



**City of Sutherlin
Request for Proposal
To Provide Engineering Services for
Schoon Mountain Potable Water Storage Tank with
135,000 Gallon Capacity and
Sixth Avenue & Oak Street Pump Station Improvements**

Project # WA 2018-02

NOTICE

The City of Sutherlin (City) is seeking proposals from a qualified and experienced Engineering Firm for performing Design, Permitting, Bidding, Land Acquisition, Construction Management and On-Site Observation Services for Schoon Mountain Potable Water Storage Tank and Sixth Avenue & Oak Street Pump Station Improvements. The City invites qualified consultants to submit a proposal package based upon the scope of the work contained within this Request for Proposal (RFP). The Schoon Mountain Potable Water Storage Tank and Sixth Avenue & Oak Street Pump Station are funded by the federal Safe Drinking Water Revolving Loan Fund through Business Oregon and a partnership of Local Funds.

SUBMISSION OF PROPOSAL PACKAGE

To receive consideration, proposal packages must be submitted in accordance with the following instructions:

1. All proposal packages shall be delivered to:
City of Sutherlin
Community Development Director
Attn: Brian Elliott
126 East Central Ave.
Sutherlin OR, 97479
2. The deadline for submittal is 3:00 pm PST on Thursday February 21, 2019. Proposals received after the deadline will not be accepted for any reason. The City will not accept faxed or emailed proposals. The official clock shall be that of the Purchasing Agent.
3. Six (6) copies of the written proposal package of reproducible quality must be submitted.
4. All project updates and/or Addenda, if any, will be posted on the City's website at www.cityofsutherlin.com under Business tab, Bid, Proposals, RFQ, and RFP. It is the responsibility of the proposer to obtain this information from the City's website.
5. The proposals must be clearly marked "PROPOSAL FOR SUTHERLIN SCHOON MOUNTAIN POTABLE WATER STORAGE TANK WITH 135,000 GALLON CAPACITY AND SIXTH AVENUE & OAK STREET PUMP STATION IMPROVEMENTS PROJECT # WA 2018-02".

6. Maintaining the integrity of the RFP process is extremely important to the City of Sutherlin. As such all questions, shall be submitted in writing to Brian Elliott, Community Development Director, via email to b.elliott@ci.sutherlin.or.us no later than 3:00 pm PST Friday, February 1, 2019. Answers to questions will be posted on the City's website at www.cityofsutherlin.com under Business tab, Bid, Proposals, RFQ and RFP as an Addendum no later than 3:00 pm PST Thursday, February 7, 2019. No questions will be accepted after the aforementioned deadline.
7. The City of Sutherlin reserves the right to reject any and all proposals, and has the right, at its sole discretion, to accept the proposal it considers most favorable to the City's interest and the right (but not the obligation) to waive minor irregularities in procedures. The City reserves the right to seek clarifications of each proposal and request information the City deems reasonably necessary to evaluate and select a Consultant to perform the services identified in the RFP. Consultants responding to the RFP do so solely at their expense, and the City is not responsible for any Consultant expenses associated with the RFP.

BACKGROUND AND SCOPE OF WORK

BACKGROUND

Schoon Mountain Potable Water Storage Tank consists of two 12,000 gallon steel tanks and was constructed in 1994. Sixth Avenue and Oak Street Pump Station was built in 1974, this underground pump station has two 30 hp pumps capable of 400/560 gpm at 300 TDH. These pumps currently operate in a lead/lag configuration.

The City of Sutherlin Water Master Plan was updated December, 2017. It was identified in the Water Master Plan that the Schoon Mountain Storage Tanks were deficient and did not meet current customer demands. It was also identified that the underground Sixth Avenue and Oak Street Pump Station built in 1974 should be replaced with an above ground pump station. Sutherlin has experienced relatively steady growth since construction of both facilities. Both facilities are in need of replacement to meet current customer, fire and future demands.

History of Sutherlin's Water System

The original water system for the City of Sutherlin was constructed in 1913 and consisted of an intake on Sutherlin Creek with wood stave pipe for transmission and distribution. Water from the Luce Land Company Irrigation Ditch and Calapooya Creek augmented the Sutherlin Creek Source. In 1925, a diversion line from Sutherlin Creek to Calapooya Creek was completed to the present site of the present day Non Pareil WTP. New intakes were built in the late 1940s and distribution lines were replaced with steel pipe during the late 1940s and 1950s. The Cooper Creek WTP, along with the earth impoundment dam, was constructed in 1971, and upgrades to the plant were made to increase the plant capacity from 0.8 to 2.0 MGD in the years that followed. In 1983, the new Non Pareil WTP was completed to provide the City with another 2.5 MD capacity. In 2014, the City constructed a new Cooper Creek WTP at the same location as the old plant with an increased capacity of 3.2 MGD.

Presently, the City of Sutherlin has three available sources of raw water: Calapooya Creek at 4.0 CFS, Cooper Creek at 5.0 CFS from the creek when flowing and 500 AF of stored water from the Reservoir when the creek stops flowing, and the North Umpqua River at 3.0 CFS which is currently not being utilized.

The City's water system has a total of ten storage tanks providing a capacity of 3,646,000 gallons of storage. Three low-level, four mid-level with booster pump stations, and three high-level with booster pump stations.

Sutherlin's water distribution system is a combination of pipe material and sizes. The distribution system consists of 14-inch main lines from the City's Water Treatment Plants, 2 to 18-inch diameter lateral pipe with service lines consisting of ¾ and 1-inch pipe. Pipe material consists of concrete cylinder, AC, ductile iron, PVC, PE, cast iron and steel.

GENERAL INSTRUCTIONS

The City of Sutherlin invites qualified individuals or firms to submit a proposal package to provide Design, Permitting, Bidding, The selected Engineer shall also coordinated and provide assistance to the City during the Land Acquisition process, Construction Management and On-Site Observation Services for Schoon Mountain Potable Water Storage Tank and Sixth Avenue & Oak Street Pump Station Improvements as described in the specifications set forth in this RFP. All submittals are subject to the provisions and requirements of the City of Sutherlin Rules of Local Contract Review and the Oregon Revised Statutes, and the Attorney General's Model Public Contract Rules.

PROPOSAL PACKAGE REQUIREMENTS

Your PROPOSAL package must not exceed 12 pages and at a minimum shall include the following:

1. **Cover Letter.** All proposal packages must include a cover letter, made to the attention of Brian Elliott, Community Development Director, and signed by a person legally authorized to bind the applicant to its Proposal. The cover letter shall include any potential conflicts of interest your firm or any key individual may have with this project. Additionally, the cover letter must include the following items:
 - a. The firm name.
 - b. The names of local partners/principals and the number of local personnel.
 - c. The address, telephone, and FAX numbers of the firm.
 - d. The contact information, including an email address of the person(s) who are authorized to represent the firm.
2. **Personnel.** All proposal packages must include the following information related to key personnel who will be working on this project. Please note that the City's contract for professional services for this project will require commitment from the selected firm that the personnel listed below will be assigned to the project in the roles stated by your firm.
 - a. The names of the partners, managers and other key staff persons who will be assigned to the project along with brief resumes that indicate their experience in municipal elevated water storage tanks and above ground pump station.
 - b. Indicate the key staff's job classification, roles and responsibilities, professional registrations and certifications, and office location. Experience in working with municipal elevated water storage tanks and above ground pump station.
 - c. An organizational chart identifying members of the team, including sub consultants, who would be assigned to this project. The chart should clearly delineate roles and responsibilities of the various team members.
 - d. For any proposed sub consultants, please provide the name of each firm, the office location, contact name and telephone number, and the services to be provided.
3. **References.** All proposal packages must include the following information related to the references and qualifications relative to the scope of work associated with this proposal.
 - a. List of Oregon local government jurisdictions your firm has provided elevated potable water tank and pump station engineering services and/or construction management services for within the last 10 years.
 - b. Relevant Project Summary/Profile Sheets completed within the last 10 years. At a minimum, the sheets shall provide a brief description of the project, provide date(s) elevated potable water tank and pump station was completed, size of elevated potable

water tank and pump station, total cost of elevated potable water tank and pump station, provide date construction was completed (if applicable), and cost of construction (if applicable). Identify staff that was involved with the project. Provide owner information and contact person.

- c. Provide references for your team members, concentrating on those members who will have the largest degree of involvement on the project. Indicate the project involved and the individual's role. Provide contact information for the reference.

4. **Project Approach and Proposal.** A preliminary scope of work has been included with this RFP, however it is anticipated that the proposal will include any amendments and/or provide additional recommendations based on the consultant's experience on similar projects. Describe how your team will meet the project goals and summarize why your firm should be selected.

QUALIFICATION EVALUATION CRITERIA

The City will follow a select procedure that involves the review of all qualified proposals, the evaluation and ranking of submittals, negotiation of fees with the most qualified firm and award of contract based upon our local and state procurement requirements and that best serves the City's interest. In its sole discretion, the City may terminate a negotiation with the most qualified consultant and begin a negotiation with the next highest ranked consultant. The evaluation committee will be comprised of City Staff. The selection will be based on the following criteria, using a scoring system 1-5 (5 being the highest):

STATEMENT OF QUALIFICATIONS

Are similar and current projects included to document the consultant's qualifications? Are individual staff members identified to document the Consultant has the staff to perform the work? Does consultant have appropriate management and support staff with the required experience for work on this type of project? Is staff local? Is staff located in Oregon? Is the staff identified in the Proposal the same staff that performed the work on the projects submitted? Is the proposal clear, concise, and complete?

PROJECT STAFFING

Is the project manager qualified to manage all phases of the project? Has consultant demonstrated ability in Design, Permitting, Bidding, Land Acquisition, Construction Management and Inspection Services on similar projects? Does support staff have sufficient experience with related work? Are all required disciplines represented in this scope of work? If sub consultants are proposed, have they worked with the consultant before? Have all team members had similar experience regarding project scope and magnitude?

PROJECT EXPERIENCE

Are similar and current projects submitted as examples? Do references confirm consultant has successfully completed similar prior projects to satisfaction of the project owners? Are references current and accessible?

PROPOSED SERVICES

Is a clear understanding of the project stated and demonstrated throughout? Is the scope detailed and comprehensive? Is the scope consistent with the teaming and staffing levels?

PROPOSAL CONTENT

Does proposal present all required material in a clear and professional manner? Does proposal address all required information?

Scope of Work

Upon approval of the City Council, provide engineering services to design a 135,000 gallon elevated glass-fused-to-steel potable water tank and Sixth Avenue & Oak Street pump station, including the necessary site work, water main tie-in, foundations, structural support, coating, mechanical, electrical, control and instrumentation system and other parameters that will be required for the improvements.

The consultant will be required to provide construction management and on-site observation during field installation.

Consultant will be required to assist with obtaining permits on behalf of the City and to coordinate with local, county, state, federal and other public utility agencies as applicable. Permit fees will be paid by the City of Sutherlin.

The consultant's scope of work will generally include the following:

Your approach and detailed scope of work/scope of service that your firm can provide in Design, Permitting, Bidding, Land Acquisition, Construction Management and Inspection Services for the construction of the Schoon Mountain Water Storage Tank and Sixth Avenue & Oak Street Pump Station Improvement. Including but not limited to the following:

- A. The consultant will produce a subsurface geotechnical study of the site prepared by a geotechnical engineer licensed in the State of Oregon.
- B. The consultant shall prepare and provide all necessary bid documents and drawings for the tank, pump station, and accessories as follows: All civil, structural, mechanical, electrical and instrumentations drawings.
- C. Provide a preliminary (60% design) and final engineering estimated (100% design) of the construction of new elevated water tank and pump station.
- D. Conduct a pre bid meeting at the Owner's facility.
- E. Provide bidding support services including responding to bidder's questions. Preparation of addendum, assist in receipt of bids, analysis of bids received, and assist in award of the construction contract.
- F. Provide construction administration services including field progress reports, pre-construction and construction meeting minutes, review and approval of submittals, response to RFI's, review of contractor's payment request, change order review and closeout documentation: punch list, as-builds, O & M manuals. Conduct at a minimum monthly meetings.
- G. Provide on-site observation during construction of the water tank and pump station improvements. The on-site representative assigned to the work in the field, are required to be experienced licensed engineers.
- H. Coordinate with city's staff, county and state other public utility agencies.
- I. Provide boundary and topographic survey of the 0.33 acre site and easements for the Schoon Mountain tank.
- J. Provide an Arial of location of property/properties of desired location of the pump station.

MINIMUM QUALIFICATION

Proposer must meet the following minimum requirement:

1. Be a licensed engineer in the state of Oregon for at least five (5) years.
2. Demonstrate experience with public sector engineering of similar size and scope of the services being requested.
3. Demonstrated experience in glass-to-steel water tanks and pump stations.

The successful proposer shall enter into a standard professional services contract with the City. The City has a standard contract. The City's contract is located at the end of this document. It is anticipated that the

successful proposer has read and agrees with the contractual language and insurance requirements in The Contract. If the proposer has questions or would like to request modifications to the contractual language, this discussion must occur prior to **March 4, 2019 at 3 p.m. PST.**

GENERAL INFORMATION

INTERVIEWS

Proposers **may** be invited to an interview with the City's Selection Committee. Selected Firms will be contacted regarding time and location of an interview.

COMPLIANCE WITH RULES

Proposers responding to this RFP must follow its procedures and requirements. Except as otherwise provided in the RFP, applicable provisions of Oregon Administrative Rules Chapter 137, Division 48 shall apply to this RFP. Failure to comply with or complete any part of this **PROPOSAL** may result in rejection of your Proposal.

REQUEST FOR ADDITIONAL INFORMATION

Proposers may submit questions or a request for additional information. All questions and/or requests be shall submitted in writing to Brian Elliott, Community Development Director, via email to b.elliott@ci.sutherlin.or.us no later than 3:00 pm PST Friday, February 1, 2019. Answers to questions will be posted on the City's website at www.cityofsutherlin.com under Business Tab, Bid, Proposals, RFQ and RFP as an Addendum no later than 3:00 pm PST Thursday, February 7, 2019. No questions will be accepted after the aforementioned deadline. Hard copies of the questions and responses can be mailed upon request for a fee.

SCHEDULE FOR RFP EVENTS

RFP Advertised	Jan. 23-28, 2019
Deadline for Additional Information Request	Feb. 1, 2019 @ 3:00 pm PST
Response to Additional Information Requests	Feb. 7, 2019 @ 3:00 pm PST
Proposal Package Due	Feb. 21, 2019 @ 3:00 pm PST
Schedule Interview (subject to City's discretion)	Feb. 25, 2019
Interviews (subject to City's discretion)	Feb. 27-28, 2019
Contract Negotiation w/ Selected Consultant	Mar. 4-5, 2019
Council Consideration of Contract	Mar. 11, 2019 @ 7:00 pm PST
Award of Project	Mar. 12, 2019
Start Design	Mar. 12, 2019
Complete Design	Sept. 27, 2019
OHA, City and Funding Agency Review	Nov. 28, 2019
Bid process, Funding Agency Approval (Tentative)	Jan. 2020
Present to Council (Tentative)	Feb. 10, 2020 @ 7:00 pm PST
Award Contract Notice to Proceed (Tentative)	Feb. 11, 2020
Start Construction (Tentative)	Mar. 2020
Complete Construction (Tentative)	Nov. 2020
Report to City	Jan. 11, 2021 @ 7:00 pm PST

PROPOSAL WITHDRAWAL

Any Proposal may be withdrawn at any time before the "Proposal Due" date and time by providing a written request for the withdrawal to the issuing office. A duly authorized representative of the agency shall make the request. Withdrawal of a Proposal will not preclude the proposer from filing a new Proposal.

PROTESTS

Solicitation protest. Any protests to this RFP or requests to change terms of the solicitation must be submitted in writing via email to Brian Elliott, Community Development Director (b.elliott@ci.sutherlin.or.us), no later than 3:00 pm PST Friday, February 1, 2019. Any protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions or specifications. Protests or requests to change terms or the solicitation received after the deadline will not be considered.

Award Protest. Bidders who wish to appeal a disqualification of proposal or the award of contract may submit the appeal in writing to the City Manager's Office within five (5) working days of the postmarked Notice of Award or disqualification. Any award protest must claim that the protesting Consultant is the highest ranked Proposer because the proposals of all higher ranked Consultants failed to meet the requirements of the FRP or because the higher ranked Consultants otherwise are not qualified to perform the services identified in the RFP.

Address: City of Sutherlin
Attn: City Manager
126 E. Central
Sutherlin, Or 97479

OWNERSHIP OF DOCUMENTS

Any material submitted by a proposer shall become the property of the City. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.

CONFIDENTIALITY OF INFORMATION

All information and data furnished to the proposer by the City and all other documents to which the proposer's employees have access during the preparation and submittal of the Proposal shall be treated as confidential to the City. Any oral or written disclosure to unauthorized individuals is prohibited.

PUBLIC RECORD

All Proposals and information submitted by proposers are not open for public inspection until after the notice of intent to award a contract is issued. Except for exempt materials, all Proposals and information submitted by proposers will be available for viewing after the evaluation process is complete and the notice of intent to award is sent to all participating parties. If a Consultant believes any part of its proposal constitutes confidential information or a trade secret, the Consultant must clearly mark each document and/or portion of document as such and indicated what exemption under the Oregon Public Records Act may apply. The City makes no guarantees that documents submitted to the City will be kept confidential.

INDEMNITY

The Engineer of Record shall hold harmless, indemnify, and save the City, its officers, employees, and agents, from any and all liability claims, losses, or damages arising or alleged to arise during the performance of the work described herein by reason of any act or omission of the Engineer of Record or any of its agents, employees or representatives. The indemnity applies to both active and passive acts or other conduct.

EMPLOYMENT STATUS

Contractor shall perform the work required by this contract as an independent contractor. Although the Owner reserves the right to determine and modify the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, the Owners cannot and will not control the means or manner of the

Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

Contractor represents and warrants that the Contractor is not an employee of the City of Sutherlin and meets the specific independent contractor standards of ORS 670.600. Contractor is not an officer, employee, or agent of the Owners as those terms are used in ORS 30.265.

Contractor shall be responsible for any federal or state taxes applicable to any compensation or payments paid to Contractor under this contract and, the Owners will not withhold from such compensation or payments any amounts to cover Contractor's federal or state tax obligations.

Contractor is not eligible for any Social Security, unemployment insurance, or Workers Compensation, from compensation paid to Contractor under this contract except as a self-employed individual.

INSURANCE

1. General Liability shall be a per occurrence form and must cover the time for which the work is being performed.
2. Proof of insurance of not less than the amount required is to be provided. Written notice of cancellation of insurance shall be provided to the City/Agency not less than 30 days prior to the date of cancellation.
3. If the City/Agency is required to use Federal or State insurance policy limits, or is subject to the Federal or State tort claim limits, the limits required through this directive shall be superseded by such limits.
4. If a claim occurs where the amount of the claim exceeds the insurance policy limits required by this directive, the contractor assumes full responsibility for the payment of such claim.
5. Insurance policy limits shall not be less than those listed in this directive without the consensus of the City Manager, City Attorney and the City Risk Manager of Record. Insurance policy limits may be waived at the discretion of the City/Agency. Insurance policy limits may be required to be higher based upon the City Manager's review of the specific application for which the certificate is required.
6. Tail Coverage": If any of the required liability insurance is on a "claims made" basis, recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Contract/Agreement, for a minimum of 24 months following the later of:
 - (1) Recipient's completion of all services and the City's/Agency's acceptance of all services required under the Contract/Agreement, or
 - (2) The expiration of all warranty periods provided under the contract/agreement.Notwithstanding the foregoing 24-month requirement, if recipient elects to maintain "tail" coverage and the maximum time period "tail" coverage is reasonably available in the marketplace is less than the 24-month period described above, recipient shall maintain "tail" coverage for the maximum time period "tail" coverage is reasonably available in the marketplace for the coverage required.
7. Definitions:
 - Commercial General Liability: To cover bodily injury, death, and property damage. This insurance shall include contractual liability coverage for the indemnity provided under those listed in the Agreement/Contract, personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits).
 - Professional Liability: To cover error, omission or negligent acts related to the professional services to be provided under the Agreement/Contract.
 - Automobile Liability: To cover each accident for bodily injury and property damage, including coverage for owned, hired, non-owned, leased, or rented vehicles as applicable. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).

Builders Risk: To cover structures being built, temporary structures at the building site, and building materials not yet having become part of the building. The building materials are covered while on the insured location, in transit, or in storage at another location.

Installation Floater: To cover materials, equipment, and personal property while in transit, installation, and until coverage terminates according to the terms of the floater. This coverage can cover the property of others in the contractor’s care, custody or control that is often excluded under the contractor’s general liability coverage.

Umbrella Liability: To cover excess liability over several of the insured's primary liability policies. An excess liability policy may be what is called a following form policy, which means it is subject to the same terms as the underlying policies; it may be a self-contained policy, which means it is subject to its own terms only; or it may be a combination of these two types of excess policies. Umbrella policies provide three functions:

- (1) To provide additional limits above each occurrence limit of the insured's primary policies;
- (2) To take the place of primary insurance when primary aggregate limits are reduced or exhausted; and
- (3) To provide broader coverage for some claims that would not be covered by the insured's primary insurance policies, which would be subject to the policy retention.

Most umbrella liability policies contain one comprehensive insuring agreement. The agreement usually states it will pay the ultimate net loss, which is the total amount in excess of the primary limit for which the insured becomes legally obligated to pay for damages of bodily injury, property damage, personal injury, and advertising injury.

Insurance Requirements: Professional Services contracts/agreements

Commercial General Liability Per occurrence	\$ 1,000,000
Professional Errors and Omissions liability (Per occurrence)	\$ 2,000,000
Workers’ Compensation	Statutory Limit
Applicable Federal (e.g., Longshoremen’s)	Statutory Limit
Employer’s Liability	\$ 500,000
Umbrella/Excess Insurance (Per occurrence)	\$ 2,000,000
Automobile Liability (Per occurrence)	\$1,000,000

8. Should the Umbrella/Excess Insurance coverage combined with Commercial General Liability coverage not equal or exceed the minimum combined coverage shown, coverage must be increased to equal or exceed the minimum total coverage limits shown. If there is no Umbrella/Excess Insurance coverage, then the Commercial General Liability, Employers Liability, and Automobile Liability limits must be increased to equal or exceed the minimum total coverage limits shown. The Certificate of Insurance(s) and Endorsement(s) will be a part of the Contract and shall be provided to the City/Agency with endorsement(s) indicating that the Commercial General Liability insurance coverage is in effect which shall be primary and non- contributory with any insurance maintained by the City/Agency and include a per project aggregate (form CG 2503 05/09 or equivalent).

Such certificate(s) and endorsement(s) shall name the City/Agency as an additional insured commercial general liability, automobile liability, and umbrella liability policies. Copies of such endorsements or coverage enhancements shall be attached to the certificate. A waiver of subrogation under the workers’ compensation and commercial general liability policies shall be provided. Thirty (30) days written notice shall be provided to the certificate holder prior to cancellation or significant modification of coverage. The Certificate of Insurance(s) and Endorsement(s) shall be provided to the City/Agency which will become a part of the Contract. Insurance Coverage provided must be underwritten by an insurance company deemed acceptable by the City/Agency. The City/Agency reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

Consultant will purchase and maintain property insurance for the entire work at the site on a replacement cost basis. Consultant shall obtain, at Consultant's expense, and keep in effect until final acceptance of the work performed under this contract, an Installation Floater or equivalent property coverage for materials, equipment, supplies, and tools to be used for completion of the work performed under this contract. The Installation Floater shall include coverage for testing, if applicable. The minimum amount of coverage to be carried shall be equal to the full amount of this contract. The Consultant will be responsible for any applicable deductibles.

9. Non-profits, community groups, and governmental entities that conduct meetings on city-owned property are exempt from the requirements of this administrative directive unless otherwise directed by the City Manager.

PROFESSIONAL SERVICE AGREEMENT

Schoon Mountain Potable Water Storage Tank with 135,000 Gallon Capacity and Sixth Avenue & Oak Street Pump Station Improvements

This Contract is made and entered into this _____ day of _____, 20____ by and between the CITY OF SUTHERLIN, an Oregon municipal corporation, hereinafter called "CITY", and _____ an independent Contractor hereinafter called "CONTRACTOR".

SECTION 1. CONTRACTOR AGREES:

1.1 Term. Beginning on, _____ **2019** and continuing thereafter until terminated pursuant to Section 3.6 of this Contract, CONTRACTOR shall perform the services required by the Contract.

1.2 Services. CONTRACTOR shall

1. Provide Design, Permitting, Bidding, Mechanical, Electrical, Control and Instrumentation System and the selected Engineer shall also coordinated and provide assistance to the City during the Land Acquisition process, Construction Management, and On-Site Observation Services, but not limited to all of the items addressed in the Scope of Work in this RFP.
2. Make every effort to adhere to the proposed schedule provided through the RFP.

1.3 Expenditures. Extraordinary unbudgeted expenditures, from Contracted funds, outside the scope of the work program may not be made by CONTRACTOR without the prior written approval of CITY'S Manager. CONTRACTOR shall promptly pay all expenses it incurs as a result of this Contract and shall comply with all provisions of federal, state and local law applicable to this Contract.

1.4 Insurance Requirements. At all times during the term of this Contract, at the sole expense of the CONTRACTOR, CONTRACTOR shall maintain continuously in effect the insurance policies described herein. Each policy shall be written as a primary policy, not contributing with or in excess of any coverage the CITY may carry. A copy of each policy or a certificate, and copies of additional insured endorsements, satisfactory to the CITY shall be delivered to the CITY prior to commencement of any work or services provided under this Contract. The certificates shall specify and document all insurance related provisions within this Contract. A renewal certificate will be sent to the CITY at least ten (10) days prior to expiration of coverage. Unless specified, each policy shall be written on an "occurrence" form. Policies must be underwritten by an insurance company deemed acceptable to the CITY and admitted to do business in Oregon, or, in the alternative, rated A- or better by AM Best. The CITY reserves the right to reject any insurance carrier with an unacceptable financial rating. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice to the CITY. The 30-day notice of cancellation provision must be physically endorsed on the policy. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limits specified in this Contract, CITY shall have the right to require CONTRACTOR to increase the CONTRACTOR'S coverage by an amount at least equal to the increase in the statutory limit for such claims and to increase the aggregate coverage by at least twice the amount of the increase in the statutory limit. Failure to maintain any insurance coverage required by this Contract shall be cause for immediate termination of the Contract by the CITY, but termination shall not relieve CONTRACTOR of its obligation to provide and maintain such coverage, and CITY shall be entitled to enforce all liability and indemnity provisions of this Contract following such termination. In addition, all requirements concerning insurance and indemnity shall survive the termination of this Contract. Unless waived or modified in writing by CITY, CONTRACTOR shall maintain the insurance coverages stated below:

1.4.1 Commercial General Liability. Throughout the term of this Contract, CONTRACTOR shall maintain continuously in a broad commercial general liability insurance policy with coverage of not less than \$2,000,000 combined single limit per occurrence, with an aggregate of \$2 million, for bodily injury, personal injury or property damage. The policy shall also contain an endorsement naming the CITY as an additional insured, on a form satisfactory to CITY, and expressly provide that the interest of the RFP for Schoon Mountain Water Tank and Sixth Avenue & Oak Pump Station Improvements / WMCP Page 11

CITY shall not be affected by CONTRACTOR'S breach of policy provisions. Such policy must be maintained in full force and effect for the duration of this Contract, failure to do so shall be cause for immediate termination of this Contract by CITY. Any additional insured requirements included in this Contract shall both provide completed operations coverage after job completion and coverage that is primary and non-contributory. Claims Made policies will not be accepted.

1.4.2 Automobile Liability Insurance. At all times during the term of this Contract, and at the sole expense of CONTRACTOR, CONTRACTOR shall maintain "Symbol 1" automobile liability coverage including coverage for all owned, hired, non-owned vehicles, equivalent to a combined single limit per occurrence on not less than \$2,000,000 for bodily injury or property damage.

1.4.3 Professional Liability Insurance. At all times during the term of this Contract, CONTRACTOR shall maintain and keep in full force, an insurance policy for professional liability in the amount of \$2,000,000 per claim, incident, or occurrence. In no instance shall CITY be responsible for any retention amount or deductible that CONTRACTOR may owe as a result of this coverage, nor shall such retention or deductible exceed \$25,000. CONTRACTOR shall continue professional liability coverage for the duration of the project and three years thereafter; and further, submit Certificate of Insurance renewals of such coverage to the CITY.

1.5 Indemnification. CONTRACTOR shall defend, indemnify and hold harmless CITY, and each of CITY'S elected officials, officers, employees and agents from and against any and all claims, losses, suits, actions, damages, and costs (including reasonable attorney fees) for personal injury, death or property damage arising out of the intentional or negligent acts or omissions of CONTRACTOR, or any of its sub-contractors, suppliers, employees, or agents, in the performance of its services. Nothing in this paragraph shall require CONTRACTOR or its insurer to defend or indemnify CITY for claims of personal injury, death or property damage caused by the sole negligence of CITY. This duty shall survive the expiration or termination of this Contract.

1.6 Books and Records. CONTRACTOR shall keep complete and proper books, records and accounts of all transactions performed as part of this Contract and the approved invoices and work program. The books, records and accounts shall be open to inspection by the CITY or its designee during normal business hours, and shall remain open to the CITY for such inspection for three (3) years following the termination of this Contract.

1.7 Availability. CONTRACTOR shall be available for meetings, discussions and program review with CITY, as deemed necessary or beneficial by City, upon reasonable and sufficient notice.

1.8 Assignment. The responsibility for performing CONTRACTOR'S services under the terms of this Contract shall not be assigned, transferred, delegated or otherwise referred by CONTRACTOR to any third person or other entity without the prior written consent of CITY.

1.9 Compliance with Law and Standard Contract Provisions. CONTRACTOR shall comply with all federal, state and local laws, including Sutherlin Municipal Code Regulations relating to business registration, and with all Standard CITY Contract Provisions which are stated in **Exhibit "A"** attached hereto and incorporated herein by reference.

1.10 Health Hazard Notification. If CONTRACTOR is hired to perform work for the CITY involving possible exposure to hazardous materials or entry into confined spaces, CONTRACTOR will be informed of the CITY'S programs and the associated hazards that CITY is aware of. The notification is not designed to take over the Contractor's safety responsibilities to his or her employees, but to provide appropriate notification under the Oregon OSHA rules.

SECTION 2. CITY AGREES:

2.1 Fee. In consideration of the above-described services, CITY agrees to pay CONTRACTOR an amount not to exceed \$ _____ as outlined in Scope of Work and Cost received from CONTRACTOR identified as Exhibit "B," which is attached hereto and is incorporated herein by reference.

2.2 Terms of Payment. CONTRACTOR will tender an invoice to CITY by no later than the tenth (10th) day after services rendered, and CITY shall make full payment on such invoice within thirty (30) days of its receipt.

SECTION 3. BOTH PARTIES AGREE:

3.1 Budget and Work Plan Approval. All approved invoices and work programs shall be in writing.

3.2 Independent Contractor. CONTRACTOR is an independent Contractor. CONTRACTOR shall control the manner in which it performs the services herein, however, the nature of the services and the results to be achieved shall be specified by CITY. CONTRACTOR is not to be deemed an employee or agent of CITY for any purpose, shall not be entitled to any CITY benefits and shall not have any authority to make any binding commitments on behalf of CITY except as may be expressly approved in advance and in writing by the CITY Manager.

3.3 Dispute Resolution. The parties agree to submit to mediation, prior to the commencement of any litigation or other form of dispute resolution process, any dispute that may arise between the parties regarding the terms of this Agreement, any Task Order made a part of this Agreement, any matters or issues arising out of or related to any work or service covered by this Agreement, any claimed breach of this Agreement or the termination of this Agreement. The parties agree to participate in good faith in the mediation process.

3.3.1 Condition Precedent. **Unless specifically waived in writing by both parties, the submission of a dispute to mediation and good faith participation in mediation shall be a condition precedent to the right of either party to commence litigation or any other form of dispute resolution.**

3.3.2 Commencing Mediation. **To commence mediation, the aggrieved party must deliver to the other party written notice of its intent to submit a dispute to mediation within thirty (30) days after the date the dispute first arose. "The date when the dispute first arose" is defined to mean when a party discovered, or, with reasonable diligence should have discovered, the facts or information on which the dispute is based.**

3.3.3 Mediator. **Any mediation will be conducted in Roseburg, Oregon, unless both parties agree otherwise. The mediation shall be conducted by one neutral mediator selected and agreed to by the parties or, if the parties fail to agree on a mediator within fifteen (15) days of provision of the notice of intent to submit a dispute to mediation, a mediator will be appointed by the presiding judge of the Douglas County Oregon Circuit Court upon request of either party.**

3.3.4 Conduct. **The mediation will be conducted as promptly as possible but in no event later than ninety (90) calendar days from the date of the written notice of intent to submit a dispute to mediation. No discovery will be allowed by or against either party prior to mediation. Each party shall share equally the mediator's fees and other administrative costs of the mediation process. The parties shall bear their own respective attorney fees and all other costs.**

3.3.5 Litigation. **If mediation is not successful in resolving a dispute, the parties may mutually agree to a dispute resolution of their choice or either party may commence litigation in a court of competent jurisdiction.**

3.4 Attorney Fees. If any arbitration, administrative proceeding, judicial action, or appeal thereon, is instituted in connection with any controversy arising out of this Contract, the performance of this Contract or any failure to perform this Contract, the prevailing party shall be entitled to recover, in addition to costs and

disbursements, such sum as the court or arbitrator may adjudge as reasonable attorney fees.

3.5 Ownership and use of Documents. In whatever form they may be produced or stored, any documents prepared in performance of this Contract and any supporting and investigative information that is gathered in the performance of this Contract, upon completion of the work, or upon termination of this Contract, shall be and remain the property of the CITY and shall be subject to copyright by the CITY it its sole discretion. CONTRACTOR shall be permitted to retain copies, including reproducible copies, of such documents. CONTRACTOR shall treat such documents as if CITY had secured a copyright thereon, and will not use the documents in a manner that would constitute copyright infringement. CITY may use the documents prepared hereunder for any purpose, however CONTRACTOR shall have no liability with regard to the City's use of such documents to the extent they are used or applied outside of the scope of CONTRACTOR's work under this Contract unless CONTRACTOR is consulted and offers a professional opinion that the contemplated use is appropriate.

3.6 Termination. This Contract may be terminated as follows:

3.6.1. CITY and CONTRACTOR, by mutual written agreement, may terminate this Contract at any time.

3.6.2. CITY, in its sole discretion, may terminate this Contract for any reason on thirty (30) days written notice to CONTRACTOR. Written notice shall be effective upon the date the written notice is provided in accordance with Section 3.7 of this Contract.

3.6.3. Either CITY or CONTRACTOR may terminate this Contract in the event of a breach of the Contract by the other party. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach as provided in Section 3.7 of this Contract and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving written notice of termination to the other party.

3.6.4. Notwithstanding paragraph 3.6.3, CITY may terminate this Contract immediately by written notice, as provided by Section 3.7, to CONTRACTOR upon denial, suspension, revocation or non-renewal of any license, permit or certificate that CONTRACTOR must hold to provide services under this Contract.

3.7 Notices. Any notice permitted or required to be given under this Contract, or required by law, shall be in writing and delivered to the parties by either hand delivery or certified mail, return receipt requested, at the following addresses:

CITY OF SUTHERLIN Schoon Mountain Potable Water Storage Tank and Sixth Avenue & Oak Street
Pump Station Improvements

CITY Manager _____
126 E Central _____
Sutherlin, OR 97479 _____

3.8 Applicable Laws. The laws of the State of Oregon shall be used in construing this Contract and enforcing the rights and remedies of the parties.

3.9 Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties and to each of their respective heirs, administrators, successors and assigns.

3.10 Complete Agreement. This Contract constitutes the entire agreement between CITY and CONTRACTOR concerning the subject matter of this Contract and supersedes any and all prior negotiations,

agreements and understandings between the parties, whether in writing or oral, that is not expressly set forth in this Contract. No amendments or modifications to this Contract may be made unless in writing and signed by both parties.

**Contract Clauses for contracts with
Professional Services Contractors
for projects funded by Safe Drinking Water financing**

1. Duns Number and SAM Registration

All entities that enter into contracts with a Safe Drinking Water Revolving Loan Fund recipient (i.e. contractors) must have both a DUNS number and be a SAM Registration. The links below can be provided to contractors if they have not already addressed this requirement.

SAM Registration: http://www.sam.gov/portal/public/SAM/ NOTE: The SAM registration expires annually and must be kept active until the SDWRLF project is closed	DUNS Number http://www.dnb.com/get-a-duns-number.html
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Contract Clause Language

Instructions: *The following language to be included verbatim in contracts according to any accompanying instructions.*

2. Source of Funds

Work under this contract is funded by the federal Safe Drinking Water Revolving Loan Fund through Business Oregon and a partnership of Local and/or Private Funds.

3. Whistleblower (language to be included in all construction contracts and subcontracts)

“Contractor receiving SDWRLF funds shall under or through this contract to, post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).”

4. Non Discrimination

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

5. Termination for Cause and for Convenience & Breach of Contract

“Contractor shall address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. In addition, contractor shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.”

6. Intellectual Property (language to be included in all contracts :)

“Contractor hereby grants to the U.S. E.P.A. a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, any intellectual

property developed under this contract. Contractor shall secure from third parties the same license in the name of the U.S. E.P.A. regarding any intellectual property developed by third parties as subcontractors to perform this project, or developed under contract with the Contractor specifically to enable Contractor's obligations related to this project."

7. Inspections; Information (language to be included in all contracts and subcontracts :)

"Contractor shall permit, and cause its subcontractors to allow *[insert name of water system Owner]*, the State of Oregon, the federal government and any party designated by them to:

- (1) Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.
- (2) Interview any officer or employee of the Contractor, or its subcontractors, regarding the Project.

Contractor shall retain all records related to the Project for three years after final payments are made and any pending matters are closed."

8. Prohibition on the Use of Federal Funds for Lobbying (Certification Regarding Lobbying form follows, for any contracts in excess of \$100,000)

(Form follows)

CERTIFICATION REGARDING LOBBYING

(Awards to Contractors and Subcontractors in excess of \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Signed _____

Title _____

Date _____

CITY OF SUTHERLIN

Schoon Mountain Potable Water Storage Tank and Sixth Avenue & Oak Street Pump Station Improvements

Jerry Gillham, CITY Manager

Date: _____

Founder and President

Date: _____

ATTEST:

CITY Recorder

EXHIBIT A

CITY OF SUTHERLIN - STANDARD CONTRACT PROVISIONS
Contracts Subject to ORS Chapter 279C
Services of Architects, Engineers, Land Surveyors and Related
Consultants on Public Improvements
Construction Services
Labor and Services for Public Improvements and
Public Works Subject to ORS 279C.800 to 279C.870

The following provisions, if applicable, are hereby included in and made a part of the attached Contract between the CITY of Sutherlin ("CITY") and the Contractor named thereon as provided for in the Sutherlin Municipal Code, the revised statutes of the State of Oregon, and Federal laws, rules, regulations, and guidelines. THE CONTRACTOR AND EVERY SUBCONTRACTOR SHALL INCLUDE THESE PROVISIONS IN EVERY SUBCONTRACT SO THAT THESE PROVISIONS WILL APPLY TO, AND BE BINDING ON EVERY SUBCONTRACTOR. Failure to comply with any of the applicable provisions below shall be a material breach of the Contract and may result in debarment of the Contractor or sub-Contractor from CITY Contracts for up to three (3) years.

1. Discrimination in sub-Contracting prohibited; remedies. (ORS 279A.110)

- 1.1. The Contractor may not discriminate against a sub-Contractor in the awarding of a sub-Contract because the sub-Contractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
- 1.2. By entering into the Contract, the Contractor certifies that it has not discriminated and will not discriminate, in violation of subsection 1.1, against any minority, women or emerging small business enterprise in obtaining any required sub-Contract.
- 1.3. If the Contractor violates the nondiscrimination certification made under subsection 1.2, the CITY may regard the violation as a breach of Contract that permits the CITY to terminate the Contract or exercise any remedies for breach permitted under the Contract.

2. CITY'S right to audit records. (OAR 137-049-0880)

- 2.1. **Cost or pricing data.** The CITY may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data in connection with the Contract to the extent that such books and records relate to such cost or pricing data. If the Contract requires submission of cost or pricing data, any person who has submitted cost or pricing data shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the Contract, unless a shorter period is authorized by the CITY in writing.
- 2.2. **Contract audit.** The CITY shall be entitled to audit the books and records of the Contractor or any sub-Contractor to the extent that the books and records relate to the performance of the Contract. Contractor and each sub-Contractor are required to maintain books and records for a period of three years from the date of final payment under the Contract or sub-Contract, as applicable, unless a shorter period is authorized by the CITY in writing.

3. Termination in the public interest. (ORS 279C.665)

The CITY may terminate the Contract when required by the public interest including, at minimum, for the following:

- (a) If the Contractor is prevented from completing the work for reasons beyond the control of the CITY;
- (b) If completion of the project is beyond control of the Contractor; or
- (c) For any reason considered by the CITY manager to be in the public interest. These reasons may include, but are not necessarily limited to, non-availability of materials, lack of funds, phenomenon of

nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional or state acts related to funding or changes in applicable laws.

When the Contract, or any portion thereof, is terminated before completion of all items of work in the Contract, payment will be made for the actual items of work completed under the Contract, or by mutual agreement, for items of work partially completed. No claim for loss of anticipated profits will be allowed.

4. Nonresident Contractors. (ORS 279A.120)

- 4.1. As used in this section, "nonresident Contractor" means a Contractor that: (A) has not paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of the bid for the Contract, (B) does not have a business address in this state and (C) stated in the bid for the Contract that it was not a "resident bidder" under ORS 279A.120.
- 4.2. If the Contractor is a nonresident Contractor and the Contract price exceeds Ten Thousand Dollars (\$10,000), the Contractor shall promptly report to the Department of Revenue on forms to be provided by the Department of Revenue the total Contract price, terms of payment, length of Contract and such other information as the Department of Revenue may require before the Contractor may receive final payment on the Contract. The CITY may not award a Contract to a nonresident bidder that is an educational service district. The CITY shall satisfy itself that the requirement of this subsection has been complied with before the CITY issues a final payment on the Contract.

5. Conditions concerning payment, contributions, liens, withholding; drug testing. (ORS 279C.505)

5.1. Prompt payment. The Contractor shall:

- (a) Make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the Contract.
- (b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or sub-Contractor incurred in the performance of the Contract.
- (c) Not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished.
- (d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

6. Demolition Contracts to require material salvage; lawn and landscape maintenance Contracts to require composting or mulching. (ORS 279C.510)

- 6.1. If the Contract includes demolition, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.
- 6.2. If the Contract includes services for lawn and landscape maintenance the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

7. Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials, and complaints. (ORS 279C.515)

- 7.1. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a sub-Contractor by any person in connection with the Contract as the claim becomes due, the CITY 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 the Contract.
- 7.2. If the Contractor or a first-tier sub-Contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract within thirty (30) days after receipt of payment from the CITY or the Contractor, the Contractor or first-tier sub-Contractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to

a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier sub-Contractor 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 thirty (30) days after the date when payment was received from the CITY or from the Contractor, but the rate of interest may not exceed thirty percent (30%). The amount of interest may not be waived.

- 7.3. If the Contractor or a sub-Contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 7.4. 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.

8. Condition concerning payment for medical care and providing workers' compensation. (ORS 279C.530)

- 8.1. The Contractor and all sub-Contractors shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor or sub-Contractor, as applicable, of all sums that the Contractor or sub-Contractor, as applicable, agrees to pay for the services and all moneys and sums that the Contractor or sub-Contractor, as applicable, collected or deducted from the wages of employees under any law, Contract or agreement for the purpose of providing or paying for the services.
- 8.2. All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

9. Conditions concerning hours and maximum hours of labor on public Contracts; holidays; exceptions; liability to workers; rules. (ORS 279C.520; 279C.540)

9.1. A person may not be employed for more, or required or permitted to labor more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, except in cases of Contracts for architect, engineering, land surveying or related consultant services, the person so employed for excessive hours shall receive at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

For all overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

- (b) For all work performed on Saturday and on the following legal holidays:

- (A) Each Sunday.
- (B) New Year's Day on January 1.
- (C) Memorial Day on the last Monday in May.
- (D) Independence Day on July 4.
- (E) Labor Day on the first Monday in September.
- (F) Thanksgiving Day on the fourth Thursday in November.
- (G) Christmas Day on December 25.

9.2. An employer shall give notice in writing to employees who perform work under subsection 9.1, 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 days per week that employees may be required to work.

- 9.3. For the purpose of this section, each time a legal holiday listed in subsection 9.1, other than Sunday, falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a legal holiday listed in subsection 9.1 falls on Saturday, the preceding Friday shall be recognized as a legal holiday.
- 9.4. Subsections 9.1 and 9.2 of this section do not apply to labor on the Contract or to construction services if the Contractor is a party to a collective bargaining agreement in effect with any labor organization.
- 9.5. When specifically agreed to under a written labor-management negotiated labor agreement, an employee may be paid at least time and a half pay for work performed on any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection 9.1.
- 9.6. This section does not apply to Contracts for architect, engineering, land surveying or related consultant services, provided that persons employed under such Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection 9.1(b)(B) to (G) of this section and for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201-209 from receiving overtime.
- 9.7. (a) Subsections 9.1 and 9.2 of this section do not apply to Contracts for construction services other than in construction of a Public Improvement or a Public Works. However, persons employed under such Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in subsection 10.1(b) (B) to (G) of this section 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.

(b) An employer shall give notice in writing to employees who work on a Contract for services, 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 days per week that the employees may be required to work.
- 9.8. Any Contractor or sub-Contractor or Contractor's or sub-Contractor's surety that violates the provisions of this section is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation results from willful falsification of payroll records, the Contractor or sub-Contractor or the Contractor's or sub-Contractor's surety is liable to the affected employees in the amount of their unpaid overtime wages and an additional amount equal to twice the unpaid overtime wages as liquidated damages.
- 9.9. This section does not apply to financial institutions as defined in ORS 706.008.

10. Contractor's relations with sub-Contractors. (ORS 279C.580)

- 10.1. **Payment to sub-Contractors.** The Contractor shall include in every sub-Contract entered into by the Contractor and a first-tier sub-Contractor, including a material supplier, for the purpose of performing the Contract:
 - (a) A payment clause that obligates the Contractor to pay the first-tier sub-Contractor for satisfactory performance under its sub-Contract within ten (10) days out of such amounts as are paid to the Contractor by CITY under such Contract; and
 - (b) An interest penalty clause that obligates the Contractor, if payment is not made within thirty (30) days after receipt of payment from CITY, to pay the first-tier sub-Contractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the sub-Contract. The Contractor or first-tier sub-Contractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier sub-Contractor did not make payment when payment was due is that the Contractor or first-tier sub-Contractor did not receive payment from CITY or the Contractor when payment was due. The interest penalty shall be:

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

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

10.2. The Contractor shall include in each of its sub-Contracts, for the purpose of performance of such Contract condition, a provision requiring the first-tier sub-Contractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subsection 11.1 and requiring each of its sub-Contractors to include such clauses in their sub-Contracts with each lower-tier sub-Contractor or supplier.

10.3. None of the provisions in this section are intended to prevent the Contractor or any sub-Contractor from including in its Contracts the provisions described in ORS 279C.580 (5).

10.4. **Contractor may not request payment of sums withheld from sub-Contractors.** The Contractor may not request payment from CITY of any amount withheld or retained from a sub-Contract by the Contractor in accordance with ORS 279C.580(5) until such time as the Contractor has determined and certified to CITY that the sub-Contractor has determined and certified to the Contractor that the sub-Contractor is entitled to the payment of such amount.

10.5. **CITY not party to disputes.** A dispute between the Contractor and first-tier sub-Contractor relating to the amount or entitlement of a first-tier sub-Contractor to a payment or a late payment interest penalty under a clause included in the sub-Contract under subsection ORS 279.580 does not constitute a dispute to which CITY is a party. CITY may not be included as a party in any administrative or judicial proceeding involving such a dispute.

11. Compliance with Tax Certification; Compliance with Laws. Contractor certifies under penalty of perjury, that to the best of its knowledge, it is not in violation of any tax laws described in ORS 305.380(4). Contractor shall comply with all federal, state and local laws, rules, ordinances and regulations at all times and in the performance of the services described in this Contract.