

## Notice of Request For Proposal

Deschutes Public Library District is conducting a selection procedure for construction services. The District intends to award the East Bend Library 2010 Tenant Improvement Project to the highest ranked proposer from those contractors submitting proposals.

Sealed responses must be received by the District prior to 2:00 p.m., November 11, 2010. Proposals must be addressed to Joe Flora, Facilities Manager, Deschutes Public Library District, 507 N.W. Wall Street, Bend, Oregon 97701, or hand delivered to the same address before 2p.m. November 11, 2010.

The proposed project is a public work, subject to ORS 279C.800 to 279C.870, Oregon's prevailing wage rate statutes.

Copies of the Request For Proposals for the *East Bend Library 2010 Tenant Improvement* may be obtained at <http://www.deschuteslibrary.org/rfp>. Copies of this Request For Proposals are also available at the Administration Building, 507 NW Wall Street, Bend, Oregon.

Documents for the work are those prepared by BLRB/GGL Architects, 497 SW Century Drive, S105, Bend, OR 97702. Bona fide General Contractors interested in responding to the RFP as a General Contractor may obtain documents by contacting Ford Graphics, 1151 SE Centennial Court #3, Bend, Oregon 97702 (541) 749-2151. Contractors are responsible for the cost of all reproductions of the documents.

Documents will be available for examination during the RFP period at the office Deschutes Public Library of the Director of Facilities located at 507 N.W. Wall Street, Bend, Oregon, 97701; at the offices of BLRB/GGL Architects, 497 SW Century Drive S105, Bend, OR 97702 (541)330-6506; via on line at Ford Graphics Plan Center [www.fordgraphics.com](http://www.fordgraphics.com), and at Central Oregon Builders Exchange 1902 NE 4<sup>th</sup> Street, Bend, Oregon 97701, Phone(541) 389-0123; Fax(541)389-1549 [www.plansonfile.com](http://www.plansonfile.com)

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# REQUEST FOR PROPOSALS

## NOTICE TO PROPOSERS

### East Bend Library Tenant Improvements

Proposals will be received by Deschutes Public Library District ("District") for tenant improvements within the East Bend Library leased premises on 2175 N.E. Hwy 20, Bend, Oregon (Project). The work will include the following basic elements;

1. Selective interior demolition.
2. Construction of approximately 8,145SF of tenant improvement.
3. Coordination with Library District for installation of owner provided shelving, equipment and finishes.
4. Design Build documentation for fire sprinklers.

Proposals must be addressed to Joe Flora, Facilities Manager, at Deschutes Public Library District, 507 N.W. Wall Street, Bend, Oregon 97701, or hand delivered to the same address before 2p.m. November 11, 2010, to be opened at that time at the Library District Administration Building 507 NW Wall St. Bend, Oregon in the conference room. Proposals must be plainly marked in the lower left hand corner: "**Proposal: East Bend Library Tenant Improvements**".

All requests for RFP packets and project specifications, and any questions regarding the RFP or proposals should be directed to: Jim Landin at BLRB|GGL Architects, 497 SW Century Drive, Suite 105, Bend, Oregon 97702, or by phone at (541) 330-6506. Proposals must be submitted in accordance with the terms of the RFP, on the proposal form included.

The successful proposer will be required to provide payment and performance bonds or statutorily acceptable alternatives for 100% of the contract price. A proposal bond equal to 10% of the proposal amount is required with proposal submittal. All proposals shall be irrevocable for 90 days.

The proposed project is a public work, subject to ORS 279C.800 to 279C.870, Oregon's prevailing wage rate statutes. Oregon's prevailing wage rates, as set forth in the July 1, 2010, publication "Prevailing Wage Rates for Public Works Contracts in Oregon", are incorporated into this packet by reference and applicable rates are available at:

[www.boli.state.or.us/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml).

The successful proposer will be required to provide proof of a public works bond filed with the Oregon Construction Contractors Board.

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# REQUEST FOR PROPOSAL

## GENERAL INFORMATION TO PROPOSERS

### EAST BEND LIBRARY TENANT IMPROVEMENTS

Deschutes Public Library District is conducting a formal solicitation for tenant improvements for leased premises on 2175 N.W. Hwy 20, Bend, Oregon. This project will consist of:

1. Selective interior demolition.
2. Construction of approximately 8,145SF of tenant improvement.
3. Coordination with Library District for installation of owner provided shelving, equipment and finishes.
4. Design Build documentation for fire sprinklers.

Sealed proposals will be received by Deschutes Public Library District up to 2p.m., on November 11, 2010, for furnishing of construction services for the tenant improvements within the East Bend Library located at 2175 N.E. Hwy 20, Bend, Oregon. Proposals will be opened immediately after this deadline. Questions regarding proposals or the project may be submitted to Jim Landin, at BLRB|GGL Architects, 497 SW Century Drive, Suite 105, Bend, Oregon 97702, or by phone at (541) 330-6506. No oral modifications are allowed, authorized, or to be relied upon by any party, unless confirmed by written Addendum.

A Mandatory pre-Offer conference will be held on October 28, 2010 at 2pm. The meeting will be held at Borden's Corner, 2175 NE Hwy 20, Bend, Oregon Suite #160. The purpose of the meeting is to review the scope of work, view the site, and answer questions about the project. Statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

There are no mandatory prequalifications required for this contract.

Proposals are to be addressed to Joe Flora, Facilities Manager, and mailed or hand delivered to Deschutes Public Library District, 507 N.W. Wall Street, Bend, Oregon 97701. Proposal must be plainly marked in the lower left hand corner: "**Proposal: East Bend Library Tenant Improvements**".

No proposal will be received or considered by District unless the proposal contains a statement by the Proposer as a part of its proposal that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 USC 276a."

District will not receive or consider a proposal unless the Proposer is registered with the Construction Contractors Board with a license in good standing.

Proposals shall be submitted on the District's proposal form included in this RFP, including a proposal bond for 10% of the proposal amount. The successful Proposer, as a part of its contract, must provide payment and performance bonds or statutorily acceptable alternatives approved by the District for 100% of the contract price. All proposals shall be irrevocable for 90 days. Proposals submitted without a completed proposal form and proposal bond will not be considered.

A contract will be negotiated with the highest ranked Proposer. If a contract cannot be successfully negotiated with the number 1 Proposer, the District reserves the right to negotiate with the number 2 Proposer, and then the number 3 Proposer, if necessary, for a contract.

No facsimile or email Proposals will be accepted.

The Proposer need not be licensed under ORS 468A.720 to work with asbestos.

Required disclosure. Prior to Intent To Award the proposer shall provide a list of the first-tier subcontractors.

The Proposal package to be submitted shall include the following documents. Where applicable, these documents must be properly executed.

1. Proposal Form. (Form 1-1)
2. Non-Collusion Affidavit. (Form 1-2)
3. Proposal Submissions.
4. Construction Contractors Board license number.

### PROPOSAL SUBMISSION REQUIREMENTS

To be responsive to this RFP, proposals shall specifically address the following information. The proposal shall be bound with tabs identifying each section. The body of this statement (Sections 1 through 4 described below) shall not exceed 25 pages. Under no circumstances will the District be responsible for any of the Contractor's costs or expenses incurred in submitting a proposal. Each prospective Contractor responding to this RFP does so solely at its own cost and expense. Proposer must submit 4 copies of the Proposal.

Submittal of a proposal indicates a proposer's agreement to execute the terms listed in this proposal.

Each Contractor's Proposal submissions must include:

1. A short company resume;
2. A list of similar projects with references;
3. Identity of key employees who will be assigned to this project for the duration of the Work, including Project Manager, Site Superintendent; include qualifications.

### ELIGIBILITY REQUIREMENTS

Each Contractor must formally comply with the following eligibility requirements:

1. The Contractor shall be able to demonstrate experience in the construction of at least three (3) public projects of similar size and scope.
2. The Contractor's key personnel identified in the proposal shall be available for the entire duration of the project.
3. Contractor's Project Manager shall be able to reach the Project site within one hour (travel time).

## SELECTION CRITERIA

The following criteria are listed from the most to the least desirable, and the proposal will be evaluated accordingly.

Proposal cost (200 points available)

Knowledge and understanding of the project. (175 points available.)

Demonstrated ability to successfully complete similar projects. (150 points available.)

Experience of key staff on comparable projects. (100 points available.)

Proximity to project site(s). (100 points available.)

Oral interview, where applicable. (100 points available.)

## SELECTION PROCESS

In order to review, score, and rank all proposals submitted in response to this Request for Proposals, the District's Facility Manager may recommend an awardee to the Board, or the District may establish an RFP Contractor Selection Committee of no fewer than two individuals. District reserves the right to interview the top three candidates.

## Section 2

### 2-1 Rights Reserved – District reserves the right to:

- A. Reject any Proposal not in compliance with all prescribed public contracting procedures and requirements and other applicable laws.
- B. Reject for good cause any or all Proposals upon the District finding that it is in the public interest to do so.
- C. Reject any Proposal or Proposals not meeting or differing from the specifications set forth herein.
- D. Waive any and all minor irregularities or informality in the Proposal submitted when, in the opinion of District, it is in its best interest to do so.
- E. Consider the competency and responsibility of Proposers in making any awards.
- F. Reject a selected Proposer if within a reasonable time determined solely at the discretion of the District, Proposer has not executed a project contract.
- G. Hold the three Proposals determined best by the District under consideration until the final award is made, provided that the District shall award the contract within 90 days after the Proposal opening date.
- H. Extend the deadline for submitting Proposals.
- I. Seek other proposals, if deemed in the public interest.

### 2-2 Bonds –The successful Final Proposer shall furnish 100% performance and payment bonds payable to the District conditioned upon compliance with and fulfillment of all the terms and provisions of the contract, plans and specifications and all applicable laws and the prompt payment, as due, to all persons supplying labor and/or materials for the processing of the work provided for in the specifications. The bond shall be executed by a surety company authorized to transact business in the State of Oregon within 10 days after notice of intent to award the contract. The bonds are to be furnished by the company who will build the proposed project. An alternative to bonds as allowed by state statute and subject to the approval of the District may be considered. The performance security includes the preparation and completion of any design and related professional services as specified in the contract.

The Proposer shall provide with the proposal a copy of its public works bond filed with the Oregon Construction Contractors Board, if required by ORS 279C.830.

### 2-3 Insurance – The Final Proposer shall provide the following Insurance:

- A Certificate of Liability Insurance coverage with a carrier rated A or better by Best Insurance guide, listing the dollar amount of the coverage with the Proposal, not less than \$1,000,000 total aggregate coverage.
- Full casualty insurance on the work, naming District as an additional insured, from contract execution, until the work is accepted by the District.
- Certificate of Workers' Compensation Insurance.

### 2-4 Liability – The Final Proposer, if its Proposal is accepted, shall defend against any and all suits and assume all liability for the use of any patented process, device or article forming a part of the facility furnished and constructed under the contract. It is the intent that the District is to receive indemnification from the contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty work claims.

- 2-5 Requirement for Representative in Oregon – The successful Proposer, if not qualified to do business in Oregon, agrees and hereby does irrevocably appoint and designate the Corporation Commissioner of the State of Oregon as its agent to accept any and all legal processes in connection with any and all actions for, or in any connection with, the contract and also agrees to furnish the said Corporation Commissioner or a mailing address. The successful Proposer may, in lieu of the foregoing, and within 10 days of execution of the contract, irrevocably appoint some other person or corporation within the State of Oregon as agent for the aforesaid purposes and furnish the District with evidence of said appointment in writing.
- 2-6 Solicitation Protest Procedures – RFP protests must be made in accordance with District Rule 137-049-0260(3).
- 2-7 Award Protest Procedures – Award protests must be made in accordance with District Rule 137-049-0450.
- 2-8 Addenda – District will notify Proposers of Addenda and make Addenda available per District Rule 137-049-0250. Addenda will be posted at <http://www.deschuteslibrary.org/rfp>. Receipt of all addenda must be acknowledged in the proposal.
- 2-9 Negotiations – District shall permit negotiation with Proposers, pursuant to District Rule 137-049-0650. The purpose of negotiations is to approve specific plans, specifications, and other provisions of the contract. If successful negotiations are not concluded with the highest-ranked Proposer, District will enter into negotiations with the next-highest ranked Proposer, continuing in this manner to work down through the next-highest ranked Proposers until a contract has been negotiated or District determines to reject all proposals.
- 2-10 Workmanship – Construction shall meet Uniform Building Code specifications for commercial buildings, as well as NFPA and OSHA specifications for all work on this project. Workmanship shall be of the best grade and shall conform in all respects to the best practices in the industry.
- 2-11 Responsibility for Structure – Other than damage and loss insured under District's property insurance as required by the General Conditions, Proposer shall promptly remedy all damage and loss and shall assume all costs and be responsible for all the work, materials, equipment, other real or personal property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, and all improvements associated with this project, prior and up to completion of the contract work.
- 2-12 Equal Opportunity Employer – In connection with the execution of the contract, the Proposer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or any other protected class, recognized by state and/or federal law. The Proposer shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, national origin, or any other protected class, recognized by state and/or federal law. Such actions shall include, but will not be limited to, the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 2-13 No Waiver of Legal Rights – The District shall not be precluded or estopped by any measure, completion or acceptance of the work and payment therefore from showing that

any such measurement, estimate or certificate is untrue or incorrectly made or that the work or materials do not conform in fact to the contract. The District shall not be precluded or estopped, notwithstanding any measurement, estimate or certificate and payment in accordance therewith, from recovering from Proposer for its failure to comply with the terms of the contract. Neither acceptance by the District or any representative of the District, nor any payment for acceptance of the whole or any part of the work on any extension of time, nor any possession taken by the District shall operate as a waiver of any portion of the contract or of any power herein reserved of any right to damages herein provided. A waiver of any breach of the contract shall not be held as a waiver of any other subsequent breach of the contract.

- 2-14 Liquidated Damages – The completion of project work is important to the District for provision of public services. If delivery is not timely, the District will be damaged. Evaluation of such damages would be difficult, if not impossible, to calculate. The parties, therefore, agree that liquidated damages of \$1000 per day are part of the consideration for the Proposal price and that the sum of \$1000 per day is a reasonable sum for such damages.
- 2-16 Brand Names – To the extent the RFP specifications profile any brand name or specific piece of equipment, it fits District needs for this project. If a Proposer can provide “equal or better than” materials or equipment, where a particular brand name is mentioned, that is acceptable. This applies throughout the entire RFP. Determination of acceptability lies within the District’s sole discretion.

#### **END OF DOCUMENT**

#### Attachments:

1. Form 1-1 Proposal Form
2. Form 1-2 Non Collusion Form
3. Exhibit “A” Agreement
4. Exhibit “B” General Conditions
5. Exhibit “C” Project Specifications

## PROPOSAL FORM

Deschutes Public Library District  
East Bend Library Tenant Improvements  
2175 N.E. Hwy 20, Bend, Oregon 97701

This proposal is submitted to Deschutes Public Library District, 507 N.W. Wall Street, Bend, Oregon 97701.

1. The undersigned proposer proposes and agrees, if this proposal is accepted, to enter into a Construction Agreement with the District in the form included in this RFP and to complete all work as specified or indicated in the contract documents for the contract price and within the contract time indicated in this proposal and in accordance with the contract documents.

2. Proposer accepts all of the terms and conditions of the instruction to proposers, including without limitation, those dealing with disposition of proposal security. The proposals may not be amended or withdrawn and are subject to acceptance for 60 days after the date of proposal opening. Selected proposer will sign the agreement and submit the security and other documents required by the contract documents within 10 days after the date of District's notice of intent to award.

3. In submitting this proposal, proposer represents as more fully set forth in the agreement, that:

(a) Proposer has examined copies of the contract documents and the following addenda:

Date: _____	Number: _____
Date: _____	Number: _____
Date: _____	Number: _____
Date: _____	Number: _____

and also copies of any advertisement or Information to Proposers;

(b) Proposer has examined the legal site and locality where the work is to be performed, the requirements (federal, state, and local, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of work, and has made such independent investigation as the proposer deems necessary;

(c) This proposal is genuine and not made in the interest or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; proposer has not directly or indirectly induced or solicited any other proposer to submit a false or sham proposal; proposer has not solicited or induced any person, firm, or corporation to refrain

from proposing; and proposer has not sought by collusion to obtain for himself any advantage over any other proposer or the District ;

(d) The District does not have to award any contract based on the proposals submitted. Any award which the District makes will be on the basis of the selection criteria.

4. Proposer will complete the work for the following price: \$ \_\_\_\_\_

5. Proposer agrees to prepare the site and perform the labor necessary to complete the construction project which will be substantially completed in accordance with the plans and specifications attached hereto within \_\_\_\_\_ calendar days of the receipt of the notice to proceed.

6. Proposer acknowledges that he has reviewed the provisions of this agreement as to liquidated damages and the event of failure to complete the work on time and has considered those potential damages in formulating this proposal.

7. The following documents are attached to and made a condition to the proposal:

(a) Required proposal security in the form of a proposal bond or certified check in the amount of 10% of the proposal;

(b) Non-Collusion Affidavit.

8. Proposer agrees and certifies as follows:

(a) The provisions of ORS 279C.800 et seq. relating to the prevailing wage rates, if the proposal is over \$50,000, will be complied with;

(b) The provisions of ORS 305.385 relating to Oregon tax laws will be complied with;

(c) The proposer has not discriminated against minorities, women or emerging small business enterprises in obtaining any subcontracts required under this Contract;

(d) The proposer, its subcontractors, if any and all employers working under this are subject to employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers;

(e) The proposer is registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055. Unregistered proposers will not be considered;

(f) All subcontractors performing work as described in ORS 701.005(2) will be registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

9. Communications concerning this proposal shall be addressed to:

Proposer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
(Corporate Name) (Company Name)  
(Corporate Seal)

By: \_\_\_\_\_  
(Name of person authorized to sign,  
Or Title)

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

Phone: (\_\_\_\_\_) \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Oregon Contractors Board No.: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary of Proposing Corporation

**NON-COLLUSION AFFIDAVIT**  
Deschutes Public Library District

East Bend Library  
Tenant Improvements

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

I state that I am \_\_\_\_\_ of \_\_\_\_\_ and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this proposal.

I state that:

- (1) The price(s) and amount of this Proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, Proposer or potential Proposer, except as disclosed on the attached appendix.
- (2) That neither the price(s) nor the amount of this Proposal, and neither the approximate price(s) nor approximate amount of this Proposal, have been discussed with any other contractor, Proposer or potential Proposer, except as disclosed on the attached appendix.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this contract, or to submit a Proposal higher than this Proposal, or to submit any intentionally high or noncompetitive Proposal or other form of complementary Proposal.
- (4) My firm has made this Proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
- (5) \_\_\_\_\_, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described on the attached appendix.

I state that \_\_\_\_\_ understands and acknowledges that the above representations are material and important, and will be relied on by District in awarding the contract(s) for which this Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the District of the true facts relating to the submission of proposals for this contract.

\_\_\_\_\_  
Name of Company: \_\_\_\_\_  
Position: \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public of Oregon

*Exhibit A*

**AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between Deschutes Public Library District hereinafter called District, and \_\_\_\_\_, hereinafter called Contractor, in consideration of mutual covenants hereinafter set forth, agree as follows:

1. **Work.** Contractor shall complete all work as specified in the contract documents and in accordance with the documents and drawings provided for the project known as the East Bend Library Tenant Improvements (Project).

2. **Materials.** Contractor will furnish all materials, permits, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project.

3. **Contract Time.** The work will commence within 10 calendar days after the date of award and will be completed by the Contractor within \_\_\_\_\_ calendar days of receipt notice to proceed unless the period for completion is extended otherwise by the contract documents or by written agreement of the parties.

4. **Contract Price.** The District shall pay Contractor for performance of the work in accordance with the documents the sum of \$ \_\_\_\_\_ as shown in the proposal.

5. **Liquidated Damages.** The parties agree that if the work is not completed within the schedule set forth above, the Contractor will be responsible to the District for the sum of \$1000 for each day or part day that the project is incomplete. The parties agree that the liquidated damages provision in this agreement has been considered by the Contractor in establishing the amount of the Contractor's proposal and, as such, is part of the negotiations of this contract. The parties further agree that the amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to accurately estimate. The parties further agree that the damages stated herein are not a penalty.

6. **Progress Payments.** District shall make progress payments on account of the contract price on the basis of the Contractor's application for payment as recommended by the District on or about the last day of each month during construction as provided herein. All progress payments shall be on the basis of progress of the work measured by the schedule of values provided for in Section 19 of the General Conditions. Prior to substantial completion, progress payments will be an amount equal to not more than 95% of the work completed and 95% of the materials and equipment not incorporated in the work, but delivered and suitably stored, less in each case the aggregate of payments previously made. Upon substantial completion, the District shall pay an amount sufficient to increase total payments to Contractor to 95% of the contract price, less such amounts as the District shall determine in accordance with Section 19 of the General Conditions. Final payment shall be upon final completion and acceptance of the work. Payment shall be received for approval at the next regularly scheduled board meeting.

7. **Contract Documents.** The term "contract documents" means and includes the following:

- (a) Request for Proposals;
- (b) Information to Proposers;
- (c) Proposal;
- (d) Proposal Bond;
- (e) Agreement;
- (f) Oregon Prevailing Wage Rates;
- (g) General Conditions;
- (h) Payment Bond;
- (i) Performance Bond;
- (j) Notice of Award;
- (k) Notice to Proceed;
- (l) Drawings attached;
- (m) Change Orders;
- (n) Addenda; Number: \_\_\_\_\_ Dated: \_\_\_\_\_;
- (o) Proof of Insurance;
- (p) Proof of Public Works Bond.

8. **Contractor's Representations.** In order to induce District to enter into this agreement, Contractor makes the following representations:

- (a) Contractor has familiarized himself with the nature and extent of the contract documents, work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations which, in any manner, may affect cost, progress, or performance of the work;
- (b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of work which were relied upon in the preparation of the drawings and specifications;
- (c) Contractor has made or has caused to be made examinations, investigations, tests and studies of reports and related data, in addition to those referred to in (b), which Contractor deems necessary for the performance of the work, determination of the contract price, and completion of the building within the contract time in accordance with the other terms and conditions of the contract documents. No additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes;
- (d) Contractor has reconciled the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the contract documents;
- (e) Contractor has given the District's representative written notice of all conflicts, errors or discrepancies which he has discovered in the contract documents and the written resolution thereof by the District's representative is acceptable to the Contractor.

9. **Miscellaneous.**

(a) No assignment by a party hereto of any rights under or interests in the contract documents will be binding on another party to this contract without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.

(b) This agreement shall be binding upon all parties to the contract and their respective partners, successor, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the contractual documents.

THIS AGREEMENT is effective on the \_\_\_\_ day of \_\_\_\_\_, 2010.

DISTRICT:

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

Address for giving notices:

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

ATTEST:

\_\_\_\_\_

CONTRACTOR:

By: \_\_\_\_\_  
EIN # \_\_\_\_\_

Address for giving notices:

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

ATTEST:

\_\_\_\_\_  
Agent for Service of Process  
License # \_\_\_\_\_

*Exhibit B*

**GENERAL CONDITIONS**

**Section 1. Definitions** - Whenever used in these General Conditions or in the other contract documents, the following terms have the meanings indicated which are applicable in both the singular and plural or masculine or feminine thereof:

1. Addenda - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the contract documents, drawings and specifications by additions, deletions, clarifications, or corrections.
2. Proposal - The offer or proposal of the proposer submitted on the prescribed form setting forth the prices for the work to be performed.
3. Bonds - Proposal, performance and payment bonds and other instruments of security.
4. Change Order - A written order to the Contractor signed by the District authorizing an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time issued after the effective date of the agreement.
5. Contract Price - The total monies payable to the Contractor under the terms and conditions of the contract documents.
6. Contract Time - The number of calendar days stated in the contract documents for completion of the work.
7. Contractor - The person, firm, or corporation with whom the District has executed the Agreement.
8. Drawings - The part of the contract documents which show the characteristic and scope of the work to be performed and are referred to in the contract documents.
9. District Representative - That person appointed by the Board of Directors of the District to act as the District's representative in all matters relating to this contract.
10. Field Order - A written order issued by the District representative which orders minor changes in work not involving an adjustment in the contract price or an extension of the contract time.
11. Substantial Completion - The date certified by the District representative when the construction of the project or a specified part thereof is sufficiently completed in accordance with the contract documents so that the project or a specified part can be utilized for purposes for which it is intended.

12. Subcontractor - An individual, firm, or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the work at the site.
13. Supplier - Any person or organization who supplies materials or equipment for the work, including that fabricated to a special design but who does not perform labor at the site.
14. Work - All labor necessary to produce the construction required by the contract documents and all materials and equipment incorporated or to be incorporated in the project.
15. Written Notice - Any notice to any party to the Agreement or relative to any part of this agreement in writing and considered delivered and the service thereof completed when posted by certified mail or registered mail to the party at his last given address as shown on the Agreement, or when delivered in person to the party or his authorized representative on the work.

## **Section 2. Preliminary Matters**

1. Delivery of Bonds - When the Contractor delivers the executed Agreements to the District, Contractor shall also deliver to District such bonds as the Contractor may be required to furnish.
2. Copies of Documents - District shall furnish to Contractor up to 3 copies of the contract documents as are reasonably necessary for the execution of the work. Additional copies will be furnished upon request at the cost of reproduction.
3. Commencement of Contract Time - The contract time will commence to run on the day indicated in the Notice to Proceed.
4. Insurance - Before undertaking any work on the project, Contractor shall provide District with certificates of insurance including a comprehensive general liability and other insurance as will provide protection for the claims set out below which may arise out of or result from Contractor's performance of the work and Contractor's other obligations under the contract documents whether such performance is by Contractor or any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
  - (a) Claims under workers or worker's compensation disability benefits or other similar employee benefits;
  - (b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
  - (c) Claims for damages because of bodily injury, sickness or disease of any person other than Contractor's employees;
  - (d) Claims for damages insured by personal injury liability coverage which is sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;

(e) Claims for damages other than to the work itself because of injury or destruction of tangible property, including loss of use resulting therefrom;

(f) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The limits of such liability shall be comprehensive general liability, \$1,000,000; automobile, \$500,000; bodily injury \$500,000; and property damage \$50,000.

5. District Insurance - The District shall be responsible for purchasing and maintaining its own liability insurance. District shall also purchase and maintain property insurance upon the work at the site to the full insurable value thereof and shall include the interest of the District, Contractor and subcontractors in the work against the perils of fire and extended coverage. All other risk of loss at the work site shall be borne by Contractor until acceptance of building by District.

6. Subrogation Waiver - District and Contractor waive all rights against each other and the subcontractors and their agents and employees for damages caused by fire or other perils to the extent covered by insurance provided in the above paragraph. The Contractor shall require similar written waivers from each subcontractor and each such waiver shall be in favor of all other parties enumerated in this paragraph.

### **Section 3. Contract Documents**

1. The contract documents comprise the entire agreement between the District and Contractor concerning work. They may be altered only by written modification.

2. The contract documents are complementary; what is called for by one is binding as if called for by all. If, during the performance of the work, Contractor finds a conflict, error or discrepancy in the contract documents, Contractor shall report it to the District representative in writing at once and before proceeding with the work affected thereby.

3. It is the intent of the specifications and drawings to describe the complete project to be constructed in accordance with the contract documents. Any work which may reasonably be inferred from the specifications or drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual or code in effect at the time of the opening of the proposal, except as may be otherwise specifically stated. However, no provision of any reference, standard, specification, manual or code shall change the duties and responsibilities of the District, Contractor, or any of their agents or employees from those set forth in the contract documents. Clarifications and interpretations of the contract documents shall be issued by the District representative.

4. Re-use of Documents - Neither Contractor nor any subcontractor, manufacturer, fabricator, supplier, or distributor shall have or acquire any title to or ownership rights in any of the

drawings, specifications, or other documents which are a part of this contract. They may not be re-used by any party without the express written consent of the owner and of the preparer of the drawings.

#### **Section 4. Materials, Service and Facilities**

1. It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
2. Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
3. All materials and equipment shall be of good quality and new except as otherwise provided in the contract documents.
4. **Equivalent Materials and Equipment** - Whenever materials or equipment are specified or described in drawings or specifications by using the name of proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the name of the item is intended to establish the type, function and quality required. Materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by the District representative if sufficient information is submitted by Contractor to allow the District representative to determine that the material proposed is equivalent to that named.
5. Contractor shall be fully responsible for all acts and omissions of his subcontractors and of persons and organizations directly or indirectly employed by them and of persons or organizations for whose acts any of them may be liable to the same extent Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in these documents creates any obligation on the part of the District to pay or to see to the payment of any monies due any subcontractor or other person or organization except as may otherwise be required by law.

#### **Section 5. Fees, Taxes and Permits**

1. Contractor shall pay all applicable royalties and license fees. Contractor shall defend all suits or claims for infringement of any patent rights and save the District harmless from loss on account thereof.
2. All permits and licenses, including SDC or other governmental fees, licenses and inspections required for construction shall be obtained at the expense of Contractor. District shall assist the Contractor when necessary in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work, and which are applicable at the time of opening the proposals. Contractor shall pay all charges of utility service companies for connections to the work. Contractor shall pay all sales, consumer, use and

other similar taxes required to be paid by him in accordance with the laws of the place of the project.

## **Section 6. Survey, Permits and Regulations**

1. The District shall furnish all boundary surveys and establish all base lines for locating principal component parts of the work together with a suitable number of bench marks adjacent to the work as shown in the contract documents. From the information provided by the District, unless otherwise specified in the contract document, Contractor shall develop and make all detailed surveys needed for construction such as slope stakes, stakes for piling locations, and other working points, lines, elevations and cut sheets.

2. The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, Contractor shall be charged with the resulting expense and shall be responsible for any mistakes which may be caused by unnecessary loss or disturbance.

## **Section 7. Protection of Work, Property and Persons**

Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor will take all necessary precautions for the safety of, or provide the necessary protection to prevent injury, damage, or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and the property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designed for removal, relocation, or replacement in the course of construction. Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or any for whose acts any of them may be liable except for acts directly attributable to the District or the District's representative or any employed by either of them and whose acts are not attributable directly or indirectly in whole or in part to the fault or negligence of Contractor.

## **Section 8. Supervision by Contractor**

The Contractor will supervise and direct the work. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

## **Section 9. Changes in Work**

The District, at any time the need arises, may order changes in the scope of the work without invalidating the Agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable

adjustment shall be authorized by change order. The District or its representative may also, at any time, by issuing a field order, make changes in the details of the work. Unless the Contractor reasonably believes the field order is in error as it jeopardizes the work; the health, safety and welfare of workers; or District's future use of the new station, the Contractor shall proceed with the performance of any changes in the work so ordered, even in the absence of agreement on adjustment, if any, in the contract amount or timelines. If the Contractor believes such field order entitled the Contractor to a change in contract price or time, or both, or that the field order is in error as described above, Contractor shall give the District's representative written notice thereof within 2 days after receipt of the field order. Thereafter, the Contractor shall document the basis for the change in contract price or time within 5 days.

### **Section 10. Changes in Contract Price**

The contract price may be changed only by a written signed change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

1. Unit prices previously approved.
2. An agreed lump sum.
3. The actual cost of labor, direct overhead, materials, supplies, and other services necessary to complete the work plus an amount not to exceed 10% of the actual work to cover the cost of general overhead profit.

### **Section 11. Limitation on Liquidated Damages**

The Contractor shall not be charged with liquidated damages when the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to the District or its representative:

1. Unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to acts of God or of the public enemy, acts of the District, acts of another Contractor in performance of the contract with the District, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, and abnormal and unforeseen weather; and
2. Any delays of subcontractors occasioned by any of the causes specified above.

### **Section 12. Correction of Work**

1. Contractor shall promptly remove from the premises all work rejected by the District's representative for failure to comply with the contract documents, whether incorporated in construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the contract documents and without expense to the District and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

2. All removal and replacement work shall be done at contractor's expense. If Contractor does not take action to remove rejected work within five (5) days after receipt of written notice, District may remove such work and store the materials at the expense of the Contractor.

### **Section 13. Subsurface Conditions**

The Contractor shall promptly and before such conditions are disturbed, except in the event of an emergency, notify District by written notice of:

1. Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents.
2. Unknown physical conditions at the site of an unusual nature, differing markedly from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

District shall promptly investigate the conditions and if found that such conditions do so materially differ and cause an increase or decrease in the cost of or in the time required for performance of the work, an equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless Contractor has given the required written notice.

### **Section 14. Suspension of Work, Termination Delay**

1. If Contractor is adjudged a bankrupt or insolvent or if Contractor makes a general assignment for the benefit of Contractor's creditors, or if a trustee or receiver is appointed for the Contractor or for any of Contractor's property, or if Contractor files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if Contractor repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if Contractor repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment, or if Contractor disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the work, or if Contractor disregards the authority of the District's representative or if Contractor otherwise violates any provision of the contract documents, then the District may, without prejudice to any other right or remedy, after giving the Contractor and his surety a minimum of 5 days' notice from delivery of the written notice, terminate the services of the Contractor and take possession of the project and all materials, equipment, tools, construction equipment, machinery thereon owned by Contractor and finish the work by whatever method Contractor may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If the costs exceed such unpaid balances, the Contractor will pay the difference to the District. Such costs incurred by the District will be determined by the District and incorporated in a change order.

2. Where the Contractor's services have been so terminated by the District, the termination shall not affect any right of the District against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the District due the Contractor will not release the Contractor from compliance with the contract documents.

3. After 5 days from delivery of written notice to the Contractor, the District may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit for the work performed.

### **Section 15. Equal Opportunity**

The Contractor agrees to comply with the applicable provisions of the Equal Opportunity Act of 1972 and the Civil Rights Act of 1964 as amended. The Contractor shall have the obligation to ensure that the employees and applicants for employment are not discriminated against because of race, creed, color, sex, or national origin.

### **Section 16. Oregon Statutory Requirements**

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.

(a) ORS 279C.580(3)(a) requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the prime contractor by the public contracting agency; and

(b) ORS 279C.580(3)(b) requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within 30 days after receipt of payment from the public contracting agency.

(c) ORS 279C.580(4) requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.

2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.

3. Contractor shall not permit any lien or claim to be filed or prosecuted against the public contracting agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.

4. A notice of claim on contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.

5. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

6. Contractor shall demonstrate to the Public Contracting Agency that an employee drug-testing program is in place within 10 days of receiving a Notice of Award.

7. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public contracting agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the public contracting agency is unable to determine the validity of any claim for labor or material furnished, the public contracting agency may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

8. If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10 day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed 30%. The amount of interest may not be waived.

9. If the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractor's Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

10. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

11. Contractor shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is 4 consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540.

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

13. The provisions of ORS 279C.800 to ORS 279C.870 relating to the prevailing wage rates will be complied with. Oregon's prevailing wage rates, as set forth in the January 1, 2009, publication "Prevailing Wage Rates for Public Works Contracts in Oregon", are incorporated into this packet by reference and applicable rates are available at [www.boli.state.or.us/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml).

14. Unless exempt under ORS 279C.836(4), (7), (8) or (9), before starting work on this contract, or any subcontract hereunder, contractor and all subcontractors must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the state of Oregon in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836(2), unless the surety sooner cancels the bond. Contractor further certifies that contractor will include in every subcontract or provision requiring a 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).

(a) Unless exempt under ORS 279C.836(4), (7), (8), or (9), before permitting a subcontractor to start work on this public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section or has elected not to file a public works bond under ORS 279C.836(7).

(b) Unless public contracting agency has been notified of any applicable exemptions under ORS 279C.836(4), (7), (8), or (9), the public works bond requirement above is in addition to any other bond contractors or subcontractors may be required to obtain under this contract.

15. (a) Contractor or contractor's surety and every subcontractor or subcontractor's surety shall file certified payroll statements with the public contracting agency in writing, pursuant to ORS 279C.845.

(b) If a contractor is required to file certified statements under ORS 279C.845, the public contracting agency shall retain 25% of any amount earned by the contractor on the public works project until the contractor has filed with the public agency certified statement as required by ORS 279C.845. The public contracting agency shall pay the contractor the amount retained within 14 days after the contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements required by statute. The public contracting agency is not required to verify the truth of the contents of certified statements filed by the contractor under this section and ORS 279C.845.

(c) The contractor shall retain 25% of any amount earned by a first-tier subcontractor on this public works contract until the subcontractor has filed with the public agency certified statements as required by ORS 279C.845. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained. The contractor shall pay the first-tier subcontractor the amount retained within 14 days after the subcontractor files the certified statements as required by ORS 279C.845. Neither the public agency nor the contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor.

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

17. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.

18. The contract may be canceled at the election of public contracting agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.

19. Contract Fee. The Owner is required to pay a fee to the Bureau of Labor and Industries pursuant to the provisions of ORS 279C.825(1). The fee is one-tenth of one percent (.1%) of the price of this contract, but not less than \$250 nor more than \$7,500, regardless of the contract price. The fee shall be paid at the time owner enters into this contract. The fee is payable to the Commissioner of the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries  
Wage and Hour Division  
Prevailing Wage Unit  
800 NE Oregon Street, #32  
Portland, OR 97232

20. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.

21. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.

22. In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.

23. Contractor certifies that all subcontractors performing construction work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaping Contractors Board in accordance with 701.035 to 701.055 before the subcontractors commence work under this contract.

24. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Owner has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- < Agriculture, Department of
- < Forest Service
- < Soil Conservation Service
- < Defense, Department of
- < Army Corps of Engineers
- < Environmental Protection Agency
- < Interior, Department of
- < Bureau of Sport Fisheries and Wildlife
- < Bureau of Outdoor Recreation
- < Bureau of Land Management
- < Bureau of Indian Affairs
- < Bureau of Reclamation
- < Labor, Department of
- < Occupational Safety and Health Administration
- < Transportation, Department of
- < Coast Guard
- < Federal Highway Administration

STATE AGENCIES:

- < Agriculture, Department of
- < Environmental Quality, Department of
- < Fish and Wildlife, Department of
- < Forestry, Department of
- < Geology and Mineral Industries, Department of
- < Human Resources, Department of
- < Land Conservation and Development Commission
- < Soil and Water Conservation Commission
- < State Engineer
- < State Land Board
- < Water Resources Board

LOCAL AGENCIES:

- < City Council
- < County Court
- < County Commissioners, Board of
- < Port Districts
- < Metropolitan Service Districts
- < County Service Districts
- < Sanitary Districts

LOCAL AGENCIES (CONT.):

- < Water Districts
- < Fire Protection Districts

## **Section 17. Warranty and Guarantee**

1. Contractor warrants and guarantees to the District that all work will be in accordance with the contract documents and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted. Contractor understands that Deschutes County, its various departments, and agencies, must be consulted and be allowed to inspect the work and sign off in each particular area. At all times the District representative and appropriate inspectors shall have access to the work for inspection and testing. Contractor shall provide proper and safe conditions for such access.

2. Where any law, ordinance, rule, regulation, code, or other order of any public body having jurisdiction requires any work or part thereof to specifically inspected, tested or approved, Contractor shall assume full responsibility therefor and pay all costs in connection therewith and furnish the District representative the required certificates of inspection, testing or approval. If any work to be inspected, tested, or approved is covered without written concurrence of the District representative, it must be, if requested, uncovered for observation. Such uncovering shall be at the Contractor's expense.

3. Neither observations by the District representative nor inspection tests or approvals by others shall relieve the Contractor from Contract's obligations to perform the work in accordance with the contract documents.

4. If, within 2 years after the date of final completion and sign-off and payment of any retainage by the District to the Contractor, there is any defect in materials or workmanship, the Contractor shall promptly, without cost to the District and in accordance with the District's written instructions, either correct such defective work or, if it has been rejected by the District, remove it from the site and replace it with nondefective work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where a delay would cause serious risk of loss or damage, District may have the defective work corrected or the rejected work removed and replaced, and all direct or indirect costs of such removal and replacement including compensation for additional professional services shall be paid by Contractor. Such additional professional services include the services of any attorney employed by the District to assist it in dealings with the Contractor. If the Contractor does not pay for such work, or does not see that such work is performed as required by this section, a claim may be made upon Contractor's bond for payment of such work. All notices sent to Contractor shall have copies sent to Contractor's surety.

5. Contractor warrants and guarantees that title to all work, materials, and equipment covered by the application for payment, whether incorporated in the project or not, will pass to District at the time of payment, free and clear of all liens, claims, security interests and encumbrances of any party whomsoever.

## **Section 18. Bond Form**

All bond forms shall be in the standard forms of the issuing company. If standard forms are not available, the AIA form A-310 shall be acceptable for the proposal bond and AIA forms A-311 and A-312 shall be acceptable for the performance and payment bonds.

## **Section 19. Payments to Contractor**

1. By the 26<sup>th</sup> day of each month, the Contractor will submit to the District representative a partial payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the District representative may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to District, as will establish the District's title to the material and equipment, and protect its interest therein, including applicable insurance. The District representative will, within 10 days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the District, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The District will, within 10 days of the next board meeting after presentation to it of an approved partial payment estimate, but in no event later 30 days after receipt of Contractor's invoice, pay the Contractor a progress payment on the basis of the approved partial payment estimate. The District shall retain 5% of the amount of each payment until final completion and acceptance of all work covered by the contract documents. The District at any time, however, after 50% of the work has been completed, if it finds that satisfactory progress is being made, may reduce retainage on the current and remaining estimates. When the work is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced to only that amount necessary to assure completion. On completion and acceptance of a part of the work on which the price is stated separately in the contract documents, payment may be made in full, including retained percentages, less authorized deductions.

2. The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.

3. Prior to substantial completion, the District, with the approval of the District representative and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.

4. The District shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the District. Such entry or work shall only be allowed to the extent it does not interfere with the Contractor's work.

5. Upon completion and acceptance of the work, the District representative shall issue a certificate attached to the final payment request that the work has been accepted by him under the

conditions of the contract documents. The entire balance found to be due the Contractor, including the retained percentages, but except such sums as may be lawfully retained by the District, shall be paid to the Contractor within 30 days of completion and acceptance of the work.

6. The Contractor will indemnify and save the District or the District's agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers or machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the District's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the Contractor fails to do so, the District may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the District to either the Contractor, his surety or any third party. In paying any unpaid bills of the Contractor, any payment so made by the District shall be considered as a payment made under the contract documents by the District to the Contractor and the District shall not be liable to the Contractor for any such payments made in good faith.

7. If the District fails to make payment 30 days after approval by the District representative, in addition to the other remedies available to the Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

## **Section 20. Cleanup**

1. From time to time as the work progresses and immediately after completion of the work, the Contractor shall clean up and remove all refuse and unused materials of any kind resulting from the work. Upon failure to do so within 24 hours after directed, the work may be done by the District and the cost thereof to be deducted from any payment due the Contractor.
2. After all other work embraced in the contract is completed and before final acceptance of the contract, the entire right-of-way and driveways, alleys, and side street approaches, slopes, ditches, utility trenches, and construction areas shall be neatly finished to the lines, grades and cross sections shown in the specifications.
3. As a condition precedent to final acceptance of the project, the Contractor shall remove all equipment and temporary structures, and all rubbish, waste and generally clean the right-of-way and premises.
4. Dumpsters and temporary facilities must be preapproved by the District representative.

## **Section 21. Use of Light, Power and Water**

The Contractor shall furnish temporary light, power, and water complete with connecting piping, wiring, lamps, and similar equipment necessary before the work is improved. The Contractor shall install, maintain and remove temporary lines upon completion of work. The Contractor shall obtain all permits and bear all costs in connection with temporary services and facilities at no expense to the owner. The costs of lights, power, and water shall be paid by the District.

## **Section 22. Arbitration**

1. All claims, disputes, and other matters in question between the District and Contractor arising out of, or relating to the contract documents, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by arbitration in District's sole discretion, in accordance ORS Chapter 36 and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within 10 days after the notice of demand, the presiding judge of the Deschutes County Circuit Court will establish rules to govern the arbitration. The District shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.

2. No demand for arbitration of any claimed dispute or other matter shall be effective until after a claim or demand is made to the Board of Directors and the Board of Directors at its next regularly scheduled meeting has rendered a written decision with respect thereto denying the claim or demand. No demand for arbitration of any such claim, dispute, or other matter shall be made later than 30 days after the date on which the board has rendered a written decision in respect herein. The failure to demand arbitration within said 30 days shall result in the board's decision being binding upon the board and the Contractor.

3. Notice of demand for arbitration shall be filed in writing with the other party to the agreement. The demand for arbitration shall be made within the 30-day period specified above. The District, if not the party demanding arbitration, has the option of allowing the matter to proceed with arbitration or by written notice within 5 days after receipt of a demand for arbitration, reject arbitration and require the other party to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

## **Section 23. Attorney's Fees.**

If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for District to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Contractor agrees to pay District's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.