



CITY OF GRANTS PASS  
COUNCIL AGENDA  
September 30, 2019

11:45 a.m. City Council Workshop and Special Meeting  
Council Chambers - 101 N.W. 'A' Street

MAYOR: Roy Lindsay

CITY COUNCIL MEMBERS:

<b>Ward 1</b>	<b>Ward 2</b>	<b>Ward 3</b>	<b>Ward 4</b>
Tyler Flaming Clint Scherf	Valerie Lovelace Rick Riker	Dennis Roler Dwight Faszer, II	Barry Eames Joel King

1. COUNCIL WORKSHOP

- a. Electric charging station grant
- b. Agenda review

2. ADJOURN WORKSHOP AND CONVENE THE SPECIAL COUNCIL MEETING

~~3. Appeal of an Exclusion Order under Grants Pass Municipal Code 6.46.355~~

4. CONSENT AGENDA

- a. Resolution authorizing the City Manager to enter into a contract for the 'B' Street Water Main & Sewer Replacement (8<sup>th</sup> Street to Dean Street); Project No. WA6360.

5. ADJOURN SPECIAL MEETING AND CONVENE THE SPECIAL COUNCIL MEETING IN EXECUTIVE SESSION

Executive Session is held to discuss the following subjects:

- (e) Real property transactions-negotiations
- (h) Litigation

*ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate person with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations at least 48 business hours prior to the meeting. To request these arrangements, please contact Karen Frerk, City Recorder at (541) 450.6000.*

Resolution authorizing the City Manager to enter into a contract for the 'B' Street Water Main & Sewer Replacement (8<sup>th</sup> Street to Dean Street); Project No. WA6360.

Date: September 30, 2019

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**SUBJECT AND SUMMARY:**

This project will replace approximately 587 lineal feet of existing substandard 2" cast iron water main with 8" ductile iron water main and 395 lineal feet of non-reinforced concrete sewer main with 8" PVC 3034 sewer main in 'B' Street from 8<sup>th</sup> Street to Dean Street.

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**RELATIONSHIP TO COUNCIL GOALS:**

This action implements the Council's goal to maintain, operate and expand our **INFRASTRUCTURE** to meet community needs.

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**CALL TO ACTION SCHEDULE:**

The notice of intent to award letter was issued on September 13, 2019. The Engineering Division has 30 days to award the project. Call to action schedule: September 30, 2019.

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**BACKGROUND:**

This project will replace existing 2" water mains which will improve domestic pressures and fire flows and 8" sewer mains which will reduce infiltration of ground water and prevent effluent from entering the soil in "B" Street from 8<sup>th</sup> Street to Dean Street.

Request for bids for the work was advertised on the City's website and in the Daily Journal of Commerce. The bid opening for this project was September 12, 2019. Three bids were received, ranging from \$241,833.72 to \$362,089.

The lowest responsible bidder is CPI Acquisitions, LLC, at \$241,833.72. This bid is below the Engineers Estimate of \$279,822.00. Staff recommends awarding the bid to CPI Acquisitions, LLC.

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**COST IMPLICATION:**

Revenue Source: This project is budgeted and funded as part of WA6360 in the Water Capital Fund and SE6198 Sewer Capital Fund.

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**ALTERNATIVES:**

1. Install the water and sewer main lines as proposed; or
2. Leave the existing mains in place and schedule replacement at a later date.

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ITEM: 4.a. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE "B" STREET WATER MAIN AND SEWER REPLACEMENT (8<sup>TH</sup> STREET TO DEAN STREET); PROJECT NO. WA6360.

Staff Report (continued):

RECOMMENDED ACTION:

It is recommended the contract for the 'B' Street Water Main & Sewer Replacement (8<sup>th</sup> Street to Dean Street); Project No. WA6360 be awarded to the lowest responsible bidder, CPI Acquisitions, LLC.

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POTENTIAL MOTION:

I move to authorize the City Manager to enter into a contract with CPI Acquisitions, LLC, for the 'B' Street Water Main & Sewer Replacement (8<sup>th</sup> Street to Dean Street).

**RESOLUTION NO.**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF GRANTS PASS  
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 'B'  
STREET WATER MAIN & SEWER REPLACEMENT; PROJECT NO. WA6360.**

**WHEREAS:**

1. The City of Grants Pass advertised and received three bids for construction of the 'B' Street Water Main & Sewer Replacement; Project No. WA6360; and
2. The bid from CPI Acquisitions, LLC, has been determined to be the lowest responsible bid, its bid is complete and responsive; and
3. The City of Grants Pass has sufficient funds for the project within the Water and Sewer Capital Funds.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Grants Pass that the City Manager is authorized to contract with CPI Acquisitions, LLC, for the work as described in the contract documents entitled the 'B' Street Water Main & Sewer Replacement; Project No. WA6360; in the amount of \$241,833.72, which the bid tab and contract is attached to and incorporated herein as Exhibit 'A'.

**EFFECTIVE DATE** of this Resolution shall be immediate upon its passage by the City Council and approval by the Council Mayor.

**ADOPTED** by the Council of the City of Grants Pass, Oregon, in special session this 30<sup>th</sup> day of September 2019.

**SUBMITTED** to and \_\_\_\_\_ by the Mayor of the City of Grants Pass, Oregon, this \_\_\_\_\_ day of September 2019.

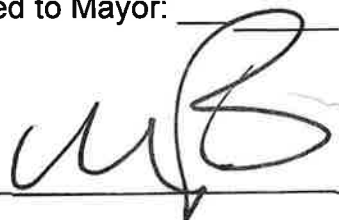
\_\_\_\_\_  
Roy Lindsay, Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Frerk, City Recorder

Date submitted to Mayor: \_\_\_\_\_

Approved as to Form, Mark Bartholomew, City Attorney

  
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**City of Grants Pass**  
**"B" Street Water Main and Sewer Replacement (8th Street to Dean Street)**  
 Project No. WA6360



**BID SUMMARY**

Item No.	Description of Item	Quantity	Unit	City of Grants Pass (Engineers Estimate)		CPI Acquisitions LLC		Timber Mountain Construction, Inc.		LTM, Inc. dba Knife River Materials	
				Address	Phone	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Mobilization, move in of equipment and materials per APWA/ODOT Sec. 00219, complete.	1	LS	101 NW "A" Street Grants Pass, OR 97526 (541) 450-6060	NA	\$16,000.00	\$16,000.00	PO Box 930 Rogue River, OR 97537 (541) 956-8700	YES 10%	PO Box 1145 Medford, OR 97501 (541) 770-2960	YES 10%
2	Work Zone Traffic Control, includes TCD, TCM and TCP per approved plans, M.U.T.C.D., and APWA/ODOT Sec. 00225 and 00225.90 (b), complete.	1	LS	NA	NA	\$3,000.00	\$3,000.00	YES 10%	YES 10%	YES 10%	YES 10%
3	Erosion & Sediment Control, per approved plans and APWA/ODOT Sec. 00280.00 Inlet Protection, Dust Control, Sediment Fence, Biofilter Bags, installed complete.	1	LS	NA	NA	\$500.00	\$500.00	YES 10%	YES 10%	YES 10%	YES 10%
4	Removal of Structures and Obstructions, includes removal and proper disposal of existing pipe, AC, curb & gutter and sidewalk and saw cutting or other methods of cutting pavement, per approved plans and APWA/ODOT Sec. 00310 and 00291.20(c), (Hazardous Waste), complete.	1	LS	NA	NA	\$7,200.00	\$7,200.00	YES 10%	YES 10%	YES 10%	YES 10%
5	Asphalt Pavement Cutting for "T" patch, per approved plans and APWA/ODOT Section 000310 and City pavement cut policy.	195	LS	NA	NA	\$2.00	\$390.00	YES 10%	YES 10%	YES 10%	YES 10%
6	48" Eccentric Sanitary Sewer Manhole, per approved plans, GP338 and APWA/ODOT Sec. 00470. Includes manhole, excavation, bedding and compacted backfill per APWA/ODOT Sec. 00405, adjustment to finish grade, concrete collars and pipe connections, installed, complete.	2	EA	NA	NA	\$4,000.00	\$8,000.00	YES 10%	YES 10%	YES 10%	YES 10%
7	8" Sanitary Sewer Main, PVC 3034, per approved plans and, GP304 and APWA/ODOT Sec. 00445. Includes pipe, trench excavation, bedding and backfill per GP300 and APWA/ODOT Sec. 00405, installed, complete.	395	LF	NA	NA	\$90.00	\$35,550.00	YES 10%	YES 10%	YES 10%	YES 10%
8	4" Sanitary Sewer Lateral Replacement, per approved plans, GP304 and APWA/ODOT Sec. 004445. Includes removal and proper disposal of existing pipe, pipe trench excavation, bedding, backfill and saw cutting or other methods of cutting pavement. Installed complete.	12	EA	NA	NA	\$1,800.00	\$21,600.00	YES 10%	YES 10%	YES 10%	YES 10%
9	Asphalt Pavement, 1/2" dense, Level 2 mix, 3" compacted thickness, per APWA/ODOT Section 00744. Includes any minor valve or manhole adjustments. Installed complete.	420	5	NA	NA	\$95.00	\$39,900.00	YES 10%	YES 10%	YES 10%	YES 10%
10	Asphalt Pavement (Driveway), 1/2" dense, Level 2 mix, 2" compacted thickness, per APWA/ODOT Section 00744. Includes sawcutting, pavement removal, excavation, base rock, gravel transition to existing driveway, any minor valve or manhole adjustments. Installed complete.	12	TN	NA	NA	\$135.00	\$1,620.00	YES 10%	YES 10%	YES 10%	YES 10%
11	Potable Water Service Connection, 2 Inch and Smaller, per approved plans, GP274 and APWA/ODOT Sec. 01170, installed, complete.	114	SF	NA	NA	\$10.00	\$1,140.00	YES 10%	YES 10%	YES 10%	YES 10%
12	1-inch Combination Air Valve, per approved plans, GP270 and APWA/ODOT Sec. 01150, installed, complete.	319	LF	NA	NA	\$30.00	\$9,570.00	YES 10%	YES 10%	YES 10%	YES 10%
13	Concrete Sidewalk (Match Existing), per approved plans, GP720 and APWA/ODOT Sec. 00759, includes excavation, base rock, concrete flatwork. Installed complete.	1,083	SF	NA	NA	\$10.00	\$10,830.00	YES 10%	YES 10%	YES 10%	YES 10%
14	Concrete Residential Driveway Apron (Match Existing), per approved plans, GP750 and APWA/ODOT Sec. 00759, includes excavation, base rock, concrete flatwork. Installed complete.	527	SF	NA	NA	\$20.00	\$10,540.00	YES 10%	YES 10%	YES 10%	YES 10%
15	Bollards, per approved plans and APWA/ODOT Sec. 00815. Installed complete.	2	EA	NA	NA	\$250.00	\$500.00	YES 10%	YES 10%	YES 10%	YES 10%

**City of Grants Pass**  
**"B" Street Water Main and Sewer Replacement (8th Street to Dean Street)**  
 Project No. WA6360



**BID SUMMARY**

Item No.	Description of Item	Quantity	Unit	City of Grants Pass (Engineers Estimate)		CPI Acquisitions LLC		Timber Mountain Construction, Inc.		L TM, Inc. dba Knife River Materials	
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
16	Landscape Restoration, per approved plans, per APWA/ODOT Sec. 01030, complete.	1	LS	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00
17	8" Water Pipe and Fittings, Cl. 52 Ductile Iron, per approved plans and APWA /ODOT Sec. 01100. Includes pipe, tapping sleeve, fittings, valves, trench excavation, bedding and backfill per GP300 and APWA/ODOT Sec. 01100, installed, complete.	587	LF	\$86.00	\$50,482.00	\$65.06	\$38,190.22	\$74.00	\$43,438.00	\$112.00	\$65,744.00
18	Potable Water Service Connection, 2 inch and smaller, per approved plans, GP274 and APWA/ODOT Sec. 01170, installed, complete. Includes PRVs and thermal expansion tanks, installed, complete.	11	EA	\$2,000.00	\$22,000.00	\$1,100.00	\$12,100.00	\$1,250.00	\$13,750.00	\$1,245.00	\$13,695.00
19	1 inch Combination Air Valve, per approved plans, GP270 and APWA/ODOT Sec. 01150, installed, complete.	1	EA	\$2,500.00	\$2,500.00	\$2,250.00	\$2,250.00	\$3,100.00	\$3,100.00	\$2,440.00	\$2,440.00
20	Re-Plumbing to Individual Houses, as per Oregon Plumbing Specialty Code.	1	LS	\$9,000.00	\$9,000.00	\$9,625.00	\$9,625.00	\$12,500.00	\$12,500.00	\$3,940.00	\$3,940.00
21	4 inch Blow Off Assembly (low point), per approved plans, GP264 and APWA/ODOT Sec. 01140. Includes excavation, backfill, connections and all appurtenances and parts necessary. Installed, complete.	1	EA	\$8,000.00	\$8,000.00	\$3,472.00	\$3,472.00	\$4,500.00	\$4,500.00	\$6,500.00	\$6,500.00
22	Install by Jack or Bore Steel Casing Pipe, per approved plans and APWA/ODOT Sec. 00406. Includes excavation, launch pit, receiving pit, jacking and boring equipment, steel casing pipe, polyethylene skids, plugs, sand infill, backfill, connections and all appurtenances and parts necessary. Installed, complete.	1	LS	\$10,000.00	\$10,000.00	\$28,583.00	\$28,583.00	\$26,000.00	\$26,000.00	\$39,000.00	\$39,000.00
23	Fire Hydrant, Short Lead, per approved plans, GP254 and APWA/ODOT Sec. 01160. Includes excavation, backfill, connections and all appurtenances and parts necessary. Installed, complete.	2	EA	\$5,000.00	\$10,000.00	\$4,250.00	\$8,500.00	\$6,400.00	\$12,800.00	\$5,600.00	\$11,200.00
<b>Total (Bid Items 1-23):</b>					<b>\$279,822.00</b>	<b>\$241,833.72</b>	<b>\$289,894.50</b>	<b>\$362,089.00</b>			

\*\*\*\*BIDS WERE OPENED ON 9/12/19 AT 3:05 PM IN THE CITY OF GRANTS PASS CITY MANAGER'S CONFERENCE ROOM.\*\*\*\*

## CONTRACT FOR CONSTRUCTION

THIS CONTRACT FOR CONSTRUCTION, made by and between the **CITY OF GRANTS PASS, OREGON**, a Municipal Corporation of the State of Oregon, and hereinafter called "**City**" and, **CPI ACQUISITIONS, LLC** hereinafter called "**Contractor**".

### WITNESSETH:

That Contractor and City, for the consideration hereinafter named, agree as follows:

1. SCOPE OF WORK

Contractor hereby agrees to furnish all of the materials and all of the equipment and labor necessary, and to perform all of the work shown on the drawings and described in the specifications for the project entitled: **"B" STREET WATER MAIN & SEWER REPLACEMENT (8TH STREET TO DEAN STREET); PROJECT NO. WA6360**

Contractor shall at all time keep premises free from accumulation of waste materials or rubbish caused by him or from his employees or subcontractors. At the completion of improvements/work he shall remove all rubbish from the premises, all his tools, scaffolding and surplus materials; and shall leave the premises clean. Contractor shall coordinate any special cleaning requirements with the City during construction.

All work will be completed in accordance with the requirements and provisions of this Contract, and the following, which are attached to, or referenced, and incorporated in this contract:

- Requirements for Bidders
- Special Provisions
- Bid Proposal
- Bid Schedule Form
- First-Tier Subcontractor Disclosure Form
- Project Supervisor Questionnaire
- Oregon Bidder Residency Statement
- Project Schedule
- Bid Bond Form
- Current Prevailing Wage Rates for Public Works Contracts in Oregon
- Drawings and Specifications

The following Addenda are also included as part of the Contract Documents:

ADDENDUM NO. 1

DATE: SEPTEMBER 10, 2019

2. TIME OF COMMENCEMENT

The work to be performed under this Contract shall be commenced within 10 calendar days after mailing by City to Contractor of a written "Notice to Proceed".

3. HOLIDAYS

No work shall be performed on the following legal holidays:

- New Year's Day on January 1
- Martin Luther King, Jr. Birthday, on the third Monday in January
- President's Day, on the third Monday in February
- Memorial Day on the last Monday in May
- Independence Day on July 4
- Labor Day on the first Monday in September
- Thanksgiving Day on the fourth Thursday in November  
Due to unavailability of City Staff, no work to be performed the day after Thanksgiving.
- Christmas Day on December 25

When a holiday falls on Sunday, the following Monday shall be recognized as a legal holiday. When a holiday falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

4. DATE OF SUCCESSFUL COMPLETION OF WORK

The work shall be successfully completed no later than sixty (60) calendar days after a written "Notice to Proceed" is given to the contractor. The time period for completion will be increased by any days which are lost due to documented weather problems so long as Contractor notifies the City Engineer in writing of an inability to work by 12 noon of each and every day work cannot continue.

5. LIQUIDATED DAMAGES

Failure to complete the work by the date of completion provided herein above, including any extension granted thereof, shall entitle City to deduct from monies otherwise due Contractor as "liquidated damages" in the amount as indicated in the Special Provision Section 00180.85 Failure to Complete on Time: Liquidated Damages for each and every calendar day beyond the date of completion the work remains uncompleted. This amount is agreed to by the Contractor and City en lieu of an analysis of loss-benefit ratios because of the extreme difficulty and cost in assessing the inconvenience to the City, increased monitoring of the Contract, inconvenience to the public, and inability of the City to utilize the completed Project, all of which Contractor hereby acknowledges does occur and result in legitimate damages and because this provision limits the liability of the Contractor to a specified maximum daily amount for delayed performance damages.



6. CONTRACT AMOUNT

Subject to the City's right to add, subtract, or delete minor portions of the work as noted on Page 9 of the Requirements for Bidders, the contract amount hereof which is to be paid by City to Contractor pursuant to the Contract Documents is: **\$241,833.72.**

7. PERFORMANCE AND PAYMENT BOND

The Contractor shall prior to or at the preconstruction conference, before the commencement of any operations hereunder, furnish the City with a signed copy of the Performance Guarantee constituting a portion of the Contract Documents. The aforesaid Performance Guarantee shall be in the amount of \$241,833.72 and shall be a Performance Bond with Travelers Casualty & Surety of Portland, Oregon as surety, or alternatively, and subject to approval by City's Council as local contract review board, Contractor may submit a cashier's or certified check, letter of credit, or loan proceeds in said sum, payable to the City of Grants Pass, Oregon.

Mark One: Contractor will furnish the following:

Performance Bond (  )  
Cashier's Check (  )  
Certified Check (  )  
Letter of Credit (  )  
Loan Proceeds (  )

Any said Payment Guarantee is subject to approval by the City and shall be in an amount equal to the amount of the contract. The bond shall comply and be in accordance with Oregon Revised Statutes, Chapter 279C.380, **Performance Bond; Payment Bond; Waiver of Bonds in Case of Emergency.** The surety companies executing such bond must appear on the **DEPARTMENT OF INSURANCE AND FINANCE, STATE OF OREGON**, Official Records, and be authorized to transact business in the State of Oregon.

8. FIFTEEN MONTH SECURITY

The Contractor agrees to save and hold harmless City and its officers, agents and employees, from any and all defects appearing or developing in the workmanship or materials performed or furnished under this Contract for a period of fifteen (15) months after the date of the written acceptance of City of the entire project by City. Any Performance Guarantee, Cashier's or Certified Check, Letter of Credit, or Loan Proceeds furnished City pursuant to paragraph 7 above, shall be retained in full by City as security to City from Contractor of Contractor's indemnification and save harmless agreement as provided in this paragraph 8.

9. STATUTORY PROVISIONS

The provisions of "Minimum Wages for Federal and Federally Assisted Construction" as published in the Federal Register by the Department of Labor, Employment Standards Administration, Wage and Hour Division requiring workers on federal and federally assisted projects to be paid not less than the prevailing rate of wage, and other related statutes, are to be complied with by Contractor, and ORS 279C.800 through 279C.870 pertaining to Oregon State requirements are hereby incorporated herein by this reference. The City shall pay a fee equal to one-tenth of one percent (.001) of the price of this contract, but not less than \$250 nor more than \$7,500 regardless of the contract price. The public agency must pay the fee at the time the public agency enters into the public works contract. The fee is payable to 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 Rate Unit #1045  
800 NE Oregon Street  
Portland, OR 97232-2180

The "Statutory Provisions" and "Federal Labor Standard Provisions" are incorporated in this Contract as part hereof by this reference and Contractor and all subcontractors shall comply therewith.

Contractor will follow federal, state and local agencies laws and regulations dealing with the prevention of environmental pollution and preservation of natural resources that affect the performance of the contract: U.S. Department of Housing and Urban Development, Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 12246); Environmental Protection Agency, Clean Air and Water Pollution Control; U.S. Water Resources Council, Floodplain Management Guidelines for implementing Executive Order 11988. The aforesaid provision is pursuant to ORS 279C.525, the terms of which are incorporated herein by this reference.

10. STATUTORY PUBLIC WORKS BOND

The Contractor and subcontractors shall, prior to or at the preconstruction conference, before the commencement of any operations hereunder, file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in 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 this section, unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30 days written notice to the contractor or subcontractor, to the board and to the Bureau of Labor and Industries.

11. WORKERS COMPENSATION COVERAGE

CONTRACTOR, its subcontractors, if any, and all employers working under this agreement, are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. CONTRACTOR shall provide proof of coverage at the time of the execution of this agreement and to provide continuing proof of coverage during the period of this agreement.

12. LIABILITY INSURANCE

CONTRACTOR will maintain a policy of liability insurance in the form, and from an insurance company, approved by the CITY, which company is admitted or otherwise licensed to do business in the State of Oregon.

- A. Said insurance shall insure CONTRACTOR for the benefit of the City of Grants Pass in not less than the amount of \$1,000,000 single limit liability for each occurrence, and aggregate coverage of not less than \$2,000,000.
- B. The insurance shall cover any occurrences, resulting from any conduct, act, or failure to act, by CONTRACTOR, or by an employee, representative, or agent of CONTRACTOR, and which occurrence or occurrences result in damages of any kind, including, but not limited to, personal injury or death to any person or persons, damage to any property (personal or real), or damage to any contractual or other commercial right or interest.
- C. Certificate of Insurance: CONTRACTOR shall require its insurance carrier to provide to the City of Grants Pass a certificate of insurance evidencing said coverage. Said policy shall provide that such coverage cannot be modified, terminated or canceled by the carrier without 30 days written notice sent by certified mail by the insurance carrier to the City of Grants Pass. It is agreed that no person shall perform any acts on behalf of CONTRACTOR without having said insurance in full force and effect.

13. REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to the City of Grants Pass that:

- 1. Contractor has the power and authority to enter into and perform this Contract.

2. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.
3. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the [date of Closing of {bids/proposals} for/effective date of] this Contract, faithfully has complied with:
  - (a) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; and
  - (b) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; and
  - (c) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
  - (d) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any [Goods/Items/Equipment/Components/Hardware/Software/Intellectual Property Rights, etc.] [delivered to/granted to] the City of Grants Pass under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to the City of Grants Pass free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

#### 14. CONTRACTOR'S COMPLIANCE WITH TAX LAWS

1. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state.
2. Any violation of subsection 1 of this section shall constitute a material breach of this Contract. Any violation shall entitle the City of Grants Pass to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:
  - (a) Termination of this Contract, in whole or in part; and

- (b) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
- (c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. City of Grants Pass shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing [replacement services/replacement goods/ a replacement contractor].

These remedies are cumulative to the extent the remedies are not inconsistent, and the City of Grants Pass may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

15. HOLD HARMLESS

CONTRACTOR and its successors and assigns agrees to completely protect, save, defend, hold harmless and indemnify the City of Grants Pass, and its officers, agents and employees, from any liability or obligation of any kind or nature whatsoever arising from injury or injuries, including death, to any person or persons, or damage to any property, real or personal, or damage to any contractual, or other commercial right or interest, suffered or alleged to have been suffered all or in part by any person, property, or business, or from any other liability of whatever kind or nature arising out of any conduct, act, or failure to act, by CONTRACTOR, or by an employee, representative, or agent of CONTRACTOR.

16. MONIES DUE BUT NOT PAYABLE

The City may retain so much of the money due CONTRACTOR under and by virtue of this Contract as may be considered necessary to pay for any suit, action or claim for injuries or damages for which the CONTRACTOR is responsible per the terms of this contract; or in case no money is due, CONTRACTOR'S surety as set forth in the Payment and Performance Bond, or any cashier's or certified check presented and approved in lieu thereof, may be held by the City until any such suits or actions, or claims for recoveries for injuries or damages and the like, without limitation, shall have been settled and suitable evidence to that effect is furnished to the City; except that money due the CONTRACTOR will not be withheld after the CONTRACTOR produces satisfactory evidence that CONTRACTOR is adequately protected by public liability and property damage insurance as required herein. The City shall not be responsible for any of the foregoing all of which is the sole responsibility of the CONTRACTOR, with the said responsibility to exist at all times, and including those times when the work is in progress and during the one-year maintenance guarantee period thereafter, without limitation.

17. ATTORNEY FEES

If suit or action is brought by either PARTY to enforce any right created by this agreement, the prevailing PARTY shall be entitled to recover in any trial court, and appellate courts, reasonable attorney fees, including costs and disbursements therein.

18. IN ACCORDANCE WITH ORS CHAPTER 279C

**A. 279C.505 Conditions concerning payment, contributions, liens, withholding, drug testing.**

Contractor shall:

- (1) 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.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- (5) Demonstrate that an employee drug program is in place.

**B. 279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.**

- (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 subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the state or a county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, 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.
- (2) If the Contractor or first-tier subcontractor fails, neglects or refuses to

make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the City or the 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 the 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 contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

- (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 public improvement 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.
- (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.

**C. 279C.520 Condition concerning hours of labor.**

Contractor shall:

- (1) Not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it and the employee shall be paid at least time and a half pay:
  - (a) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; or
  - (b) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - (c) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- (2) Give notice in writing to employees, who work on a public contract, 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.

**D. 279C.530 Condition concerning payment for medical care and providing workers' compensation.**

Contractor shall:

- (1) Promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (2) Comply with ORS 656.017.

19. ENTIRE CONTRACT

This AGREEMENT represents the entire contract between the PARTIES. It is the intent of the PARTIES that prior conversations or writings between the PARTIES which are not specifically incorporated by reference into this AGREEMENT, may not be used by the PARTIES or by a Court of law to interpret the terms and conditions stated herein. Except as specifically set forth herein, prior courses of dealing and performance between the PARTIES, and trade usage and practices which may or may not be acceptable in the industry, also may not be used by the PARTIES or by a Court of law to interpret the terms and conditions stated herein. (Madison Indus. Inc. V. Eastman Kodak Co., 243 N.J. Super. 578,581 A.2nd 85 (1990)).

20. ORAL MODIFICATIONS AND WAIVERS

The rights and benefits of the City, under this AGREEMENT and any parts thereof, may not be orally modified or waived.

21. WRITTEN MODIFICATIONS AND WAIVERS

The rights and benefits of the City, under this AGREEMENT and any parts thereof, may be modified or waived so long as said modification or waiver is in writing and signed by the City Manager.



22. DEFECTIVE WORK

If any part or portion of the work done or material furnished under this contract shall prove defective and not in accordance with the drawings and specifications, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the owner shall have the right and authority to retain such work but shall make such deductions in the final payment therefore as may be just and reasonable.

**IN WITNESS WHEREOF**, the PARTIES have hereto, on the dates indicated, set their hands by and through their duly authorized agents.

**CITY OF GRANTS PASS:**

**BY:**

\_\_\_\_\_  
Jason Canady, Public Works Director

**DATE:**

\_\_\_\_\_

\_\_\_\_\_  
Aaron K. Cubic, City Manager

**DATE:**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Karen Frerk, City Recorder

**DATE:**

\_\_\_\_\_

**APPROVED AS  
TO FORM:**

\_\_\_\_\_  
Mark Bartholomew, City Attorney

**DATE:**

\_\_\_\_\_

**CONTRACTOR:**

**BY:**

\_\_\_\_\_  
(Signature)

**DATE:**

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)