedule notwithstanding, Contractor will remain responsible to complete the Work within the times specified in the Contract.

C. If the Work is not proceeding according to the Schedule and Owner does not reasonably believe Contractor's proposed actions or schedule modifications are sufficient to accomplish completion of the Work within the Contract time, Contractor will be in default under the Contract. If Contractor fails to cure such default by submitting proposed actions or schedule modifications, reasonably acceptable to Owner, within ten (10) days of receiving written notice of the default, Owner may perform such Work as it deems necessary to bring the Work into compliance with the current schedule and to credit the cost thereof against payments due Contractor. Such action will not constitute Owner's waiver of any other claim or claims against Contractor resulting from Contractor's failure to perform on schedule or within the time limits set forth in the Contract.

### **ARTICLE 23**

#### **Delays and Extension of Time**

A. If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or by any other firm employed by Owner or by changes ordered in the Work, strikes, lockouts, fires, floods, earthquakes, or acts of God, acts of war, or public enemy, inability to obtain materials due to government restrictions, acts of public officials, or by any cause which Owner decides justifies the delay, then the schedule for completion of the Work will be extended for a period equal to the delay so caused. No such delay will be recognized unless it alone increases the overall critical path duration of the schedule in effect at the time of the delay.

B. No schedule extension will be allowed for delay commencing more than five (5) days before claim therefore is made in writing to the Owner. In case of a continuing delay, only one claim is necessary.

C. No claim for delay will be allowed Contractor on account of Owner's failure to return drawings and shop drawings to Contractor until ten (10) working days after Owner's receipt of a demand for such drawings, and not then, unless such claim is reasonable. Disapproval of drawings by Owner will not be a claim for delay.

D. Extension of time of completion by Owner, if any, will be Contractor's sole remedy for delay, no matter how or by whom caused, and Contractor will not be entitled to any increase in the Contract Sum or to damages or additional compensation as a consequence of such delays; provided, however, Contractor will be entitled to compensation for delays caused by Owner's failure to obtain such permits as are Owner's responsibility in a timely manner.

E. Contractor will cause each subcontract or agreement with material suppliers to contain a provision limiting remedies of subcontractors and suppliers for delay to those allowed the Contractor under Paragraph D, above.

**ARTICLE 24**  
**Temporary Sign**

Contractor may, at no cost to Owner, provide a suitable temporary sign acceptable to the Owner advertising the Work and indicating thereon the title of the project and name of Contractor. The sign will be no larger than four feet by eight feet (4' x 8'). Layout, text, and location of such sign will be as approved by Owner. No other signs advertising the Work will be permitted.

**ARTICLE 25**  
**Temporary Structures and Services**

A. Toilets. Contractor will provide suitable toilet facilities at approved locations with proper enclosures for the use of all workers, and will maintain such in a sanitary and operable condition, all in conformity with local regulations.

B. Temporary buildings. Contractor will provide such temporary buildings as may be required for the use of its workers and the safe storage of tools and materials. Such structures will be located on the job site with location as approved in advance by Owner.

C. Temporary Electric Power. Owner will provide, at Contractor's expense, for all temporary light and power required for the Work including, without limitation, all wiring, connections, and accessories, and all power consumed.

D. Temporary Water Supply. Contractor will make all necessary arrangements for and provisions of water including temporary piping and hose extensions required for construction purposes. Contractor will obtain and pay for temporary permits from proper authorities and pay for all water used.

E. Temporary Facilities. Contractor will install and operate an adequate number of temporary hoists and furnish and maintain temporary scaffolds, ladders, runways, and the like as required for the proper execution of the Work. As soon as the progress of the Work will permit, Contractor will erect the permanent stairs, platforms, ramps, catwalks, etc., properly equipped with handrails and other safeguards and will provide wood or paper coverings to protect these and all other permanent parts of the facility from damage or defacement during the Work.

F. Removal of Temporary Structures and Services. Contractor will remove temporary structures and services installed by Contractor upon completion of the Contract or as directed by Owner. Contractor will make any repairs or alterations necessitated by such removal at Contractor's expense.

G. Pestilence Control. Contractor will guard against and, if necessary, exterminate rodents, termites, vermin, and other pests. All personnel on the project site will be required to dispose of garbage and refuse in covered metal containers, which the Contractor will furnish and empty regularly.

H. Pollution Control. Contractor will comply with requirements of Owner and of governmental authorities having jurisdiction, regarding pollution control.

I. Contractor will not disrupt or interrupt electric, gas, water, steam, or other utilities or services to existing structures without prior notice to Owner and then only at a definite time and for a definite duration as approved by Owner in writing.

J. If Work is to be performed upon or adjacent to an existing structure, the Work will be executed in such manner as will not interfere with the continued free and comfortable use of the structure, walks and grounds. Contractor will keep building exits clear of obstructions at all times.

K. Contractor will provide designated smoking areas, separate from areas where work is actively being performed, for its employees and subcontractors.

## **ARTICLE 26**

### **Security of Equipment and Operable Machinery**

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

## **ARTICLE 27**

### **Weather Protection and Heating**

A. Contractor will provide and maintain weather protection and temporary heating to properly protect all Work from damage. Contractor will not use any installed or partially installed heating system for temporary heating purposes, unless specifically authorized in writing by Owner.

B. When necessary to enclose buildings for construction, Contractor will provide all permanent and temporary enclosures required and will provide temporary heating by means of adequately ventilated devices to maintain suitable temperatures for the Work of all trades. Temporary heating will be maintained for such periods as required or as directed by Owner. When directed by Owner, Contractor will remove all temporary enclosures.

C. If portable ventilating fans are used to dispel moisture, Contractor will provide the same with adequate safety guards and the area will be broom clean to insure protection of personnel.

D. Contractor will use only flameproof tarpaulins.

## **ARTICLE 28**

### **Cleaning**

A. Contractor will at all time keep the premises free from accumulation of waste materials or rubbish caused by employees, subcontractors, or the Work. At the completion of the Work, Contractor will remove, from the building and site, all rubbish, tools, scaffolding and surplus materials, and will leave the Work broom clean unless otherwise directed. If, in the opinion of Owner, Contractor fails to keep the premises clean, Owner may remove waste materials, rubbish, and charge the expense of such removal to Contractor.

B. Contractor will thoroughly wash and clean all glass; replace broken glass; clean hardware; remove paint stains, spots, smears, marks, and dirt from all surfaces; clean fixtures; and wash terrazzo tile floors and all exposed concrete so as to present clean work to Owner for acceptance.

C. Contractor will neatly stack construction materials such as concrete forms and scaffolding when not in use. Contractor will promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from surfaces to prevent marring or other damage.

D. Volatile wastes will be properly stored in covered metal containers and removed daily.

E. Wastes will not be buried or burned on the site, or disposed of into storm drains, sanitary sewers, streams, or waterways. Contractor will remove and dispose of all wastes from the site in a manner complying with local ordinances and state and federal anti-pollution laws.

F. Contractor will periodically wet down walls, debris, trucks, chutes, etc. as required minimizing flying dust. Contractor will provide enclosed chutes for upper floors to selected ground floor collecting or loading areas adjacent to the bottom of chutes will be sprayed or dampened with water to prevent dust.

## **ARTICLE 29**

### **Progress Payments and Final Payments**

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

On or before the twentieth (20th) day of each month, Contractor will submit a statement indicating the value of labor and materials acceptably incorporated into the Project during that calendar month. Owner will pay the amount due under each statement within thirty (30) days after Owner has reviewed and approved the statement.

There will be a five percent (5%) retainage of all sums due. The retainage will be paid to Contractor with final payment.

B. Partial payments will not constitute acceptance by Owner of Contractor's Work nor be construed as a waiver of any right or claim by Owner in connection with the Work.

C. Contractor will submit invoices with a detailed cost breakdown.

D. Contractor will keep the Project, including, without limitation, any structure or the land upon which the Project is erected free and clear of all liens, claims, security interests, and/or encumbrances in favor of any person and arising by reason of having provided labor, materials or equipment relating to the Work. Contractor will indemnify and hold Owner, the Project, and the real property harmless from and against any liens, notices, or claims that may be filed in connection with Contractor's performance under this Contract or with construction of the Work, including, without limitation, damages, costs, and/or attorney fees arising therefrom.



E. Applications for payment will include the value of materials or equipment not incorporated in the Work, but delivered and suitably stored at the site or at some other location agreed upon in writing by the parties hereto. Contractor warrants that title to all equipment and materials will pass to Owner upon Owner's payment therefore or upon incorporation into the Work, whichever occurs first. Contractor will prepare and execute all documents necessary to effect and perfect such transfer of title. Title thereto will vest in Owner provided; however, the vesting of title will not impose any obligation on Owner or relieve Contractor of its obligations under the Contract.

F. Contractor will submit an updated schedule with each application for payment.

G. Upon receipt of written notice that the Work is ready for final inspection and acceptance, Owner will promptly make such inspection. Owner will make final payment to Contractor approximately thirty (30) days after Owner's acceptance of the completed Work.

H. Before submitting application for final payment, Contractor will remove all equipment from the project and complete Contract closeout procedures.

I. By acceptance of the final payment, Contractor warrants that it has received payment in full for its performance of the Contract and waives all further claims against Owner in connection with the Work. Final payment by Owner will be conclusive proof of Owner's performance of the Contract.

### **ARTICLE 30**

#### **Owner's Right to Withhold Payment**

A. Owner will have the right to withhold from payments due Contractor such sums as necessary, in Owner's sole opinion, to protect Owner against any loss and/or damage which may result from negligence and/or deficient Work by Contractor, failure by Contractor to perform its obligations, including, without limitation, failure to maintain satisfactory progress of the Work, and/or claims against Contractor or Owner relating to Contractor's performance or work. In addition, Owner may withhold payments from Contractor for damages, caused by Contractor, for which no adjustment is made, or any subcontractors, and where reasonable evidence indicates a claim will be filed against Owner or the property.

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

### **ARTICLE 31**

#### **Premium Time**

A. Owner reserves the right to accelerate the Schedule from time to time, without cause, upon written direction to Contractor to so accelerate. If the forces of contractor or any of its subcontractors are required to work overtime as a result of such acceleration, Owner will reimburse Contractor for the premium portion of overtime wages paid plus applicable federal and state payroll taxes and other actual payroll costs attributable to the overtime premium. Reimbursement for such acceleration will not

include any overhead or profits of Contractor or its subcontractors on the premium portion of overtime wages.

B. Contractor will keep and maintain accurate records of all overtime hours to be reimbursed and will secure Owner's approval of such records on a daily basis. Reimbursement will be made based on such approved records by change order as provided herein.

C. This article will have no application to overtime work that Contractor is required to perform due to its own failure to meet the Contract schedule or, without limitation, due to any other fault of Contractor.

## **ARTICLE 32**

### **Claims and Demands**

A. If Contractor claims that any written instructions issued after the effective date of this Contract, by drawings or otherwise, involve extra costs under the Contract, Contractor will not be entitled to reimbursement for such extra costs unless Contractor will so notify Owner in writing before proceeding to execute the Work and within seven (7) days after receipt of such instructions.

B. Claims and demands for any other cause whatsoever, by Contractor against Owner, must be served in writing upon Owner within fourteen (14) days from the occurrence of the cause thereof, except as otherwise expressly provided, or Contractor will be deemed to have waived such claims or demands.

## **ARTICLE 33**

### **Taxes**

Contractor will comply with all Oregon tax laws and pay all federal, state, and local taxes, including, without limitation, excise taxes, sales and use taxes.

## **ARTICLE 34**

### **Owner's Right to Occupy**

A. Owner has the right to occupy or use, ahead of schedule, any substantially completed or partially completed portion of the Work, notwithstanding the time of completion for all of the Work. If occupancy or use increases the cost of the Work (other than for delay or for corrections which are Contractor's responsibility), Contractor will be entitled to extra compensation. If such occupancy or use delays completion of the Work, Contractor will be entitled only to any extension of time. Claims for such extra compensation or extension of time, or notification to Contractor of Owner's intent to so occupy or use, will be made within five (5) days of the event giving rise to the claim for extra compensation or extension of time, or not later than five (5) days prior to Owner's intended date of occupancy or use.

B. After Owner has taken occupancy of any substantially completed portion of the Project, Contractor will not disrupt the use and occupancy thereof to make corrections in the Work but will, at Owner's discretion, make such corrections at Contractor's expense outside of Owner's normal hours of operation.

**ARTICLE 35**  
**Owner's Right to Terminate**

A. If Contractor fails to commence the Work in accordance with the provisions of the Contract; fails to diligently prosecute the Work to completion in a timely, efficient, workmanlike, skillful and careful manner, and in strict accordance with the provisions of the Contract (including the scheduled completion date and any interim scheduled milestone dates); fails to deploy adequate qualified personnel or equipment to complete the Work on time; fails to perform any of its obligations under the Contract; or fails to make prompt payments to its subcontractors, materialmen, or laborers, Contractor must cure any such default within seven (7) days after written notice of the default or Owner will have the right to (i) terminate the Contract; (ii) take possession of all or any part of Contractor's materials, equipment, supplies, and other property of any kind used in the performance of the Work and to use such property including engaging the services of other parties therefore. No action taken by Owner hereunder will be deemed a waiver of any other right or remedy. If the cost to Owner of performing the balance of the Work is more than the balance of the Contract Sum that has not been paid to Contractor, Contractor will be liable, and will reimburse Owner, for such excess.

B. If Contractor fails to prosecute the Work properly; or fails to perform any provision of the contract; or does, or omits, anything whereby safety or proper construction may be compromised or whereby damage or injury may result to persons or property, after three (3) days' written notice to Contractor, Owner will have the right to make good all omissions or deficiencies and may deduct the cost therefore from the Contract Sum. No action taken by Owner hereunder will affect any other rights or remedies of Owner or relieve Contractor from any consequences or liabilities arising from such acts or omissions.

C. Owner may stop or suspend the work, in whole or in part, or terminate the Contract for public interest and without cause by giving seven (7) days' prior written notice of suspension or termination to Contractor. In such event, the Contract Sum will be adjusted with respect to the Work completed at the time of termination. Owner will pay Contractor for Work completed according to payment provisions of the Contract and Owner will reimburse Contractor for all costs necessarily incurred in organizing and carrying out the stoppage of the Work and paid directly by Contractor. Owner will not reimburse Contractor for any continuing contractual commitments to subcontractors, materialmen, or others, or for penalties or damages for canceling such contractual commitments inasmuch as Contractor will make all subcontracts and other commitments subject to this provision.

D. Contractor and Owner recognize that if Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of the Contract. Accordingly, Contractor and Owner agree that upon the occurrence of any such event, Owner may request of Contractor, or its successor in interest, assurance of future performance in accordance with the Contract. Upon failure to comply with such request within ten (10) days of the request, Owner may terminate the Contract.

E. If Owner stops or suspends the Work, or terminates the Contract, and an arbitrator or a court determines that Owner's termination was wrongful, such termination will be deemed converted to a termination without cause, set forth above, and Contractor's remedy is limited to the recovery of the

payments permitted for such termination for public interest and without cause as set forth in subparagraph C, above.

F. Termination by Owner will not constitute any waiver of rights, claims, and/or causes of action Owner may have against Contractor. If a party breaches or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Contract, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Contract, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

### **ARTICLE 36**

#### **Dispute Resolution**

If any claim, dispute, or controversy arising out of or related to this Contract occurs (a "Dispute"), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Contract.

### **ARTICLE 37**

#### **Attorney Fees**

With respect to any dispute relating to this Contract, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Contract, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

### **ARTICLE 38**

#### **Assignment**

A. Contractor will not assign its rights or obligations under, or arising from, the whole or any part of the Contract or any subcontract without Owner's prior written consent. Contractor will not assign any amounts due or to become due under the Contract without prior written notice to Owner.

B. Contractor hereby assigns, to Owner (and its assigns), all interest in subcontracts and purchase orders, now existing or hereinafter entered into by Contractor, for performance of any part of the Work. Assignment will be effective upon acceptance by Owner, in writing and only as to those subcontracts and purchase orders that Owner so designates. Owner may accept assignment at any time during the course of construction prior to final completion. All of Contractor's subcontracts and purchase orders will provide that they are freely assignable by Contractor to Owner (and its assigns). It is agreed and understood that such assignment is part of the consideration to Owner for entering into the Contract and may not be withdrawn prior to final completion.

**ARTICLE 39**  
**Guarantees and Warranties**

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

**ARTICLE 40**  
**Public Contract**

Contractor will comply with all applicable public contracting provisions required by Oregon law, including, without limitation, the provisions contained in OAR 137-049-0200(1)(c). Without otherwise limiting the generality of the immediately preceding sentence, Contract will comply with the following:

- A. Contractor will make payment promptly, as due, to all persons supplying to the Contractor labor or materials for the performance of the work provided for in this Contract.
- B. Contractor will pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractor incurred in the performance of the Contract.
- C. Contractor will not permit any lien or claim to be filed or prosecuted against the state, or a county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or materials furnished for the Work.
- D. Contractor will pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- E. Contractor must demonstrate that an employee drug testing program is in place.

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F. To the extent lawn and landscape maintenance is part of the Work; Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost-effective. If the Contract calls for demolition work (as described in ORS 279C.510(1)), Contractor will salvage or recycle construction and demolition debris, if feasible and cost-effective;

G. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or any Subcontractor by any person in connection with this Contract as the claim becomes due, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract.

H. If Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor materials in connection with this Contract within thirty (30) days after receipt of payment from the Owner or a contractor, the Contractor or Subcontractor will owe the person the amount due plus interest charges commencing at the end of the ten (10) day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent (9%) per annum. The amount of interest may not be waived.

I. If Contractor or any Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The payment of a claim in the manner authorized in this section does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

J. A person may not be employed by the Contractor or any Subcontractor for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of agreements for personal services as defined in ORS 279C.100, the employee will be paid at least time and a half pay:

1. For all overtime in excess of eight hours in any one day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday; or

2. For all overtime in excess of ten (10) hours in any one day or forty (40) hours in one week when the work week is four consecutive days, Monday through Friday; and

3. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

K. Contractor will give notice in writing to employees either at the time of hire or before commencement of work on the agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. Contractor will include an identical provision in its subcontracts and require all Subcontractors, of any tier, to include an identical provision in all subcontracts.

L. In the case of agreement for personal services as defined in ORS 279C.100, the employee will be paid at least time and half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services agreements who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

M. Agreements for services must contain a provision that requires that persons employed under the agreement will receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one day or in excess of forty (40) hours in any one week, whichever is greater.

N. Contractor will promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any agreement for the purpose of providing or paying for the services.

O. Contractor and all Subcontractors are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.

P. Contractor and all Subcontractors will comply with the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that may be paid to workers in each trade or occupation required for the public works employed in the performance of this Contract either by the Contractor or Subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated by this Contract, as specified in the specifications for the Work.

Q. Workers will be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840.

R. Contractor represents and agrees that the specifications contain a sufficient provision stating that a fee is required to be paid by the Owner to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The fee will be paid to the Commissioner under the administrative rule of the Commissioner.

S. Contractor represents and agrees that the specifications contain a sufficient provision stating that Contractor and every Subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

1. Contractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

2. Contractor will require each Subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

3. Contractor is aware of the provisions of ORS 279C.600 and 279C.605 relating to notices of claim and payment of claims on Public Works Bonds.

T. The hourly rate of wage to be paid by the Contractor or every Subcontractor subject to prevailing wage rates to workers, will be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed.

U. Contractor and every Subcontractor subject to prevailing wage rates to workers will keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the project.

V. To the extent Contractor or any Subcontractor subject to prevailing wage rates will also provide for or contribute to a health and welfare plan or a pension plan, or both, for its employees on the project, the Contractor or Subcontractor, as applicable, shall post notice describing such plans in a conspicuous and accessible place in or about the project. The notice preferably will be posted in the same place as the notice required under Paragraph U, above. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information.

W. Contractor or the Contractor's surety, and every Subcontractor or Subcontractor's surety, will file certified statements with the Owner in writing on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the Contractor or the Subcontractor has employed upon such public work, and that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement will be verified by the oath of the Contractor or the Contractor's surety, or Subcontractor or the Subcontractor's surety that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's knowledge. The certified statements will set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Each certified statement required shall be delivered or mailed by the Contractor or Subcontractor to the Owner. Certified statements shall be submitted for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month by the fifth business day of the following month. If a contractor fails to file the required certified statements, the public agency shall retain twenty-five percent (25%) of any amount earned by the contractor until the contractor has filed with the public agency certified statements as required by this Paragraph W. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

X. Contractor or Subcontractor will preserve the certified statements for a period of three years from the date of completion of the Contract.

Y. Contractor represents and agrees that the Owner has fully and timely included a provision that the Contractor and any Subcontractor will comply with ORS 279C.840 in the advertisement for Proposals, the request for Proposals, the contract specifications, the accepted Proposal or elsewhere in the contract documents and that the Owner has no liability for unpaid minimum wages.

Z. Owner shall make progress payments under the Contract monthly as work progresses. Payment shall be based upon estimates of work completed that are approved by the Owner. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein. In instances when an invoice is filled out incorrectly or when there is any defect or impropriety in any submitted invoice when there is a good faith dispute, the Owner shall so notify the Contractor within fifteen (15) days stating the reason or reasons the invoice is defective or improper or the reasons for the



dispute. A defective or improper invoice, if corrected by the Contractor within seven days of being notified by the Owner, shall not cause a payment to be made later than specified in this Paragraph Z.

AA. If requested in writing by a first-tier Subcontractor, Contractor, within ten (10) calendar days after receiving the request, will send to the first-tier Subcontractor a copy of that portion of any invoice, request for payment submitted to the Owner or pay document provided by the Owner, to the Contractor specifically related to any labor or materials supplied by the first-tier Subcontractor.

BB. Payment of interest may be postponed when payment on the principal is delayed because of disagreement between Owner and Contractor.

CC. Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As work progresses, Owner may, in Owner's sole discretion, reduce the amount of the retainage and the Owner may in its sole discretion eliminate retainage on any remaining monthly contract payments after fifty percent (50%) of the work under the contract is completed if, in the Owner's sole opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage will be allowed only upon written application by the Contractor, which application will include written approval of Contractor's surety; except that when the Contract work is ninety-seven and one-half percent (97½ %) completed Owner may, at its discretion, and without application by Contractor, reduce the retained amount to one-hundred percent (100%) of the value of the Contract Work remaining to be done. Upon receipt of a written application by Contractor, Owner will respond in writing within a reasonable time.

DD. The retainage held by Owner will be included in and paid to Contractor as part of the final payment of the Contract Price. Contractor's construction manager will notify Owner in writing when Contractor considers the work complete and Owner will, within fifteen (15) days after receiving the notice, either accept the work or notify Contractor of work yet to be performed on the Contract.

EE. Contractor will not request payment from the Owner of any amount withheld or retained in accordance herewith until such time as Contractor has determined and certified to Owner that the Subcontractor is entitled to the payment of such amount. A dispute between Contractor and a first-tier Subcontractor relating to the amount or entitlement of a first-tier Subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to the terms hereof does not constitute a dispute to which Owner is a party. Owner will not be included as a party in any administrative or judicial proceeding involving such a dispute. Contractor will include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including material supplier, for the purpose of performing a construction contract:

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

2. An interest penalty clause that obligates Contractor, if payment is not made within thirty (30) days after receipt of payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to subparagraph (1) of this Paragraph EE. Contractor or first-tier Subcontractor will not be obligated to pay an interest penalty if the only reason that Contractor or first-tier Subcontractor did not make payment when payment was due is that Contractor or first-tier

Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty will be:

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

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

FF. Contractor will include in each of its subcontracts, for the purpose of performance of such contraction condition, a provision requiring the first-tier Subcontractor to include payment clause and an interest penalty clause conforming to the standards of Paragraph EE, above, in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier. Contractor will comply and require all Subcontractors to comply with applicable requirements of all laws, codes, ordinances, regulations and statutes, including but not limited to those in ORS Chapter 279C. To the extent that ORS Chapter 279C, or any other law, code, ordinance or regulations, requires any term or condition to be included in this Contract, such term or condition are hereby incorporated by this reference. Nothing contained herein will be construed so as to require the commission of any act contrary to law, code, rule, statute, ordinance or regulation and whenever there is any conflict between any provisions contained herein and any statute, law, code, ordinance, rule, and/or regulation the provision of this Contract which is affected will be curtailed and limited only to the extent necessary to bring it within the requirements of the law, code, rule, statute, ordinance, or regulation.

GG. By signing this Contract, Contractor certifies that all Subcontractors performing construction work will be registered by the Construction Contractors Board or licensed by the State Landscape Contractors Board before the Subcontractor starts work on the Project.

#### **END OF GENERAL CONDITIONS**

**PERFORMANCE BOND**

Bond # \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_ ("Principal")  
(Corporation, Partnership or Individual)

Principal and \_\_\_\_\_ ("Surety")  
(Name of Surety),

are held and firmly bound unto City of John Day, Oregon ("Owner"), whose address is 450 E. Main Street, John Day, Oregon 97845, in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2018, a copy of which is hereto attached and made a part hereof for the:

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

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

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

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_(number) counterparts,  
each one of which shall be deemed an original, this \_\_\_\_\_day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
(Principal)

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

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Surety)

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

(SEAL)

\_\_\_\_\_  
(Witness as to Surety)

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

**Name, phone number & address of agent:** \_\_\_\_\_

**PAYMENT BOND**

Bond # \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_ ("Principal")  
(Corporation, Partnership or Individual)

Principal and \_\_\_\_\_ ("Surety")  
(Name of Surety),

are held and firmly bound unto City of John Day, Oregon ("Owner"), whose address is 450 E. Main Street, John Day, Oregon 97845, in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) in lawful money  
of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors  
and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas, the Principal entered into a certain contract  
with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2018, a copy of which is  
hereto attached and made a part hereof for the:

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

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

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

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_(number) counterparts,  
each of of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Principal)

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

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Surety)

ATTEST:

\_\_\_\_\_  
(Witness as to Surety)

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

**Agent name, phone number & address of agent:** \_\_\_\_\_