

CITY OF PENDLETON

SW Tutuilla Road Sewer Line Project



Expires: 6/30/24

Stamped: 9/7/22

September 2022

Engineering Department
500 SW Dorion Avenue
Pendleton, OR 97801
www.pendleton.or.us

Office (541) 966-0203
Fax (541) 966-0251

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INVITATION TO BID

Sealed bids for the **SW Tutuilla Road Sewer Line Project** will be received by the City of Pendleton, c/o Tim Simons, Community Development Director, 500 SW Dorion Avenue, Pendleton, OR 97801 until **2:00 pm local time on the 27th day of September, 2022**, plainly marked “**SW Tutuilla Road Sewer Line Project**”.

Bid opening will be available via Zoom or at the Community Development Department conference room located at that same address as above at 2:00 pm local time Tuesday, September 27, 2022. **Contact the Community Development Director’s office at 541 966-0203 or Jutta Haliewicz at 541 966-0240, jutta.haliewicz@ci.pendleton.or.us for the Zoom link.**

A copy of the bid documents may be obtained for a **non-refundable fee of \$25.00** from the Community Development Director’s office located at the same address as above or by calling (541) 966-0203. A copy is also available online on the **City of Pendleton’s website: www.pendleton.or.us/rfps** or the **OregonBuys website: <https://oregonbuys.gov/bso/view/login/login.xhtml>**. For the nearest location of a review copy, contact the Community Development Director’s office. **Bid documents will be available until 5:00 pm, Friday, September 23, 2022.**

The Oregon Standard Specifications for Construction (ODOT/APWA) latest revision, excluding Sections 00100 and 00745.95, and the City of Pendleton Standard Specifications will apply to all construction work not noted in the Special Specifications. It is the Contractor’s responsibility to obtain the latest revisions made to these specifications (latest revisions to City Standard Specifications, January 2001 with minor revisions 2001, 2004, 2005, 2006 and 2012).

All bidders must be prequalified for the class of work included in this bid document in accordance with the laws of the State of Oregon, and all prequalification applications with payment must be submitted to the City by 1:00 pm, September 26, 2022, the day before the bid opening. (See Section 2.00)

The City of Pendleton will not mail notice of Addenda, but will post notice of any Addenda on the OregonBuys website and the City’s website (www.pendleton.or.us/rfps). Addenda may be downloaded off these websites and will be faxed or emailed to all bidders who have requested to be on the City’s Planholders List. Contact jutta.haliewicz@ci.pendleton.or.us to be added to the list. Bidders should frequently check the websites until bid closing.

Each Bid Proposal must be submitted on the prescribed form (Section 3.00) accompanied by a certified or cashier’s check drawn from an Oregon Bank in good standing, or banks doing business in Oregon in good standing, or a Bid Bond issued by a surety company authorized to issue such bonds in the State of Oregon, payable to the City of Pendleton, Oregon, in an amount not less than five percent (5%) of the total amount of the Bid submitted.

All bidders must comply with ORS Chapter 279C and pay applicable prevailing wage rates in effect on July 1, 2022, including any amendments, as stated in the Prevailing Wage Rates for Public Works Contracts in Oregon published by the Oregon Bureau of Labor and Industries. (see <https://www.oregon.gov/boli/employers/pages/prevailing-wage.aspx>).

The successful bidder will be required to furnish a bond for faithful performance of the contract in the full amount of the contract price. In addition to required performance bonds which may be used for unpaid wages, all contractors, subcontractors and non-construction companies working on public works projects, with a contract price that exceeds \$100,000, subject to the Prevailing Wage Rate law, must file a \$30,000 Public Works Bond with the Construction Contractor’s Board before starting work on the project, unless exempt, to be used exclusively for unpaid wages determined to be due by BOLI {ORS 279C.830 and ORS 279C.836} **(See forms included in Section 5.00)**

Each bidder must identify whether they are a resident bidder as defined in ORS 279A.120. (Preference for Oregon goods and services)

Nonresident Bidders: ORS 279A.120(3) states: "When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the bidder shall promptly report to the Department of Revenue (DOR) on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract." See form attached to the end of Special Conditions (Section 11.00). For information about DOR requirements, contact: <http://www.oregon.gov/DOR>

The Contractor shall, within two (2) working hours of the advertised bid opening, submit the first-tier subcontractor disclosure form. This form is to notify the Public Works Director in writing the names of the first-tier subcontractors. The disclosure form is attached to the end of the Special Conditions (Section 11.00). If no subcontractors need to be disclosed, enter "NONE" on the form and submit it.

The Contractor, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation law and shall comply with ORS Chapter 656, which requires them to provide workers' compensation coverage for all their subject workers.

The City reserves the right to accept that proposal which is in the best interest of the City of Pendleton, Oregon and to postpone the award of the Contract for a period not to exceed thirty (30) calendar days.

The deadline for filing a protest by the second responsible bidder is seven (7) calendar days after the Notice of Intent to Award has been issued. Protest must be in written form and received by 5:00 pm on the 7th day from the date of the letter of intent to award issued by the Public Works Director or his designated representative. Once the Notice of Intent to Award has been issued, bid submittal information will be available for public review.

Dated this 7th day of September, 2022.



Timothy M. Simons, Community Development Director

INFORMATION FOR BIDDERS

City of Pendleton, hereby referred to as OWNER, will be completing work under one contract for **SW Tutuilla Road Sewer Line Project**. Bids are expected to be opened **2:00 pm, local time, Tuesday, September 27, 2022**. Bid award, with seven (7) calendar day notice of intent declaration, will likely take place on Tuesday, October 4, 2022, at the regularly scheduled City Council meeting.

The work to be performed under these contract documents consists of furnishing all labor, materials and equipment necessary for the construction of the following:

A 12" sanitary sewer main approximately 273 feet in length under Tutuilla Creek to Tutuilla Road, and approximately 1,096 feet of 8" sanitary sewer pipe in Tutuilla Road up to SW Runnion Avenue.

The sanitary sewer to be constructed begins with connecting into an existing manhole by coring the existing manhole at Station 0+00 that presently has a 12" sanitary sewer line running through it adjacent to Tutuilla Creek; then constructing a new 12", 3034 PVC pipe through a new manhole before constructing the pipe under Tutuilla Creek and into Tutuilla Road, all being approximately 12 feet deep except for the creek crossing. Some dewatering may be necessary.

Once in Tutuilla Road, an outside drop manhole is to be installed and two separate 8" lines are to be installed, one to the east right-of-way line or Tutuilla Road at approximately 12 feet deep, and one continuing south on Tutuilla Road at a depth between 6 and 7 feet deep.

Additionally, two 8" lines and one 6" line will be stubbed out to the east right-of-way of Tutuilla Road for future extension. Also, three 4" service laterals will be stubbed out to adjacent parcels lying on the west side of Tutuilla Road.

Project also includes replacement of some curb, gutter, and sidewalk/driveway approaches as needed to install new service laterals and stub-outs for future extension, as well as trench patching of all pavement disturbed and seeding of disturbed ground as part of the sewer installation. Work includes additional and incidental work as called for in the Specifications and Plans.

City has received 401 Water Quality Certification(WQC) Approval for Project Number 2022-172, Tutuilla Creek Sewer Crossing from the Oregon Department of Environmental Quality (DEQ), Department of State Lands (DSL) Removal/Fill Permit approval and authorization from the US Army Corp of Engineers (USACE) under Nationwide Permit (NWP) category #58. In addition to all USACE national and regional permit terms and conditions, Contractor must meet all DEQ 401 WQC conditions and DSL permit conditions. See Section 14.00 for a copy of the approval letters/conditions.

A copy of the 401 WQC will be required to be kept on the job site and be readily available for reference.

The above information is a general outline of principal features of the work. It does not in any way limit the responsibility of the CONTRACTOR(s) to perform all work and furnish all equipment, labor and materials required by the specifications and drawings. The drawings and specifications shall be considered and used together. Anything appearing as a requirement of either shall be accepted as applicable to both even though not so stated therein or shown.

No attempt has been made in the specifications or drawings to segregate work covered by any trade or subcontract under one specification. Such segregation and establishment of subcontract limits will be solely a matter of specific agreement between the CONTRACTOR and its subcontractors and shall not be based upon any inclusion, segregation or arrangement in or of these specifications.

Bidders must submit the following completed documents with their bids by the bid due date **(September 27, 2022)** and time **(2:00 pm)** indicated on the Invitation to Bid (Section 1.00) or as stated on any addendum(s) stating otherwise. **Bids not containing the following items may be considered non-responsive:**

- Bid Proposal – form signed by company representative having authority to submit bids – see Section 3.00
- Bid Bond/Security (5%) in form of certified or cashier's check drawn from an Oregon Bank – see Section 4.00
- Acknowledgement of ALL Addenda
- Non-Collusion Affidavit (signed by company representative and notarized) – see Section 8.00

Document to be submitted by Disclosure Deadline Date and Time:

- First-Tier Subcontractor Disclosure Form – see end of Section 11.00 (Special Conditions)

Upon award of contract the SUCCESSFUL BIDDER must be prepared to submit the following completed documents within ten (10) business days of contract award:

Contract Forms and Submittals:

- Three original signed contracts (to be provided by City)
- Copy of Statutory Public Works Bond
- Performance and Payment Bond
- Certificate of Liability Insurance
- Oregon Nonresident Bidder Form (if applicable)
- IRS Form W-9
- Application and payment for City Business License (Contractor and all subcontractors)
- Signed copy of Special Conditions (Section 11.00)
- BOLI Wage Rate Worksheet (indicating BOLI Wage Rates used for the project)
 - Example worksheet attached
- Construction Schedule

BOLI WAGE RATE WORKSHEET

[illegible]

PREQUALIFICATION

PUBLIC WORKS DEPARTMENT
CITY OF PENDLETON
PENDLETON, OREGON

Oregon Law requires a statement as to financial ability, equipment and experience to be completed and submitted by prospective contractors bidding on contracts for public improvements, the estimated cost of which is \$10,000 or over. No contractor is eligible to bid until this statement has been submitted.

Bidders must be prequalified for the class of work included in the bid documents. The City of Pendleton no longer accepts a copy of a bidder's approved Oregon Department of Transportation's prequalification application or approval letter. The City requires their own application to be completed and filed with the City Engineering Department. All prequalification applications must be submitted to the City by **1:00 pm the day before the bid opening**.

Upon request, this application is available to you through this office at 541 966-0203 or online at <https://pendleton.or.us/cdev/page/prequalification-application-2022> for your use in prequalification for this work.

PROPOSAL

Honorable Mayor and City Council
City Hall
Pendleton, Oregon 97801

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that the Proposal is in all respects fair and without fraud, but it is made without collusion with any official or employee of the City of Pendleton, Oregon, and that the Proposal is made without any connection or collusion with any person making another Proposal on this Contract.

The Bidder further declares that he has carefully examined the Contract Documents for the construction of the proposed improvements, and he has personally inspected the site, and he has satisfied himself as to the quantities of the materials, items of equipment, and conditions of work involved, including the fact that the description of the work and materials, as included herein, is brief and is intended only to indicate the general nature of such items and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereto attached and are hereby made a part of this Proposal.

The Bidder agrees that if this Proposal is accepted, Bidder will, within ten (10) calendar days after notification of acceptance, execute the Contract with the City of Pendleton, Oregon, in the form of Contract annexed thereto, and will, at the time of execution of the Contract, deliver to the City of Pendleton, the Performance Bond required herein, and will to the extent of his Proposal, furnish all machinery, tools, and apparatus and other means of construction and do all the work and furnish all the materials necessary to complete the work in the manner and in the time and according to the methods as specified in the Contract Documents and required by the Engineer there under.

In the event the Bidder is awarded the Contract and shall fail to complete the work within the time limit or extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid the City of Pendleton, Oregon, at the rate of one percent (1%) per calendar day of the price of contract work not yet completed, or \$500.00 per calendar day, whichever is greater, for work not completed **within sixty (60) calendar days of Notice to Proceed for sewer lines, and March 31, 2023, for surface restoration work.** Sundays and legal holidays shall be excluded in determining days of default.

Contractor to note that if the sewer line is not installed before the local asphalt plants are closed for the season, then the Contractor shall temporarily patch with cold mix or Control Density Fill (CDF) at no additional cost to the Contract. The Contractor will be required to maintain the temporary patch until a final patch with hot mix asphalt can be installed. The final patch shall be installed by March 31, 2023, in order to avoid assessment of liquidated damages.

Contractor to note that if there are delays with sewer parts delivery that would cause the Contractor to miss the Contract Deadline, then the Contractor will need to provide proof from their Supplier regarding the delayed delivery, and the City will consider giving a contract timeline extension. If a contract timeline extension is granted, then the Contractor must complete the Project no later than forty-five (45) days after the final delivery of the parts.

The Bidder further proposes to accept as full payment for the work proposed herein the amount computed under the provisions of the Contract Documents and based on the following unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved, that they represent a true measure of the labor and material required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

The Contract will be awarded based on bids. City reserves the right to award or reject the bids that are in the best interest of the City.

Bidders must submit the following completed documents with their bids by the bid due date **(September 27, 2022)** and time **(2:00 pm)** indicated on the Invitation to Bid (Section 1.00) or as stated on any addendum(s) stating otherwise. **Bids not containing the following items may be considered non-responsive:**

- **Bid Proposal form (dated and signed by company representative having authority to submit bids) – Section 3.00**
- **Bid Bond/Security (5%) in form of certified or cashier's check drawn from an Oregon Bank – see Section 4.00**
- **Acknowledgement of ALL Addenda**
- **Non-Collusion Affidavit (signed by company representative and notarized) - see Section 8.00**

Document to be submitted by Disclosure Deadline Date and Time:

- **First-Tier Subcontractor Disclosure Form – see end of Section 11.00 (Special Conditions)**

The following instructions outline the procedure for preparing and submitting Bids. Bidders must fulfill all requirements as specified in this Contract Document:

- Prequalification application and payment must be submitted by 1:00 pm the day before the bid opening (**bid opening date: September 27, 2022**)
- Bidders shall use only the Bid Proposal form provided in this Contract Document. A bid amount shall be submitted in the appropriate place for each Item for which a Bid is being submitted. All blank spaces in the Bid Proposal form must be filled in completely where required. No changes shall be made in the phraseology of the forms.
- Bid will be awarded based on grand total bid amount.
- The Bid Proposal form may be submitted separately from the remainder of these Contract Documents. It must be submitted in a sealed envelope and marked clearly to indicate its contents without being opened.
- **The Bidder shall acknowledge receipt of all Addenda to the Bid. Bids received without acknowledgement or without the Addenda enclosed may be considered nonconforming. Notice of Addenda will not be mailed but will be posted on City's website (www.pendleton.or.us/rfps) and the OregonBuys website (<https://oregonbuys.gov/bso/view/login/login.xhtml>). Addenda may be downloaded off website and will be faxed or emailed to all bidders who have notified City to request their firm be placed on the Planholders list. Bidders should frequently check the websites until bid closing.**
- Any taxes required by the laws and statutes of the State of Oregon and its political subdivisions shall be paid by the Contractor.
- Owner will pay all permit expenses with the exception of temporary permits related to construction work. The successful Bidder must pay all temporary permit expenses.
- All Bids must be submitted no later than the prescribed time, place, and manner set forth in the Contract Documents.
- Bids without sufficient data to provide a complete evaluation may not be considered.
- Any Bidder may modify its Bid by telegraphic or written communication at any time prior to the scheduled closing time for receipt of the Bids, provided the Owner receives such communication prior to the closing time. The telegraphic or written communication should not reveal the Bid Amount; however, it should state the addition, subtraction, or other modification so that the final amount or terms will not be known to the Owner until the sealed Bid is opened.
- Bids cannot be modified at any time following the deadline for receipt of the Bids.
- **Bids must be accompanied by a certified or cashier's check drawn from an Oregon Bank in good standing, or banks doing business in Oregon in good standing, or a Bid Bond issued by a surety company authorized to issue such bonds in the State of Oregon, in an amount not less than five percent (5%) of the total amount of the Bid submitted. This check or Bid Bond shall be given as guarantee that if awarded the Contract, the successful Bidder will execute the Contract within the time specified. See Standard Specifications for the City of Pendleton – Section 1:06 – Bid Security for more information.**
- **Non-Collusion Affidavit must be submitted with the Bid; otherwise, the Bid may be considered non-responsive. (See Section 8.00)**
- **First-Tier Subcontractor Disclosure Form must be submitted by the date and time designated in the Invitation to Bid. This Form must be submitted separately for each Schedule, even if there are no subcontractors that need to be disclosed; otherwise, the Bid will be considered non-responsive. See Special Conditions (Section 11.00) for more information and a copy of the Disclosure Form.**

The Owner will make the award of work based on the best interests of the City of Pendleton. The Owner also reserves the right to reject any or all bids and to postpone the award of the work for a period not to exceed thirty (30) calendar days with time extensions for completion date. The Owner, at its sole discretion, reserves the right to select the bid(s) most beneficial to the City of Pendleton.

SW TUTUILLA ROAD SEWER LINE PROJECT

Time of Completion: Not later than sixty (60) calendar days from Notice to Proceed for sewer lines, and then March 31, 2023 for surface restoration work.

<u>Item No.</u>	<u>Approx. Quantity</u>	<u>Item with Unit Price Bid</u>	<u>Unit Price</u>	<u>Extended Total</u>
1.	JOB	Mobilization	_____	_____
2.	JOB	Temporary Traffic Control	_____	_____
3.	LS	Erosion and sediment control plan/permit	_____	_____
4.	2510 LF	Saw Cutting	_____	_____
5.	60 LF	Curb and Gutter	_____	_____
6.	1 EA	City Standard Deep Manhole (8'+)	_____	_____
7.	1 EA	City Standard Outside Drop Manhole (8'+)	_____	_____
8.	4 EACH	City Standard 4' diameter Manholes	_____	_____
9.	1 EACH	Tie in to Existing Manhole (MH 0)	_____	_____
10.	273 LF	12" 3034 PVC Pipe installed Deep Trench (8'+)	_____	_____
11.	35 LF	8" 3034 PVC Pipe installed Deep Trench (8'+)	_____	_____
12.	1097 LF	8" 3034 PVC Pipe installed	_____	_____
13.	35 LF	6" 3034 PVC Pipe installed	_____	_____
14.	111 LF	4" 3034 PVC Pipe installed (sewer services)	_____	_____
15.	60 TONS	Level 3 HMA 1/2" Dense, (Patching within construction area)	_____	_____

Item No.	Approx. Quantity	Item with Unit Price Bid	Unit Price	Extended Total
16.	40 SY	4.5' Wide Sidewalk/Driveway	_____	_____
17.	1 LS	Restore Striping (Stop bars/turn markers/bike)	_____	_____
18.	2,600 SY	Seeding and ground restoration of disturbed vegetation areas	_____	_____

TOTAL BID AMOUNT: _____

It is agreed that if the Bidder is awarded the Contract for the work proposed herein, and shall fail or refuse to execute the Contract and furnish the specified Performance and Payment Bond within ten (10) days after the receipt of the Notification of Acceptance of his Bid Proposal, then, in that case, the bid security deposited herewith by the said Bidder, according to the conditions of the Request for Proposals and the Information for Bidders, shall be retained by the City of Pendleton, Oregon, in accordance with the terms of the Bond as specified in the Information for Bidders.

The Bidder has examined and carefully studied the Contract Documents, the other related data identified in the Contract Documents, and the following Addenda, receipt of all which is hereby acknowledged:

Addendum Number:

Addendum Date:

The name of the Bidder who is submitting this Proposal is _____
doing business at _____
(Street) (City) (State) (Zip)
which is the address to which all communication concerned with this Proposal and with the Contract shall be sent.

The name of the principal officers of the corporation submitting this Proposal, of the partnership, or of all persons interested in this Proposal as principals are as follows:

Print Name

Print Name

Signature

Signature

Dated this _____ day of _____, 2022.

Signature of Bidder

Title

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____
 _____ as Surety, are hereby held and firmly bound unto _____
 _____ as OWNER in the penal sum of _____
 for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors
 and assigns.

Signed, this _____ day of _____, 2022.

The condition of the above obligation is such that whereas the Principal has submitted to the City of
 Pendleton a certain BID, attached hereto and hereby made a part hereof to enter into a Contract in writing for the
SW Tutuilla Road Sewer Line Project.

NOW THEREFORE,

(A) If said BID shall be rejected, or

(B) If said BID is accepted and the Principal executes and delivers contract in the Form of Contract attached hereto
 (properly completed in accordance with said BID) and furnishes a BOND for the faithful performance of said
 Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith,
 and in all other respects perform the agreement created by the Acceptance of said BID,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly
 understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed
 the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND
 shall be in no way impaired or affected by any extension of the time within which the Owner may accept such BID;
 and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____.L.S.
Principal

Surety

By:_____
Attorney-in-Fact

IMPORTANT -- Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.



STATE OF OREGON

STATUTORY PUBLIC WORKS BOND

Surety bond #: _____ CCB # (if applicable): _____

We, _____, as principal, and _____, a corporation qualified and authorized to do business in the State of Oregon, as surety, are held and firmly bound unto the State of Oregon for the use and benefit of the Oregon Bureau of Labor and Industries (BOLI) in the sum of thirty thousand dollars (\$30,000) lawful money of the United States of America to be paid as provided in ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, for which payment well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by this agreement.

WHEREAS, the above-named principal wishes to be eligible to work on public works project(s) subject to the provisions of ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and is, therefore, required to obtain and file a statutory public works bond in the penal sum of \$30,000 with good and sufficient surety as required pursuant to the provisions of section 2, chapter 360, Oregon Laws 2005, conditioned as herein set forth.

NOW, THEREFORE, the conditions of the foregoing obligations are that if said principal with regard to all work done by the principal as a contractor or subcontractor on public works project(s), shall pay all claims ordered by BOLI against the principal to workers performing labor upon public works projects for unpaid wages determined to be due, in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and OAR Chapter 839, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of wage claims ordered by BOLI to workers performing labor upon public works projects in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date it is executed by both the principal and surety and shall continuously remain in effect until depleted by claims paid under ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, unless the surety sooner cancels the bond. This bond may be cancelled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal, the Construction Contractors Board, and BOLI. Cancellation shall not limit the responsibility of the surety for the payment of claims ordered by BOLI relating to work performed during the work period of a contract entered into before cancellation of this bond.

IN WITNESS WHEREOF, the principal and surety execute this agreement. The surety fully authorizes its representatives in the State of Oregon to enter into this obligation.

SIGNED, SEALED AND DATED this _____ day of _____, 20 _____

Surety by:

Principal by:

(Seal)
Company Name

Name

Signature

Signature

Title (e.g. Attorney-in-Fact)

Title

Address

Address

City *State* *Zip*

City *State* *Zip*

**SEND BOND TO: Construction Contractors Board
PO Box 14140
Salem, OR 97309-5052
Telephone: (503) 378-4621**



Construction Contractors Board

PO Box 14140
Salem OR 97309-5052
Telephone: 503-378-4621
Fax: 503-373-2007

Web Address: www.oregon.gov/ccb

For CCB Use Only:

File No. _____

Non-Construction Company

Filing STATUTORY PUBLIC WORKS BOND with CCB

ORS 279C.836 requires that all public works contractors working on qualifying public works projects, with a contract price that exceeds \$100,000, file a \$30,000 public works bond with the Construction Contractors Board (CCB). This includes construction companies that are licensed and non-construction companies that are not required to be licensed with the CCB.

If you are already licensed with the CCB, you do not need to complete this form. Please send your \$30,000 public works bond directly to the CCB with your license number on it.

If you are a non-construction company that is NOT required to be licensed with the CCB, please complete this information below and submit it with your \$30,000 public works bond. This will be used to help the CCB properly store and display your information on-line.

Type of Business Entity:

<input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Partnership	<input type="checkbox"/> Corporation
<input type="checkbox"/> LLC	<input type="checkbox"/> LP	<input type="checkbox"/> LLP	<input type="checkbox"/> Trust

Oregon Corporation Division Registry No. (if applicable) _____

Name of Business Entity: _____

Business Address: _____

Telephone No: (_____) _____ Email: _____

Type of Work This Company Performs: _____

I certify that the aforementioned independent contracting business does not perform work subject to ORS 701 and is **NOT** required to be licensed with CCB.

Name of Individual Filling Out This Form (Please Print)

Title/Position (Please Print)

Signature

Date

Contract No. _____

CONTRACT FOR CONSTRUCTION

THIS CONTRACT, made and entered into this _____ day of _____, 2022, by and between the City of Pendleton, Oregon, a municipal corporation hereinafter called the "Owner" and _____ hereinafter called the "Contractor".

WITNESSETH:

Said Contractor, in consideration of the sum in the amount of \$_____ to be paid him by the Owner and of the covenants and agreements herein contained, hereby agrees at his own proper cost and expense to do all the work and furnish all the materials, tools, and labor for the construction of **SW Tutuilla Road Sewer Line Project**.

Contract Documents shall be referred to as Invitation to Bid, Information for Bidders, Prequalification, Bid Proposal, Bid Bond, Statutory Public Works Bond, Contract, Assignment of Anti-Trust Rights, Non-Collusion Affidavit, Performance and Payment Bond, Certificate of Insurance, Special Conditions, IRS Form W-9, Special Specifications, Oregon DEQ, DSL and USACE Approval Letters/Conditions, Drawings, all Addendum (if any) and the contents of the latest revision of the Oregon Standards Specifications for Construction (ODOT/APWA), excluding Sections 00100 and 00745.95 and the City of Pendleton Standard Specifications, and are all hereby made a part of this Contract by specific reference as fully and completely as if the same were fully set forth herein.

In the consideration of the faithful performance of the work herein embraced, as set forth in these Contract Documents, and in accordance with the direction of the Community Development Department Director and to his satisfaction to the extent provided in the Contract Documents, the Owner agrees to pay to the Contractor the amount bid as adjusted in accordance with the proposals as determined by the Contract Documents, or as otherwise herein provided, and based on the said Proposal made by the Contractor, and to make such payments in the manner and at the times provided in the Contract Documents.

The Contractor agrees to indemnify and save harmless the Owner from any and all defects appearing or developing in the workmanship or materials performed or furnished under this Contract for a period of one (1) year after the acceptance by the Owner.

It is agreed that the time limit for the completion of the Contract, based upon the Proposal, is **within sixty (60) calendar days of Notice to Proceed for sewer lines, and March 31, 2023, for surface restoration work.**

Contractor to note that if the sewer line is not installed before the local asphalt plants are closed for the season, then the Contractor shall temporarily patch with cold mix or Control Density Fill (CDF) at no additional cost to the Contract. The Contractor will be required to maintain the temporary patch until a final patch with hot mix asphalt can be installed. The final patch shall be installed by March 31, 2023, in order to avoid assessment of liquidated damages.

Contractor to note that if there are delays with sewer parts delivery that would cause the Contractor to miss the Contract Deadline, then the Contractor will need to provide proof from their Supplier regarding the delayed delivery, and the City will consider giving a contract timeline extension. If a contract timeline extension is granted, then the Contractor must complete the Project no later than forty-five (45) days after the final delivery of the parts.

In the event the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be computed at the rate of one percent (1%) per calendar day of the total price of contract work not yet completed, or \$500.00 per calendar day, whichever is greater. Sundays and legal holidays excluded in determining days of default.

The Contractor shall not discriminate against any employee or applicant for employment because of sex, race, creed, color, or national origin.

IN WITNESS WHEREOF, we the parties hereto, each herewith subscribe the same this _____ day of _____, 2022.

CITY OF PENDLETON

By _____
John H. Turner, Mayor

By _____
A.F. Denton, City Recorder

(Contractor)

By _____
(Signature)

Title: _____

Approved as to Form: _____
Nancy Kerns, City Attorney

Contractor's Registration # _____

Contractor's Tax Identification # _____

ASSIGNMENT OF ANTITRUST RIGHTS

By entering into a contract, the Contractor, for consideration paid to the Contractor under the contract, does irrevocably assign to the City of Pendleton any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at the City's option, the right to further assign any claim for relief or consideration and to control any such litigation on such claim for relief or counsel action, by reason of any violation of 15 USC 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this contract.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the contract, the Contractor shall require the subcontractor to irrevocably assign to the City of Pendleton, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to further assess any claim for relief or Counsel action and to control any litigation arising there under, in connection with any goods or services provided to the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the contract.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Pendleton. It is an express obligation of the Contractor to advise the City of Pendleton of Oregon:

1. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
2. Immediately upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
3. The date on which it notified the obligator(s) of any such claims for relief or cause of action of the fact of its assignment to the City of Pendleton.

Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay to the City of Pendleton its proportionate share thereof, if any, assigned to the State hereunder.

NON-COLLUSION AFFIDAVIT

- 1) This Non-Collusion Affidavit is material to any Contract awarded pursuant to the bid. According to the Oregon Public Contracts and Purchasing Laws, a public contracting agency may reject any or all bids upon the finding by the agency that it is in the public interest to do so (ORS 279.035). This public contracting agency finds that it is in the public interest to require the completion of this Affidavit by potential Contractors.
- 2) This Non-Collusion Affidavit must be executed by the member, officer, or employee of the Bidder who makes the final decision for price(s) and the amount(s) quoted in the bid.
- 3) Bid rigging and other efforts to restrain competition and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure themselves that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Bidder with responsibilities for the preparation, approval, or submission of the bid.
- 4) In the case of a bid submitted by joint venture, each party to the venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.
- 5) The term “complementary bid” as used in the Affidavit has the meaning commonly associated with that term in the bid process and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or non-competitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
- 6) Failure to file an Affidavit in compliance with these instructions may result in disqualification of the bid.

STATE OF _____)
_____)
County of _____)

I state that I am _____,
Print/Type – Name Print/Type – Position Title with Firm/Company

representing _____
Print/Type – Name of Firm/Company

and that I am authorized to make this Affidavit on behalf of my Firm/Company, and its owners, directors, and/or officers. I am the person responsible in my Firm/Company for the price(s) and the amount(s) provided in this Proposal.

I state that:

- 1) The price(s) and the amount(s) provided in this bid have been arrived at independently and without consultation, communication, or agreement with any other Contractor, Bidder, or potential Bidder, except as disclosed on the attached appendix to this Non-Collusion Affidavit.
- 2) Neither the price(s) nor the amount(s) provided in this bid, and neither the approximate price(s) nor approximate amount(s) provided in this bid, have been disclosed to any other Firm/Company or person who is a Bidder or potential Bidder, and they will not be disclosed before the bid opening.
- 3) No attempt has been made or will be made to induce any Firm/Company or person to refrain from Bidding on this contract, or to submit a bid with price(s) and/or amount(s) higher than this bid, or submit any intentionally high or noncompetitive price(s) and/or amount(s) in a bid or other form of complementary bid.
- 4) The price(s) and/or amount(s) provided in this bid on behalf of my Firm/Company is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any Firm/Company or person to submit a complementary or other non-competitive bid.
- 5) My Firm/Company, its affiliates, subsidiaries, officers, directors, and/or employees are not currently under investigation by a governmental agency. They have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to Bidding on any public contract, except as described on the attached appendix to this Non-Collusion Affidavit.

I state that my Firm/Company understands and acknowledges that the representations are material and important and will be relied on by the City of Pendleton in awarding the Contract(s) for which this Bid is submitted.

I understand, and my Firm/Company understands, that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from the City of Pendleton of the true facts relating to the submission of the Bid for this Contract(s).

Signature – Name

This instrument was acknowledged before me this _____ day of _____, 2022.

Notary Public for _____

My Commission Expires: _____

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____

(The official name, form of organization, and address of the Contractor, and, if partnership, name of partners.)

as Principal, and _____
(Name and Address of the Surety)

_____, a corporation, duly authorized to do a general surety business in the State of Oregon as Surety, are jointly and severally held and bound unto City of Pendleton in the sum of _____
(the basic contract price, in words and figures)

for the payment of which we jointly and severally bind ourselves, our heirs, executors, successors, and assigns, firmly by these presents.

THE CONDITIONS OF THIS BOND ARE SUCH THAT

WHEREAS _____, the Principal herein, on the ____ day of _____, 2022, entered into a Contract with the City of Pendleton, the obligee herein, which Contract consists of:

Invitation to Bid, Information for Bidders, Prequalification, Bid Proposal, Bid Bond, Statutory Public Works Bond, Contract, Assignment of Anti-Trust Rights, Non-Collusion Affidavit, Performance and Payment Bond, Certificate of Insurance, Special Conditions, IRS Form W-9, Special Specifications, Oregon DEQ, DSL and USACE Approval Letters/Conditions, Drawings, all Addenda (if any), Oregon Standard Specifications for Construction (ODOT/APWA) latest revision, excluding Sections 00100 and 00745.95, and the City of Pendleton Standard Specifications

All as hereto attached and made a part hereof, whereby said Principal undertakes to do all labor, furnish all plant and equipment, and furnish all material in accordance with all the terms and conditions set forth in said Contract Documents; and promptly to make payment for all labor, services, and material and pay sums due the City of Pendleton and the United States required to be paid by employers and to save harmless the obligee from any claims for damages or injury to property or persons arising by reason of said work, as set out more fully in said Contract Documents; and to do and perform all things in said Contract Documents required, in the time and manner and under the terms and conditions therein set forth; and in conformity with all laws, state and national.

NOW, THEREFORE, if said Principal herein shall promptly pay all persons, furnishing labor, services, material or insurance to said Principal, or to his subcontractors, or to their assigns, on or about said work; and shall save harmless the Obligee, its officers and agents, from all claims therefore, or from any claim for damages of injury to property or persons arising by reason of said work; and shall in the time and manner, and under the terms and conditions prescribed, will and faithfully do, perform and furnish all material and things as by them in said contract undertaken, and as by law, state, and federal prescribed, then this obligation shall be void, but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following further conditions:

- (a) All material, workmen, and all persons who shall supply such laborers, mechanics or subcontractors with material, supplies, or provisions for carrying on such work shall have a direct right of action against the Principal and Surety on this bond, second only to the right of the Obligee under this bond, which right of action shall be asserted in proceedings instituted in the appropriate court of the State of Oregon, and insofar as permitted by the laws of Oregon, such right of action shall be asserted in a proceeding instituted in the name of the Obligee to the use and benefit of the person, firm or corporation instituting such action and of all persons, firms, or corporations having claims hereunder shall have the right to be made a party to such proceeding (but not later than six months after the complete performance of said contract and final settlement and judgment rendered thereon).
- (b) In no event shall the Surety be liable for a greater sum than the amount of this bond, or subject to any suit, action, or proceeding thereon that is instituted later than twelve (12) months after the complete performance of said contract and final settlement thereof.
- (c) Said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications and accompanying the same shall in any way affect its obligations on this bond. It does hereby waive notice of such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, the parties hereto have caused this Bond to be executed in _____
_____ this _____ day of _____, 2022.

_____(SEAL)

_____(SEAL)

_____(SEAL)
(Principal)

WITNESSES:

_____(SEAL)

_____(SEAL)

COUNTERSIGNED:

BY: _____
(Resident Agent)

ISSUE DATE _____

CERTIFICATE OF INSURANCE

This is to certify to the CITY OF PENDLETON that a CERTIFICATE OF INSURANCE is issued co-insuring the City of Pendleton as described below and that the insurer agrees that it shall notify the City in writing, of material change, or any expiration or of any cancellation of the below described policies not less than thirty (30) days prior to such change, expiration, or cancellation may become effective and that such notice shall be made by certified mail, return receipt requested, to the City of Pendleton at the following address: 500 S. W. Dorion Avenue, Pendleton, Oregon 97801.

Insured

COMPANIES AFFORDING COVERAGE

Company Letter A _____
 Company Letter B _____
 Company Letter C _____
 Company Letter D _____
 Company Letter E _____

COVERAGES

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, THE INSURANCE AFFORDED BY THE POLICY DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES EXCEPT WHERE, A CONTRACT BETWEEN THE INSURED AND THE CITY OF PENDLETON REQUIRES OTHERWISE.

TYPE OF INSURANCE (Check One)	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIABILITY LIMITS IN THOUSANDS EACH OCCURRENCE	AGGREGATE
<input type="checkbox"/> Claims Made					
<input type="checkbox"/> Occurrence					

GENERAL LIABILITY

☐ COMPREHENSIVE FORM
☐ PREMISES/OPERATIONS
☐ UNDERGROUND
☐ EXPLOSION & COLLAPSE
☐ PRODUCTS/COMPLETED OPERATIONS
☐ CONTRACTUAL
☐ INDEPENDENT CONTRACTORS
☐ BROAD FORM PROPERTY DAMAGE
☐ PERSONAL INJURY

BODILY INJURY	\$	\$
PROPERTY DAMAGE	\$	\$
BI & PD COMBINED	\$	\$
PERSONAL INJ.	\$	\$

AUTOMOBILE LIABILITY

☐ ANY AUTO
☐ ALL OWNED AUTOS (PRIV. PASS.)
☐ ALL OWNED AUTOS (OTHER THAN PRIV. PASS)

BODILY INJURY (PER PERSON) \$

BODILY INJURY (PER ACCIDENT)\$

☐ HIRED AUTOS
☐ NON-OWNED AUTOS
☐ GARAGE LIABILITY

PROPERTY DAMAGE \$

BI & PD COMBINED \$

EXCESS LIABILITY

☐ UMBRELLA FORM
☐ OTHER THAN UMBRELLA FORM

BI & PD COMBINED \$

WORKER'S COMPENSATION

AND

EMPLOYERS' LIABILITY

STATUTORY

\$ _____ (each accident)
 \$ _____ (disease policy limit)
 \$ _____ (disease-each employee)

OTHER

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

SPECIAL INSTRUCTIONS INDICATE WITH RESPECT TO EACH OF THE GENERAL CATEGORIES OF INSURANCE, IE. GENERAL LIABILITY, AUTO LIABILITY, EXCESS LIABILITY AND THE LIKE, WHETHER OR NOT THEY COVER THE BOXES ABOVE. SPECIFICALLY, THE CITY WANTS TO KNOW WHETHER BY CHECKING ONE OF THE BROAD COVERAGES ALL THE COVERAGES LISTED ARE ALSO INCLUDED. IN ADDITION, WITH RESPECT TO AGGREGATE LIMITS PLEASE INDICATE WHETHER THE AGGREGATES ARE FOR ONE OCCURRENCE OR AGGREGATE DURING THE LIFE OF THE POLICY WITH RESPECT TO EACH.

CERTIFICATE HOLDER

CANCELLATION

This is to certify to the CITY OF PENDLETON that a CERTIFICATE OF INSURANCE is issued co-insuring the City of Pendleton as described below and that the insurer agrees that it shall notify the City in writing, of material change, of any expiration, of any cancellation of the below described policies not less than thirty (30) days prior to such change, expiration, or cancellation may become effective and that such notice shall be made by certified mail, return receipt requested, to the City of Pendleton at the following address: 500 SW Dorion Avenue, Pendleton, OR 97801.

AUTHORIZED REPRESENTATIVE _____

SPECIAL CONDITIONS

1. In the case of a difference or conflict in specifications and/or drawings, the Special Conditions, followed by the Special Specifications, followed by the City's Standard Specifications, and then followed by ODOT/APWA Specifications shall govern or prevail.
2. The Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or materials for the prosecution of the work provided in the Contract.
3. The Contractor shall provide workers' compensation insurance coverage for all individuals, others than those exempt under ORS 656.027, who perform labor under the Contract before labor under the Contract commences. Contractor shall pay all contributions or amounts due for Workers' Compensation coverage from the Contractor incurred in the performance of the Contract.
A copy of each insurance policy, or certificate thereof, issued by a responsible and solvent insurance corporation or association authorized to issue such policy or policies under the laws of the State of Oregon shall be delivered to the City within a reasonable period of time after the same is issued by the company or companies or associations issuing such policy or policies. All said policies or certificates shall provide for a minimum of thirty (30) days notice to the City in the event of cancellation or material change in the terms.
4. The Contractor will not permit any lien or claim to be filed or prosecuted against the City on account of any material or labor furnished to the Contractor.
5. The Contractor will pay to the Oregon Department of Revenue all sums withheld from employees pursuant to Oregon Statutes.
6. The Contractor shall demonstrate that an employee drug testing program is in place.
7. 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 this Contract as such claim shall become due, the proper officer or officers representing the City may pay such claim to the person furnishing the labor or service and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract. The payment of a claim in this manner authorized by this paragraph shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claim. (ORS 279C.515)
8. **The Contractor shall, within two (2) working hours after the advertised bid closing date and time, notify the Community Development Director in writing of the names of the first-tier sub-contractors on the disclosure form attached to the end of these Special Conditions.** Submission of the first-tier sub-contractors disclosure form only applies to public contracts for public improvements with a contract value of more than \$100,000 (ORS 279C.370). Contractors are required to disclose information about certain first-tier subcontractors. Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the total project bid, but at least \$15,000; whichever is greater; or (ii) \$350,000 regardless of the percentage of the total project bid. **If no subcontractors need to be disclosed, enter "NONE" on the form and submit it.**
9. In addition to required payment and performance bonds which may be used for unpaid wages, all contractors, subcontractors and non-construction companies who work on public works projects, with a contract price that exceeds \$100,000, subject to the Prevailing Wage Rate law shall file a \$30,000 Statutory Public Works Bond with the Construction Contractor's Board (CCB) before starting work on the project, unless exempt, to be used exclusively for unpaid wages determined to be due by BOLI {ORS 279C.830 and ORS 279C.836}. **(See forms included in Section 5.00)** This bond applies to ALL CCB licensed and non-CCB licensed subcontractors. Contractors must include in every subcontract a provision requiring the subcontractor to have a Public Works Bond filed with the CCB and must verify that subcontractors have filed a Public Works Bond before permitting subcontractor to start work on a project, unless exempt. For more information regarding this requirement, contact the Construction Contractor's Board at (503) 378-4621.
10. If the Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the public improvement contract as the claim becomes due, the proper officer that represents the municipality (Owner) may pay the amount of the claim to the person that provides 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.

If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within thirty (30) days after receiving payment from the contracting agency or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under [ORS 279C.580 \(Contractor's relations with subcontractors\)](#) (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in [ORS 279C.580 \(Contractor's relations with subcontractors\)](#). The rate of interest on the amount due is nine (9) percent per annum as defined under ORS 279C.515(2). The amount of interest may not be waived.

11. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public 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. **Every contract related to this Contract shall contain a clause setting forth this requirement.**

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

13. Except where the Contractor is a party to a collective bargaining agreement in effect with a labor organization, no person shall be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, the employee shall be paid at least time and a half pay:

- A) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five (5) consecutive days, Monday through Friday except for individuals under this Contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime; or
- B) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; except for individuals under this Contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime; and
- C) For all work performed on Saturday and on the following legal holidays:
 - (i) Each Sunday.
 - (ii) New Year's Day on January 1.
 - (iii) Memorial Day on the last Monday in May.
 - (iv) Independence Day on July 4.
 - (v) Labor Day on the first Monday in September.
 - (vi) The afternoons of Wednesday and Thursday of the second full week in September (Round-up Week).
 - (vii) The Friday of the second full week of September (Round-up Week).
 - (viii) Thanksgiving Day on the fourth Thursday in November.
 - (ix) Christmas Eve on December 24.
 - (x) Christmas Day on December 25.
 - (xi) New Year's Eve on December 31.
- D) Each time a holiday listed above falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a holiday listed above falls on Saturday, the preceding Friday shall be recognized as a legal holiday. (ORS 279C.540)
- E) The Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. (ORS 279C.520)

14. Contractor must promptly pay for all medical services for which the contractor has agreed to pay and for all amounts for which the Contractor collects or deducts from the worker's wages. (ORS 279C.530)

15. Each worker in each trade or occupation employed in the performance of the Contract either by the Contractor, subcontractor or other person doing or contracting to do the work in whole or any part on the Contract, shall be paid not less than the applicable prevailing rate of wage as required by ORS Chapter 279C.838 and 279C.840. All bidders must comply and agree that the requirements and conditions of employment be observed and prevailing wage rates, as established by the Oregon Bureau of Labor and Industries be paid under this Contract.

The existing prevailing wage rates in effect on July 1, 2022, including any amendments, are as published by the Oregon Bureau of Labor and Industries. Copies of the existing prevailing wages are available online at <https://www.oregon.gov/boli/employers/pages/prevailing-wage.aspx>

16. Any and all employees of Contractor or his contractors while engaged or performing any work or services required by him under this agreement shall be considered his employees only and not employees of the City and any claims that may arise under the Workers' Compensation Act on behalf of the said employees while so engaged in any and all claims made by third parties as a consequence of any act or omission on the part of him or his employees while so engaged on any of the work or services provided to be rendered herein shall be the sole obligation responsibility of Contractor and/or his contractors. The parties to this agreement recognize that Contractor and his employees, officers, agents and subcontractors are providing professional services as independent contractors and are not providing services as employees of the City and are therefore not entitled to the benefits provided by the City to his employees, including but not limited to Workers' Compensation benefits, group health insurance, social security, pension plans, or any other benefit accruing to City's employees. Contractor hereby agrees to hold the City harmless from, and shall process and defend at his own expense, all claims, demands, or suits of whatever nature, brought against him arising from his performance under this agreement. Contractor shall advise his officers, agents, employees and subcontractors of this provision.

17. The Contractor shall keep himself informed and at all times comply with any ordinance, laws, and regulations dealing with the preservation of environmental pollution and the preservation of natural resources that may be affected in the performance of the Contract. The following are a list of agencies that may have enacted ordinances or regulations dealing with the preservation and environmental pollution and the preservation of natural resources:

Federal Agencies:

Agriculture, Department of
Forest Service
Soil Conservation Service
Defense, Department of
Army Corps of Engineers
Energy, Department of
Federal Energy Regulatory Commission
Environmental Protection Agency
Health and Human Services, Department of
Housing and Urban Development,
Department of Solar Energy and Energy
Conservation Bank
Interior, Department of
Bureau of Land Management
Bureau of Indian Affairs
Bureau of Mines
Bureau of Reclamation
Geological Survey
Mineral Management Service
U.S. Fish and Wildlife Service
Labor, Department of
Occupational Safety and Health Administration
Mine Safety and Health Administration
Transportation, Department of
Coast Guard
Water Resources Council

State Agencies:

Administrative Services, Department of
Dept of Agriculture
Department of Consumer & Business Services,
State of Oregon
Occupational Safety & Health Division
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Health Division
Historic Preservation Office
Human Resources, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
Soil and Water Conservation Commission
State Engineer
State Land Board (Lands, Division of State)
Transportation, Department of
Water Resources Department

Local Agencies:

City of Pendleton City Council
Umatilla County Commissioners
Board of Port of Umatilla
Fire Protection Districts
City of Pendleton Planning Commission
Umatilla County Planning Commission
Confederated Tribes of the Umatilla Indian
Reservation

18. Liability and Indemnity:

- A) Indemnification. Contractor shall indemnify, hold harmless and defend City and its officers, agents and employees from, and reimburse City for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any negligent activity of Contractor in the execution of this Contract. City shall have no liability to Contractor for any injury, loss, or damage caused by Contractor or third parties.
- B) Public Liability and Property Damage Insurance. Before beginning execution of the Contract, Contractor shall maintain public liability insurance against death or injury to person, or damage to property, during the life of this Contract at Contractor's cost; said insurance shall be in such form so as to protect both Contractor and City from all claims expressed or implied as above provided, and in the following amounts:
- 1) Public Liability Insurance not less than \$1,000,000 for injuries to any one person, including accidental death and not less than \$1,000,000 for any one accident.
 - 2) Property Damage Insurance not less than \$1,000,000 for any one accident.

The Contractor's Public Liability and Property Damage Insurance shall adequately provide the primary coverage on all claims arising out of the performance of the Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities. Such insurance shall protect Contractor against the claims on account of the obligations assumed by Contractor under this Contract and shall name City and its officers, agents and employees as additional insured.

The above-mentioned proof shall be in the form of a copy of the policy and all appropriate riders with the City being named as a co-insured on all policies and provide for thirty (30) days written notice of any change or cancellation to City before Contractor begins execution of the Contract.

19. No bid for construction will be received or considered by the City unless the bidder is registered with the Construction Contractors Board as required by ORS Chapter 701 or the State Landscape Contractors Board as required by ORS 672.530. In addition, the Contractor and subcontractors must obtain a City of Pendleton Business License as follows:

- A) Any contractor or subcontractor engaged in any activity for which registration with the Oregon Construction Contractors Board is required pursuant to Oregon Revised Statutes, Chapter 701, must obtain a City of Pendleton Business License or comply with the alternative in paragraph 18.C) below.
- B) The Contractor or any subcontractor engaged in any activity for which registration with the Oregon Construction Contractors Board is required pursuant to Oregon Revised Statutes, Chapter 701, must include, as part of the application for a City of Pendleton business license, a copy of a current certificate of registration issued by the Oregon Construction Contractors Board.
- C) A prime contractor engaged in a Construction Project may obtain a Construction Project License as an alternative to obtaining a City of Pendleton Business License for each subcontractor engaged in the Construction Project. The Construction Project License is in lieu of a Business License for subcontractors only and is in addition to the Business License of the prime contractor. The application for a Construction Project License must contain, among other items, a signed statement by the prime contractor and each subcontractor engaged in the Construction Project that each signatory is registered under the provisions of this Oregon Revised Statutes, Chapter 701, and stating that the registration is in full force and effect. For the prime contractor and each subcontractor, a copy of a current certificate of registration issued by the Oregon Construction Contractors Board is also required.

20. The Oregon Government Standards and Practices laws may apply to Contractor. ORS 244.040(1)(a) prohibits any government officer, employee, or agent from using the governmental relationship to obtain a financial gain or avoid a financial detriment that would not otherwise be available but for the governmental relationship. For further information on this matter contact the Oregon Government Standards and Practices Commission; 100 High Street SE, Suite 220; Salem, Oregon 97310; phone 503 378-5105.

21. Contractor certifies that:

- A) Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the right of City to specify the desired results;
- B) Contractor is responsible for obtaining all assumed business registrations or professional occupational licenses required by state law or local governmental ordinances;
- C) Contractor furnishes the tools or equipment necessary for performance of the contracted labor or services;
- D) Contractor has the authority to hire and fire employees to perform the labor or services;
- E) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of a periodic retainer;

- F) Contractor is registered under ORS chapter 701 (Construction Contractors), if Contractor provides labor or services for which such registration is required;
- G) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the contractor performed labor or services as an independent contractor in the previous year; and
- H) Contractor represents to the public that the Contractor is an independently established business. Except where Contractor files a Schedule F as part of the personal income tax return and the Contractor performs farm labor or services that are reportable on Schedule C, Contractor is considered to be engaged in an independently established business when four or more of the following circumstances exist:

[Initial those that apply]

- i ___ The labor or services are primarily carried out at a location that is separate from the residence of Contractor or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
- ii ___ Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the Contractor has a trade association membership;
- iii ___ Telephone listing and service are used for the business that is separate from the personal residence listing and service used by Contractor;
- iv ___ Labor or services are performed only pursuant to written Contracts;
- v ___ Labor or services are performed for two or more different persons within a period of one year; or
- vi ___ Contractor assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services provided.

22. If any action is instituted in connection with any claim or controversy arising out of this agreement, attorney fees may not be awarded by the court of competent jurisdiction and each party shall bear its own expenses of such action.

23. This agreement and the party's rights under it shall be construed and regulated by the laws of the State of Oregon and venue for any dispute hereunder shall lie in Pendleton, Umatilla County, Oregon.

24. Work Hours

Normal working hours are Monday through Friday, 7:00 am to 5:00 pm. Work may extend beyond this time period with prior written permission from the City. The Contractor shall notify the City forty-eight (48) hours in advance of time work will be performed on Saturdays, Sundays or Holidays or other than normal working hours.

Per City Ordinance No. 2287, no work that produces dust or flying debris shall be performed or equipment utilized that produces noise of sufficient volume to disturb the sleep or repose of occupants of neighboring property between the hours of 6:00 pm and 7:00 am without express written permission from the City.

25. The Contractor shall plan, coordinate and be responsible for all construction work and proceed with minimum interference to the operation of the existing facility or other construction work. Prior to starting the construction, confer with the City to develop an approved construction schedule, which will permit the facility to function as normal as practical during the construction. If it becomes necessary to do certain parts of the construction outside normal working hours, or change/modify sequence of activities in order to avoid undesirable conditions, it shall be the obligation of the Contractor to do this work at such a time at no additional cost to the City.

26. The Contractor shall maintain proper and required construction related impact controls, including controls for such impact as noise, dust, erosion and hours of operation.

27. The Contractor shall provide and receive written approval from the City of Pendleton a payment schedule prior to construction.

28. All existing features including, but not limited to, roadways, driveways/easements, structures, lots, curbs, sidewalks, fences, walls, plantings, ditches, mailboxes, signs, irrigation, piping and utilities disturbed during construction shall be restored to "AS GOOD or BETTER" than original condition unless otherwise specified in the plans/specifications. If a utility is damaged during construction, the Contractor shall contact owner of the utility for inspection of damage prior to repairs. Contractor shall repair all utility services damaged during construction, and such repair shall be considered incidental.

29. Recovery of Costs

As work on the Contract progresses, the City shall upon request, inform the Contractor of all accrued costs. If punch list items are not completed after the 12-month period following substantial completion, the City will retain the remaining retainage and consider the Contract closed. The City will complete the punch list items and any cost above the remaining retainage withheld will be sought by placing a lien against the Contractor's bond.

30. Final Payment

Upon completion of the work, Contractor shall notify City in writing that they have completed their part of the Contract and shall request Final Payment. Final Payment or any part of the retained percentage will be withheld upon the option of the City until the Contractor submits to the City an Affidavit Certifying Contractor Payment for Labor, Services and Materials, Compliance With Labor Provisions and Contractor's Acceptance of Final Payment. **(see Affidavit attached to end of this Section)**

31. Oregon's Reciprocal Preference Law

ORS 279A.120 requires public contracting agencies, in determining the lowest responsible bidder, to add a percent increase to each out-of-state bidder's bid price which is equal to the percent of preference given to local bidders in the bidder's home state. That is, if the low bidder is from a state that grants a 10 percent preference to its own in-state bidders, the Oregon agency must add 10 percent to that bidder's price when evaluating the bid.

ORS 279A.120(2) states: For the purposes of awarding a public contract, a contracting agency shall:

- (a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and
- (b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

The Department of Administrative Services (DAS), State Procurement Office has gathered information on preference laws of all states. For more information please visit:

<https://www.oregon.gov/DAS/Procurement/Pages/Index.aspx>

32. Each bid must identify whether the bidder is a resident bidder and each bidder must be qualified in accordance with ORS 279 and other applicable sections of the Oregon Revised Statutes in order to enter into a Contract with the Owner for public work in Oregon.

33. In-State Tie-Bid Awards

All state and local contracting agencies shall give preference to in-state offerors if their offers are the same as nonresident offerors.

34. Nonresident Bidders

ORS 279A.120(3) states: "When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the bidder shall promptly report to the Department of Revenue (DOR) on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract." (See form attached to the end of these Special Conditions)

To view ORS 279A.120, visit: www.oregonlegislature.gov

For information about DOR requirements, contact: www.oregon.gov/DOR

35. Damage of existing structure - when the existing structure or facility, which is intended to remain, is damaged by the Contractor during demolition or construction, the Contractor shall promptly repair and replace the damaged portion of the facility at no cost to the City.

36. Street closures and notifications:

Streets may be closed as approved by City of Pendleton on a case-by-case basis. Contractor will be responsible for all necessary signing and public notification and will give a minimum forty-eight (48) hours advance notification to the City and all residents and businesses along a street scheduled for reconstruction. Overall schedule must be submitted to and

approved by City five (5) days prior to commencing work. City will publish schedule with local media to help with public notification. If bus stops/shelters are located within the project area which will impact the bus route, Contractor will coordinate with bus companies alternative temporary bus stops/shelters until complete of the project.

Public notification by the Contractor must also be sent to the following:

- First Student Bus Company
- Pendleton School District
- Kayak Public Transit
- Let 'er Bus Transit
- Pendleton Sanitary Service
- Umatilla County Dispatch
- Police Chief
- Fire Chief

Contact information for the above will be provided by the City at the pre-construction meeting.

DATED: _____, 2022.

Contractor: _____

By: _____

CITY OF PENDLETON

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Bids which are submitted by Bid Closing, but for which a required disclosure submittal has not been made by the specified Disclosure Deadline, are not responsive and shall not be considered for Contract award.

AGENCY SUPPLIED INFORMATION:

Project Name: SW Tutuilla Road Sewer Line Project

Bid Closing Date: September 27, 2022 **Time:** 2:00 pm

Disclosure Deadline Date: September 27, 2022 **Time:** 4:00 pm

THIS DISCLOSURE FORM MUST BE SUBMITTED to the City of Pendleton at the location specified and in accordance with the date and time in the Advertisement for Bids. A separate form must be submitted for each Schedule. If necessary, use additional forms to satisfy the Disclosure requirements.

The contracting agency will insert "N/A" if the contract value is not anticipated to exceed \$100,000, otherwise, this form must be submitted either with the bid or within two (2) working hours after the advertised bid closing date and time; but no later than the Disclosure Deadline stated above.

List below the NAME, ADDRESS, DOLLAR VALUE, CONSTRUCTION CONTRACTOR BOARD (CCB) NUMBER, CONTACT NAME and TELEPHONE NUMBER of each Subcontractor that will be furnishing labor and/or materials that are required to be disclosed in accordance with ORS 279C.370.

ENTER "NONE" IF THERE ARE NO SUBCONTRACTORS THAT NEED TO BE DISCLOSED.
(Attach additional sheets if needed)

<u>NAME/ADDRESS OF SUBCONTRACTORS</u>		<u>\$ VALUE/CCB #</u>	<u>CONTACT NAME/PHONE #</u>
1)		\$	
		CCB#	
2)		\$	
		CCB#	
3)		\$	
		CCB#	

The above listed first-tier subcontractor(s) are providing labor and/or materials with a Contract value equal to or greater than:

- a) **5% of the total project amount proposed or \$15,000, whichever is greater; or**
b) **\$350,000, regardless of the percentage of the total project amount proposed.**

Disclosure submitted by: _____
Signature – Bidder Name

Contact Name: _____
Print/type – Bidder Name Phone Number

Unless otherwise stated in the original solicitation, this document shall not be faxed. It is the responsibility of the Bidder to separately submit this Disclosure Form and any additional sheets with the Project Schedule and Name clearly marked in accordance with the date and time in the Advertisement for Bids.

(READ THIS DOCUMENT CAREFULLY. IT IS A LEGAL DOCUMENT)

I, _____ the _____
(Name) (Officer/Title)
of _____ acknowledge:
(Company)

1. That all labor, services, materials furnished for the above Contract have been paid in full.
2. That I and my subcontractors, employees, agents and officials have complied with all labor provisions of the above Contract, and all final Certified Payroll Reports have been submitted to the City of Pendleton.
3. That there are no claim(s), potential claim(s) or pending claim(s) for any labor, services or materials related to this Contract.
4. That there are no liens, potential liens or pending liens existing related to this Project and/or to the above Contract.
5. That I have reviewed the attached final pay statement and it is a true and accurate statement for final payment for all labor, services and materials of the above Contract.
6. That all work (labor and/or services) has been performed and/or material supplied in full accordance with the requirements of the above Contract, except for those modifications approved by the City in writing including: duly authorized written deviations, written substitutions, written alterations and/or written additions.
7. That I accept final payment for all labor, services and materials furnished pertinent to the above Contract and that I release the City of Pendleton, an Oregon municipal corporation and its officers, agents and employees from any and all claims and any and all liabilities to me as the Contractor for all things done or furnished in connection with the Contract and agree to defend and indemnify the City of Pendleton against any and all claims, loss, damage or liability made against the City by Contractor, his employees, agents, subcontractors or those acting within his authority and every act of the City related to or rising out of the Contract.
8. That I have provided a performance bond for the Contract, which shall remain in full force and effect for one (1) year after the date of final written acceptance by the City of the work, and this performance bond guarantees any and all workmanship and materials from any defect whatsoever.
9. That I have read this Affidavit and agree with it.

DATED this _____ day of _____, 20____.

Contractor's Name

Print Name and Title

Signature

State of _____)

)

County of _____)

On the _____ day of _____, 20____, personally appeared _____
as _____ of _____, Contractor,
who acknowledged this instrument to be his/her voluntary act and deed.

(SEAL)

Notary Public – State of _____
My Commission Expires: _____

Form OR-NRB

Page 1 of 1, 150-800-020 (Rev. 03-17) Oregon Department of Revenue

Oregon Nonresident Bidder Form

Submit original form—do not submit photocopy.

Office use only
Date received

Oregon Revised Statute (ORS) 279A.120 states that when a public contract is awarded to a nonresident bidder and the contract price is more than \$10,000, the bidder must report certain information to the Oregon Department of Revenue before the bidder can receive final payment on the contract. To view ORS 279A.120, visit www.oregonlegislature.gov.

Using one of the options below, you must submit this completed form before we can make your final payment.

A. Bidder information

Company name		Federal ID number
Company contact name		Oregon business ID number
Street/mailling address		Telephone () -
City, state, ZIP	Email	

B. Contract information

Contracting agency name		
Terms of payment		Total contract price \$
Brief description of services provided		
Will the work or services provided, at any time, require a physical presence in Oregon? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Contract number	Start date of contract / /	Contract expiration date / /
Agency contact		

C. Submitting this form

Please submit this form one of these ways:

Mail	Fax	Email
Oregon Department of Revenue Financial Services Unit 955 Center Street NE, Room 461 Salem OR 97301	503-945-8382	dor.procurement@state.or.us (You must have Acrobat Standard or Professional to use this option)

Name of person signing for business	Title
Signature of person signing for business	Date / /

Form **W-9**
(Rev. November 2017)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code		
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number	
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or	
Employer identification number	
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Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

SPECIAL SPECIFICATIONS

PROJECT OVERVIEW

The purpose of this Project is to construct a 12" sanitary sewer main approximately 273 feet in length under Tutuilla Creek to Tutuilla Road, and to construct approximately 1,096 feet of 8" sanitary sewer pipe in Tutuilla Road up to SW Runnion Avenue.

A portion of sanitary sewer to be constructed includes connecting into an existing manhole by coring the existing manhole at Station 0+00 that presently has a 12" sanitary sewer line running through it adjacent to Tutuilla Creek; then constructing a new 12", 3034 PVC pipe through a new manhole before constructing the pipe under Tutuilla Creek and into Tutuilla Road, all being approximately 12 feet deep except for the creek crossing.

Once in Tutuilla Road, an outside drop manhole shall be installed and two separate 8" lines shall be installed, one to the east right-of-way line or Tutuilla Road at approximately 12 feet deep, and one continuing south on Tutuilla Road at a depth between 6 and 7 feet deep.

Additionally, two 8" lines and one 6" line will be stubbed out to the east right-of-way of Tutuilla Road for future extension. Also, three 4" service laterals will be stubbed out to adjacent parcels lying on the west side of Tutuilla Road.

Project also includes replacement of some curb, gutter, and sidewalk/driveway approaches as needed to install new service laterals and stub-outs for future extension, as well as trench patching of all pavement disturbed as part of the sewer installation. Work includes additional and incidental work as called for in the Specifications and Plans.

1. ALL CONSTRUCTION

All construction shall be in compliance with the latest revision of the City of Pendleton, ODOT and APWA Standard Specifications, most current edition, unless otherwise noted in these special specifications.

2. STANDARDS APPLICABLE TO CONSTRUCTION

The following specifications shall be included by this reference as they may apply to this Project. The most current versions of these specifications, which were in effect at the time of the first publication of the Advertisement for Bid, are applicable.

A.1	AASHTO	-American Association of State Highway & Transportation Officials
A.2	ACI	-American Concrete Institute
A.3	AISI	-American Iron and Steel Institute
A.4	ANSI	-American National Standards Institute
A.5	APWA	-American Public Works Association
A.6	ASME	-American Society of Mechanical Engineers
A.7	ASTM	-American Society for Testing and Materials
A.8	AWWA	-American Water Works Association
A.9	AWA	-American Welding Society
A.10	AWPA	-American Wood Preservers Institute
A.11	CSAA	-Coating Standards Association
A.12	CRSI	-Concrete Reinforcing Steel Institute
A.13	FWHA	-Federal Highway Administration
A.14	HI	-Hydraulic Institute
A.15	IEEE	-Institute of Electrical & Electronic Engineers
A.16	ICEA	-Insulated Cable Engineers Association
A.17	NBS	-National Bureau of Standards
A.18	NACE	-National Association of Corrosion Engineers
A.19	NEC	-National Electric Code
A.20	NEMA	-National Electric Manufacturer's Association
A.21	NLMA	-National Lumber Manufacturer's Association
A.22	OSHD	-Oregon State Highway Department

- A.23 PCA -Portland Cement Association
- A.24 SPFA -Steel Plate Fabricators Association
- A.25 SSPC -Steel Structures Painting Council
- A.26 UL -Underwriters Laboratories, Inc.
- A.27 UBC -Uniform Building Code
- A.28 WWPA -Western Wood Products Association
- A.29 All applicable governmental building codes, use of the "Call Before You Dig" locate service and construction specifications in effect at the time of the first Advertisement for Bids. Where conflicts occur between the different specifications, these special specifications shall prevail over the above-cited specifications, followed by the City's Standard Specifications. As a general rule, the most stringent specification for any conflicting specifications shall prevail. Any interpretation required of the specifications shall be referred to the City Engineer. Response shall be in writing and final.

3. SATURDAY, SUNDAY OR HOLIDAY WORK

The Contractor shall notify the City 48 hours in advance of the time work will be performed on Saturday, Sunday or Holidays or other than normal working hours.

4. PERMITS AND LICENSES

The Contractor shall keep themselves informed of all local ordinances, state and federal laws in any manner affecting the work. All permits and licenses necessary for the prosecution of this work shall be secured and paid for by the Contractor. **Creek crossing permits have been obtained from Oregon DEQ, DSL, and USACE; however, each permit has special provisions that must be complied with while working in the creek area. Approval letters are attached in the back of this document for review and reference.** City will work with Contractor to extend permits, if necessary. Additional coordination may be required with the Oregon Department of Fish and Wildlife and Oregon DSL for personnel to inspect the stream channel for the presence of fish eggs, if water is present. Contractor is required to obtain an NPDES 1200-C Erosion Control permit from the State of Oregon DEQ. All persons engaged in business in fulfillment of this Contract must have a valid City of Pendleton Business License or the Contractor must have a valid Construction Project License for this Project.

5. UNCLASSIFIED EXCAVATION

All excavation material shall be unclassified material, City Standard Specifications Section 3:01, regardless to type, nature, characteristic, and/or condition of the material to be encountered. The Contractor, by signing the Proposal, has certified that he has carefully examined the Plans and work site, that he has satisfied himself as to the nature and location of the work, quality and quantity of material required, and the character of equipment and facilities needed to accomplish the work. He has included any costs in his bid associated with the extra effort of excavating unclassified material in his unit cost of excavation, or lineal foot of sanitary sewer pipe installed. **(Note: Be aware of the depth of the trench that is required for construction of this Project. This Project may require special machinery, dewatering or additional shoring.)** Dewatering efforts shall be considered incidental, and no separate payment will be made. Contractor is responsible for compaction of all trench backfill per City Standard Specifications.

6. NOTIFICATIONS

The Contractor shall make every effort possible to contact adjoining property owners of areas scheduled for work. This effort shall be incidental to the contract. Contact efforts should include, but not be limited to signage **(lettering should be easily legible from a vehicle and be at least 3"-4" in size)**, door knock and talks, letters, door hangars, and/or phone notifications, if possible. Contractor shall give written notification five (5) days prior and 24-hour advance notice to all residents and businesses along a street scheduled for road work. The notice shall describe the activity planned, when and if the street or driveway access is to be closed and when it is scheduled to be reopened, and Contractor contact information. Contractor shall develop a work schedule to be approved by City. City will provide scheduled closures to local media to help with public notification.

7. TRAFFIC CONTROL

In addition to other requirements as set forth in the Special Conditions, other provisions pertaining to traffic control shall include, but not be limited to:

- a. The Contractor shall supply the City with a traffic control plan for approval prior to commencing work. This plan will need to show lane closures, duration of closures, detours, and other pertinent information regarding the traffic flow of the Project. **(Note: Be advised that Tutuilla Road is the primary route to Sunridge Middle School, with heavy AM and PM peak-hour traffic, including**

school buses. Long duration closures will not be allowed during peak drop-off and pick-up times at the school.)

- b. The Contractor shall at all times maintain such signs, lights, barricades and other safety devices as necessary to insure the safety and convenience of the public and its employees and to protect the work.
- c. The Contractor will insure that during non-working hours on-call staff is available to maintain all traffic control devices for the Project. The Contractor shall provide the City of Pendleton with up-to-date information of these persons. Failure to comply with this provision will cause the Contractor to be billed for any services the City of Pendleton is required to provide in order to provide adequate protection to the traveling public during non-working hours.
- d. Traffic control, temporary protection, and directional devices shall be used outside the limits of the Project when they have direct bearing or reference on the work under Contract.
- e. The Contractor shall, at all times, keep the road in the vicinity of the Project and routes used for hauling materials that are open to traffic free from mud, rock and other debris that may create traffic hazards and shall provide adequate personnel to alleviate any danger. Roads shall be inspected and cleaned of any such debris at the close of every working day by the Contractor or as often as deemed necessary by the City. At the end of the day the Contractor shall leave the road in such condition that traffic can be traveled without damage to work, personal property, or without danger to the public.
- f. The Contractor will be concerned with the following factors in restricting traffic flow: The approved traffic control and channelization plan; emergency vehicle access; permissible hours of restriction; sufficient traffic control personnel and devices; prior warning to public residents and school; and a minimum 48-hours advance notification to the City, School District 16R and First Student Bus Company.
- g. An emergency vehicle access plan shall be in effect at all times to allow immediate emergency access through the Project at all times.
- h. Pedestrian access shall be available at all times through the Project by maintaining a circumferential temporary access way, if needed.

The City may direct the Contractor to provide additional traffic control devices to assure the safety of pedestrian and vehicular traffic, as the City deems necessary. It shall be the responsibility of the Contractor to move, replace, position, or remove any sign or barricade as required due to the change of work schedule due to weather or other unforeseen circumstances.

All costs for traffic control shall be included in the Bid Line Item. No additional payment will be made to the Contractor for traffic control. The roadway in the vicinity of the construction shall be open to traffic with only temporary closures of a short time. If parked vehicles obstruct the progress of work after an appropriate notification of closure, requests for removal of the obstructive vehicles should be made through the City of Pendleton.

8. SAW CUTTING/TRENCH ZIPPING

This item shall be bid as the cost per LF to saw cut. The quantity listed in the proposal is for saw cutting. The Contractor may zip the trench with a grinder in lieu of saw cutting and will be paid for two (2) times the unit cost per LF of the saw cutting line item for each LF of zipping. However, if a zipper is used the Contractor shall be responsible for maintaining neat vertical edges for the trench. If neat edges are not maintained or if settlement cracking appears, regardless of the method used, the Contractor shall re-saw cut the trenches to a neat edge to utilize a T-patch configuration and the additional saw cutting will not be paid. Payment of this item shall include all labor, tools, equipment, and materials necessary for a complete and approved job.

9. NEW MANHOLE CONSTRUCTION

Payment for these items shall be made for each new 4' diameter standard manhole less than 8' deep constructed, the new 4' diameter standard deep manhole greater than 8' deep constructed, and the standard outside drop manhole that is greater than 8' deep constructed. All new 4' diameter standard manhole construction shall comply with City Standard Details 300, 304, 305, 307A, and City Standard Specifications Section 3:02, where applicable. Channel construction to meet City Standard Detail 304 and City Standard Specifications Section 3:02. Contractor shall take care to not allow debris, grout or new concrete to enter the downstream sewer pipe. All grouting and channelization shall meet Standard Specifications for the City of Pendleton, Oregon. Payment shall be full compensation for all labor, materials, equipment and tools necessary for a complete an approved job.

10. TIE-IN TO EXISTING MANHOLE (MH-0)

Existing manhole MH-0 tie-in includes coring or cutting the side of the existing manhole so that the new pipe can be inserted into the manhole and secured with grout. Tie-in shall conform to City Standard Detail 300, and must specifically meet Note 4, where cut-in connections required a flexible joint and/or a sand collar connector. Required modification to the channel shall be considered incidental to the completion of the tie-in connection to the existing manhole. Work to include, but not limited to, the removal, construction and/or modification of manhole wall and channels, filling or capping existing pipe entrances or channels, dewatering, and the coring and patching of the manhole wall in order to connect the new sewer pipe. Channel construction to meet City Standard Specifications, Section 3:02, and City Standard Details 300 and 304. Cored hole in existing manhole wall for new pipe shall be made of minimum size possible for new pipe diameter and shall be patched completely around new pipe for the full thickness of the manhole wall with fast set grout. A sand collar and/or rubberized gasket in the pipe shall be within 18" of outside of manhole. Contractor should take care to not allow debris, grout or new concrete to enter the downstream sewer pipe. All grouting and channelization shall meet Standard Specifications for the City of Pendleton, Oregon.

11. SANITARY SEWER PIPELINE, BEDDING, AND BACKFILL

Payment for these items shall be made at the unit price per lineal foot of actual sewer line installed including bedding and backfill. Size and slope are specified on the drawings. Sewer pipe and fittings shall be PVC conforming to the requirements of ASTM D 3034. All sanitary sewer pipes shall have a minimum wall stiffness of 46 psi when tested in accordance with ASTM D2412, or SDR of 35. All fittings and joints shall be watertight, conforming to ASTM D3212 and ASTM F 477. Gaskets shall be installed per the pipe manufacturer and shall be free from dirt and debris before assembly.

- a. **Pipe Bedding and Backfill:** Bedding and backfill shall have a minimum of 4" (compacted depth) of $\frac{3}{4}$ " – 0" pipe bedding below the sewer pipe and a minimum of 12" compacted depth of $\frac{3}{4}$ " – 0" cover over the top of the pipe, measured at the top of pipe, and shall meet Standard Detail 103 and Standard Specifications for the City of Pendleton, Oregon, for sewer pipe, as called out on the plans for specific Class. Select backfill shall be $\frac{3}{4}$ " minus rock and provide 12 inches of cover for the pipe in place. Class A bedding as specified on plans is incidental to the pipe installation. Clean native material may be used as backfill outside of pipe zone in areas not within a roadway and compacted in lifts not to exceed 12 inches. Reconstructed road bed shall consist of 12 inches of $\frac{3}{4}$ " minus compacted, or 8 inches of 2" minus and 4 inches of $\frac{3}{4}$ " minus compacted prior to asphalt placement. Unit price for each specific category of pipe installed shall include, but not be limited to, all unclassified trench excavation, shoring, dewatering, bedding and backfill materials, bedding and backfill placement and compaction, all labor, material, equipment and tools necessary for a complete and approved job
- b. **Locate Wire:** Locate wire shall be installed on all sanitary sewer mains and laterals to the right-of-way line, per City Standard Details, or were possible, or to a locate stake as shown in City Standard Drawing No. 316. Locate wire shall be made accessible at each manhole or cleanout without having to enter the structure or reach more than 12". Locate wire size shall be green solid copper 12-gauge wire for all installations. The locate wire shall be continuous and attached to the top of all pipe buried in a trench or casing, whether the pipe is DI, C-900, PEX, copper, PVC, ABS, or HDPE, and all risers, with a minimum 6" length of duct tape at a maximum of 10' intervals, with enough wire brought to the surface at every clean out, pipe end or manhole, and shall extend a minimum 6" above finished grade unless otherwise noted. All splices shall be overlapped and tied. The splice connection shall be made waterproof with an approved silicone splice kit. Splice kit shall be King Technology Model 50-566 (Phone: 1-800-633-0232), 3M-direct bury splice kit DBR/Y-6, or pre-approved equal. Locate wire installation and splicing shall be incidental to the installation of the utility. This work is incidental to pipe installation for all labor, materials, equipment and tools necessary for a complete and approved job. Locate wire shall be tested after being buried but before finished grade is established or patching is performed.
- c. **4" Sewer Service Installation:** Payment for this item shall be made at the unit price per lineal foot of actual 4" sewer service line installed and approved as shown on the Plans and in accordance with City Specifications and Standard Details. This line item shall include all work required, including all unclassified trench excavation, shoring, dewatering, bedding and backfill materials, bedding and backfill placement and compaction, locate wire, all labor, miscellaneous fittings and materials, equipment and tools necessary for a complete and approved job. Installation of 3-factory wyes considered incidental to installation of 4" sewer service installation.

12. ASPHALT PATCHING RESTORATION

Payment for this item shall be made at the unit cost per actual tons of asphalt used. The Contractor shall remove loose asphalt as directed by Engineer. All edges of existing asphalt shall be cut with a saw or zip grinder to create a smooth vertical edge. Over excavated areas shall be filled with 3/4" minus base rock and compacted to 95% of maximum density. Contractor may place Control Density Fill (CDF) in lieu of base rock at no additional cost. CDF shall meet APWA Standard Specification 301.204E. The thickness of asphalt restoration shall be a minimum of 5 inches in Tutuilla Road, and 3" for any private driveways. HMAC shall comply with Section 00745 of the newest Oregon/APWA Standard Specifications for Construction approved in advance by City of Pendleton. Asphalt shall be HMAC Level III, 1/2" dense, with a maximum 2" per lift compacted to 95% density. Workmanship and quality shall meet the requirements of the Oregon Standard Specifications and testing as specified by same. Payment for this item shall be full compensation for all labor, materials, equipment and tools necessary for a complete and approved job.

13. REPAIR/ REPLACE/INSTALL SIDEWALK, CURB AND GUTTER, DRIVEWAY APPROACH

- a. **Driveways:** Shall meet City Standard Details 208, 209, 210, 210A, 211, 212, and/or 212A, whichever detail most closely matches the existing condition. Work shall include all concrete sidewalk/driveway or asphalt cutting, removal, excavation, and replacement per City Standard Drawings. Payment for this item shall include all labor, tools, equipment, and materials necessary for a complete and approved job. Saw cutting will be paid separately under Bid Item #3, "Saw Cutting".
- b. **Sidewalk, Curb and Gutter Repair:** Shall meet City of Pendleton Standard Drawings No. 205, 206, 208, 209, 210, 210A, 211, 212, and/or 212A, whichever detail most closely matches the existing condition. The work shall consist of saw cutting the existing sidewalk/driveway behind curb and asphalt 18" from face of gutter, all removal of curbing needed to install pipe, and adjoining sidewalk and asphalt, and replacement as directed by the Engineer. Payment for this item shall include all labor, tools, equipment, and materials necessary for a complete and approved job. Saw cutting will be paid separately under Bid Item #3, "Saw Cutting".

14. PROJECT COORDINATION

Contractor shall provide coordination to ensure that safe access and egress to the Middle School property will be maintained as required. Safe access and egress to the Middle School property is essential during the Project and must be coordinated with the City, School District 16R and First Student Bus Company throughout the Project. SW Tutuilla Road is a primary access and egress route during the time periods when students are going to and leaving the Sunridge Middle School property.

15. SURVEY LAYOUT AND CONSTRUCTION STAKING

The City of Pendleton will provide the initial surveying and construction staking required for the location and installation of the manholes and new sewer piping. Included in this staking will be offset hubs/nails with required invert elevations and approximate rim elevations at all manholes at a maximum of 25 ft stations along the new sewer main lines. Any additional surveying, construction staking, or re-staking required, and related costs shall be the sole responsibility of the Contractor and are deemed incidental expenses to the Contractor. Once the initial construction staking is complete, it is the responsibility of the Contractor to protect the stakes from removal due to construction and/or vandalism. No additional payment will be made to the Contractor for additional surveying, construction staking, or re-staking if required. Once the initial surveying and construction staking are completed, field adjustments by the City of Pendleton may be made, at no additional charge to the City, as deemed necessary or required.

16. PRESERVATION OF EXISTING MONUMENTATION

The centerline of SW Tutuilla Road may be monumented with brass caps. It shall be the responsibility of the Contractor to contact the City if any monumentation is in danger of damage and/or shall make all efforts reasonably possible to protect the monument from damage. If damage is unavoidable, the Contractor shall notify the City at least 24-hours before damaging or removing so that efforts can be made by the City to reference, or tie for resetting, or make provisions to save or protect the monument. This effort to protect any existing monuments is considered incidental and is required per State law. If ample notice is not provided, Contractor will be responsible for all costs associated to restore/replace the monuments by an Oregon Professional Land Surveyor.

17. STRIPING

The Contractor shall maintain and replace all damaged or removed striping within the Project limits. Payment for this item shall include all labor, tools, equipment, and materials necessary for a complete and approved job. All strips shall meet Oregon/APWA Standard Specifications for Construction

18. SEEDING AND GROUND RESTORATION OF DISTURBED VEGETATED AREAS

- a. Area requiring seeding and ground restoration is identified on plans as CONTRACTOR LAY DOWN AREA. This is the maximum limits allowed of disturbed area outside of City right-of-way.
- b. Stabilize the excavation areas in addition to other areas within the site disturbed by the Contractor's operations, by seeding, mulching, and tackifying, as required per permits and as directed by the Engineer.
- c. Before seeding, prepare disturbed areas by removing any surface gravels or crushed stone, or any other debris, paper, plastic, or any other rubble, trash, or litter, placing and compacting native soil material in all disturbed areas, and grading to match the surrounding areas generally to a similar contour found before the project began.
- d. Provide the following seed mixture: Permanent seeding according to Oregon Standard Specifications for Construction, Section 001030.13(f).
- e. Use only certified weed free seed. Provide copies of the certification to the Engineer.
- f. Provide straw mulch according to 01030.15(b).
- g. Apply a commercial straw mulch tackifier according to the manufacturer's directions and at the recommended rate.
- h. Apply seed and mulch according to Section 01030.
- i. If conditions allow and the Contractor chooses, the area may be stabilized by applying seed using a range drill with a roller attachment. All areas seeded with the range drill and roller will not need to be subsequently covered with mulch and tackifier.
- j. All variations to these requirements require written approval by the Engineer.
- k. Payment to be made on a square yard (SY) basis, measured upon the completion of the disturbed area within the CONTRACTOR LAY DOWN AREA that is graded and seeded per specifications.

19. INCIDENTAL ITEMS

All materials and work shown on the plans or necessary to complete the job and receive approval of the Project, which are not identified as a separate pay item on the Proposal, shall not be measured for payment separately but shall be considered as subsidiary obligations of the Contractor.

20. CONTRACT COMPLETION TIME AND LIQUIDATED DAMAGES

Contractor shall furnish in writing a work schedule for the Project. Project schedule shall be updated and resubmitted every two (2) weeks.

All portions of the sewer line for this project must be completed, tested, and fully operational within sixty (60) calendar days of the Notice to Proceed. The remaining asphalt and surface concrete replacement and restoration work must be completed prior to March 31, 2023. All Liquidated damages shall be computed at the rate of one percent (1%) per calendar day of the total price of contract work not yet completed, or \$500.00 per calendar day, whichever is greater, for sewer line work not completed within 60 days, and for surface restoration work not completed by **March 31, 2023**. Sundays and legal holidays shall be excluded in determining days of default.

Contractor to note that if the sewer line trench is not installed before local asphalt plants can provide asphalt, then the Contractor shall temporarily patch with cold mix or Control Density Fill (CDF) all travel ways at no additional cost to the Contract. The Contractor will be required to maintain the temporary patch until a final patch with hot mix asphalt can be installed. The final patch shall be installed by March 31, 2023, in order to avoid assessment of liquidated damages.

21. WORKING HOURS, RESTRICTIONS

Normal working hours are Monday through Friday - 7:00 am to 5:00 pm. Work may extend beyond this time period with prior written permission from the City. The Contractor shall notify the City forty-eight (48) hours in advance if work will be performed on Saturday, Sunday or Holidays or other than normal working hours. **Per Ordinance No. 2287, no work that produces dust or flying debris shall be performed or equipment utilized that produces noise of sufficient volume to disturb the sleep or repose of occupants of neighboring property between the hours of 6:00 pm and 7:00 am without expressed written permission from the City.**



Oregon

Kate Brown, Governor

Department of Environmental Quality
Northwest Region
700 NE Multnomah Street, Suite 600
Portland, OR 97232
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FAX (503) 229-6945
TTY 711

June 28, 2022

Bob Patterson
City of Pendleton
500 SW Dorion Ave.
Pendleton, OR 97801

RE: 401 Water Quality Certification Approval for 2022-172, Tutuilla Creek Sewer Crossing Permitting Assistance

The US Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #58. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the expedited 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard individual certification. A standard individual certification will require additional information, a public notice, and a higher review fee.

Certification Decision: Based on information provided by the USACE and the Applicant, DEQ has determined that implementation eligible activities under the proposed NWP will be consistent with water quality requirements including applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

Duration of Certificate: This 401 WQC for impacts to waters, including dredge and fill activities, is valid for the duration of the USACE Section 404 permit. A new 401 WQC must be requested with any modification of the USACE 404 permit.

In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the Nationwide 401 WQC.

401 GENERAL CERTIFICATION CONDITIONS

- 1) **Responsible parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this WQC.
Rule: 40 CFR 121, OAR 340-048-0015
Justification: DEQ must be aware of responsible parties to ensure compliance.
- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Permit Application and additional application materials (hereafter "the permit application

materials”), unless otherwise authorized by DEQ. If the project is operated in a manner not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.

Rule: OAR 340-048-0015

Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.

- 3) **401 WQC on Site:** A copy of this 401 WQC must be kept on the job site and readily available for reference by the Applicant and its contractors and subcontractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other state and local government inspectors.
Rule: OAR 340-012
Justification: All parties must be aware of and comply with the 401 WQC, including on-site contractors.
- 4) **Project Changes:** DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification.
Rule: OAR 340-048-0050
Justification: To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.
- 5) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant must submit findings prepared by the local land use jurisdiction that demonstrates the activity’s compliance with the local comprehensive plan. Such findings can be submitted using Section 11 of the Joint Permit Application, signed by the appropriate local official and indicating:
 - a. “This project is consistent with the comprehensive plan and land use regulations;” or,
 - b. “This project will be consistent with the comprehensive plan and land use regulations when the following local approvals are obtained,” accompanied by the obtained local approvals.
 - c. Rarely, such as for federal projects on federal land, “this project is not regulated by the comprehensive plan” will be acceptable.

In lieu of submitting the appropriate section of the USACE & Department of State Lands (DSL) Joint Permit Application, the Applicant may use DEQ’s Land Use Compatibility Statement form found at: <http://www.oregon.gov/deq/FilterDocs/lucs.pdf>

Rule: OAR 340-048-0020(2) (i), OAR 340-018

Justification: DEQ must ensure compliance with water quality land use laws at the local level.

- 6) **Access:** The Applicant and its contractors must allow DEQ access to the project site with or without prior notice, including staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:
 - a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
 - b. To inspect best management practices (BMPs), monitoring or equipment or methods; and

- c. To collect samples or monitor any discharge of pollutants.

Rule: OAR 340-012

Justification: DEQ must inspect facilities for compliance with all state rules and laws.

- 7) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

Rule: OAR 340-012

Justification: If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.

**FOR PROJECTS THAT PROPOSE CONSTRUCTION, THE FOLLOWING GENERAL
CONDITIONS APPLY**

- 8) **Erosion and Sediment Control:** During construction, erosion control measures must be implemented to prevent or control movement of soil into waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. A project that disturbs more than one acre may be required to obtain a National Pollutant Discharge Elimination System (NPDES) 1200-C construction stormwater general permit. Contact the DEQ Stormwater Program for more information at: <https://www.oregon.gov/deq/wq/wgpermits/Pages/Stormwater-Construction.aspx>

In addition, the Applicant must:

- a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.
- b. Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours.
- c. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized;
 - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. If sediment has reached 1/3 of the exposed height of a sediment or erosion control, Applicant must remove the sediment to its original contour.
- d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.
- e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.
- f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.

- g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.

Rule: OAR 340-041-0007(8), ORS 468B.050, CWA Section 402, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways.

- 9) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands (wetlands are waters of the state). This includes, but is not limited to: petroleum products; chemicals; cement cured less than 24 hours; welding slag and grindings; concrete saw cutting by-products; sandblasted materials; chipped paint; tires; wire; steel posts; asphalt; and waste concrete.

The following specific requirements apply:

- a. Cure concrete, cement, or grout for at least 24 hours before any contact with flowing waters;
- b. Use only clean fill, free of waste and polluted substances;
- c. Employ all practicable controls to prevent discharges of spills of harmful materials to surface or groundwater;
- d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;
- e. Remove all foreign materials, refuse, and waste from the project area

Rule: OAR 340-041-0007(8), ORS 468B.050, CWA Section 402

Justification: DEQ must ensure that pollution does not enter waterways.

- 10) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat directly or result in potential discharges.

Rule: ORS 468B.025(1)(a)

Justification: DEQ must ensure that pollution does not enter waterways.

- 11) **Spill & Incident Reporting:**

- a. In the event that deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311) within 24 hours. Containment and cleanup must begin immediately and be completed as soon as possible.
- b. If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS, and US Fish and Wildlife Service (USFW).

Rule: ORS 466.645(1); OAR 340-142-0030(1)(b)(B), OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

12) **Vegetation Protection and Site Restoration:**

- a. The Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:
 - i. Minimization of project and impact footprint;
 - ii. Designation of staging areas and access points in open, upland areas;
 - iii. Fencing and other barriers demarking construction areas; and
 - iv. Use of alternative equipment (e.g., spider hoe or crane).
- b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance.
- c. Pesticides (including herbicides) and fertilizers must be applied per manufacturer's instructions by a professionally licensed applicator. If chemical treatment is necessary, the Applicant is responsible for ensuring that pesticide application laws, including with the NPDES System 2300-A general permit, are met. Please review the information on the following website for more information:
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>
 - i. For pesticide application within stormwater treatment facilities or within 150 feet of waters of the state, the Applicant must adopt an Integrated Pest Management (IPM) plan that describes pest prevention, monitoring and control techniques with a focus on prevention of inputs to waters of the state, or coverage under an NPDES permit, if required.
 - ii. Pesticide application should be applied during the dry season and avoid direct water application;
 - iii. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.

Rule: OAR 340-041, OAR 340-012, OAR 340-041-0033

Justification: Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 13) **Buffers:** The Applicant shall avoid and protect from harm, all wetlands and provide a 50 foot buffer to waters of the state, unless proposed, necessary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will take the place of this certification requirement.

Rule: OAR 340-041, OAR 340-012

Justification: Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 14) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The Applicant must notify the Environmental Cleanup Section of DEQ at 1-800-452-4011.

Rule: OAR 340-041, OAR 340-012, OAR 340-122, OAR 340-040

Justification: DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.

FOR PROJECTS THAT PROPOSE IN-STREAM WORK IN JURISDICTIONAL WATERS

- 15) **Fish protection/ Oregon Department of Fish and Wildlife timing:** The Applicant must perform in-water work only within the ODFW preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*, or as authorized otherwise under a USACE permit and/or DSL removal/fill permit. Exceptions to the timing window must be recommended by ODFW, NMFS and/or the USFW as appropriate, and approved by DSL when applicable.
Rule: OAR 340-041-0011
Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.
- 16) **Aquatic life movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity, unless otherwise approved in the approved application.
Rule: OAR 340-041-0016; OAR 340-041-0028
Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.
- 17) **Isolation of in-water work areas:** The Applicant must isolate in-water work areas from the active flowing stream, unless otherwise authorized as part of the approved application, or authorized by DEQ.
Rule: OAR 340-041, OAR 340-012, OAR 340-045
Justification: DEQ must ensure that pollution does not enter waterways.
- 18) **Cessation of Work:** The Applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.
Rule: OAR 340-041, OAR 340-012
Justification: DEQ must ensure that pollution does not enter waterways.
- 19) **Turbidity:** The Applicant must implement BMPs to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except as specifically provided below:
 - a. **Monitoring:** Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ.**
 - i. **Representative Background Point:** The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet up-current of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring down-current at the compliance point described below.
 - ii. **Compliance Point:** The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet

down-current from the disturbance at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

- b. **Compliance:** The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances are allowed as followed:

MONITORING WITH A TURBIDIMETER EVERY 2 HOURS	
<i>TURBIDITY LEVEL</i>	<i>Restrictions to Duration of Activity</i>
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

c. **Reporting:**

- i. Record all turbidity monitoring required by subsections (a) and (b) above in daily logs which must include: calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; and location; date; time; and tidal stage (if applicable) for each reading.
 - ii. A narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW upon request.
 - iii. Keep records on file for the duration of the permit cycle.
- d. **BMPs to Minimize In-stream Turbidity:** The Applicant must implement the following BMPs, unless accepted in writing by DEQ:
- i. Sequence/Phasing of work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances.
 - ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or using a closed-lipped environmental bucket must be implemented;

- iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary at the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
- iv. Machinery may not be driven into the flowing channel, unless authorized in writing by DEQ; and
- v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.
- vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

Rule: OAR 340-041-0036, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

SPECIFIC CONDITIONS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT

- 20) **Post Construction Stormwater Management:** For projects which propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post-construction stormwater management plan to DEQ. The plan must be reviewed and approved prior to construction to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including construction, operation, and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ in writing.

In lieu of a complete stormwater management plan, the Applicant may submit documentation of acceptance of the stormwater into a DEQ permitted NPDES Phase I Municipal Separate Storm Sewer System (MS4).

Rule: ORS 468B.050, OAR 340-045, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

- 21) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the applicant or the entity listed in the approved post-construction stormwater management plan.

Maintenance of stormwater treatment facilities subject to an MS4 permit is regulated by the permit.

Rule: OAR 340-041, OAR 340-012, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways.

- 22) **Corrective Action May Be Required:** DEQ retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

Rule: OAR 340-041, OAR 340-012

Justification: DEQ must ensure that pollution does not enter waterways.

CATEGORY SPECIFIC CONDITIONS

In addition to all national and regional conditions of the USACE permit and the 401 Water Quality Certification general conditions above, the following conditions apply to the noted specific categories of authorized activities.

NWP 7 – Outfall Structures and Associated Intake Structures:

7.1) The following actions are denied certification:

- a. Discharge outfalls that are not subject to an NPDES permit; and
- b. Outfalls that discharge stormwater without pollutant removal demonstrated to meet water-quality standards prior to discharge to waters of the state.

Rule: OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

7.2) If an Applicant cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines found at: <http://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf> the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

Rule: OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

Justification: DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

NWP 13 – Bank Stabilization:

13.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

13.2) Projects that propose permanent fill in adjacent wetlands are denied certification.

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Water adjacent wetlands provide water quality benefits.

13.3) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

Rule: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 14 – Linear Transportation:

- 14.1) For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.
Rule: OAR 340-041, OAR 340-012, OAR 340-048
Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.
- 14.2) To apply for certification for a project without bioengineering, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.
Rule: OAR 340-041-0059
Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

NWP 16 - Return Water from Contained Upland Disposal Areas: Water-quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 30, 31, and 40 at: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=68746>.

- 16.1) Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.
Rule: OAR 340-041-0053(b)(A), OAR 340-041
Justification: DEQ must ensure that pollution does not enter waterways.
- 16.2) Water removed with contaminated dredged material that could or does exceed chronic water-quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.
Rule: OAR 340-041-0053(b)(A), OAR 340-041
Justification: DEQ must ensure that pollution does not enter waterways.
- 16.3) If a Modified Elutriate Test (MET) is performed for the known contaminants of concern (CoCs) and CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited.
- a. The MET must be performed before dredging.
 - a. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
 - b. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.
- Rule:* OAR 340-041, OAR 340-012, OAR 340-048
Justification: DEQ must ensure that pollution does not enter waterways.

NWP 20 – Response Operations for Oil and Hazardous Waste:

- 20.1) Coordination with DEQ's Emergency Response program is required. See: <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx>.
Rule: OAR 340-142-0130(3), OAR 340-041
Justification: DEQ must ensure that pollution does not enter waterways.

NWP 22 – Removal of Vessels:

- 22.1) Coordination with DEQ's Emergency Response program is required. See:
<http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx>.

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways. Vessels may contain various fuels, lubricants, and other possible sources of pollution.

NWP 31 – Maintenance of Existing Flood Control Facilities:

- 31.1) Projects in streams with temperature TMDLs which result in a net reduction of riparian shade are prohibited.

Rule: OAR 340-041-0028, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 38 – Cleanup of Hazardous and Toxic Waste:

- 38.1) For removal of contaminated material from waters, dredging method is limited to diver assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry, unless otherwise authorized by DEQ.

a. For in-water isolation measures, the Applicant is referred to Appendix D of DEQ's Oregon Erosion and Sediment Control Manual, April 2005 (or most current version), at: [DEQ Erosion and Sediment Control Manual](#)

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.2) Discharge to waters of the state resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below.

- a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or,
- b. A Modified Elutriate Test (MET) may be performed for the known Contaminants of Concern (CoCs) and if CoC concentrations are below DEQ chronic water-quality criteria; return water discharge is not limited.
 - i. The MET must be performed before dredging.
 - ii. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
 - iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: <http://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/default.aspx>) or Solid Waste (see: <http://www.oregon.gov/deq/mm/swpermits/Pages/Solid-Waste-Disposal-Sites-and-Landfill.aspx>).

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 38.4) The new in-water surface must be managed to prevent exposure or mobilization of

contaminants.

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

NWP 41 - Reshaping Existing Drainage Ditches:

- 41.1) To the extent practicable, the Applicant must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways.

- 41.2) Following authorized work, the Applicant must establish in-stream and riparian vegetation on reshaped channels and side-channels using native plant species wherever practicable. Plantings must be targeted to address water-quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

Rule: OAR 340-041-0004(5)(a)

Justification: Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

NWP 42 – Recreational Facilities:

- 42.1) For facilities that include turf maintenance actions, the permittee must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at:

<http://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>).

Rule: OAR 340-041-0033, OAR 340-041

Justification: DEQ must ensure that pollution does not enter waterways, including excess pesticides and fertilizers.

NWP 43 – Stormwater Management Facilities:

- 43.1) Projects that propose the following elements are denied expedited certification:

- a. In-stream stormwater facilities;
- b. Discharge outfalls not subject to an MS4 NPDES permit; and,
- c. Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

- 43.2) To apply for certification for a project with in-stream stormwater facilities, without an NPDES permit, or without submittal of an approvable stormwater management plan per DEQ's Guidelines (at: <http://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf>), the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

Rule: OAR 340-041-0059

Justification: DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

NWP 44 – Mining Activities:

- 44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied expedited certification.
Rule: OAR 340-045-0033, OAR 340-041
Justification: DEQ must ensure that pollution does not enter waterways. Excess turbidity can be considered pollution.
- 44.2) To apply for certification for a project without an NPDES permit, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.
Rule: OAR 340-041-0059
Justification: DEQ must ensure that pollution does not enter waterways.
- 44.3) The State of Oregon requires an In-Water Blasting Permit be obtained per OAR, 635-425-0000. Permittee is advised to contact the nearest ODFW office for further information at: <https://www.dfw.state.or.us/lands/inwater/>
Rule: OAR 340-041-0011
Justification: DEQ must be protective of all water quality standards, including beneficial uses such as fish.

NWP 51 – Land-Based Renewable Energy Generation Facilities:

- 51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition D.1 must be applied.
Rule: OAR 340-041, OAR 340-012, OAR 340-048
Justification: DEQ must ensure that pollution does not enter waterways

NWP 53 – Removal of Low-Head Dams:

- 53.1) Projects that do *not* go through a PSET review if sediments are being dispersed are denied certification.
Rule: OAR 340-041, OAR 340-012, OAR 340-048
Justification: DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.
- 53.2) To apply for certification for a project without a PSET, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.
Rule: OAR 340-041-0059
Justification: DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.

NWP 54 – Living Shorelines:

- 54.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.
Rule: OAR 340-041, OAR 340-012, OAR 340-048
Justification: DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion in the system.

NWP 58 – Utility Lines:

- 58.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable;
- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures and report the spill to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.
- d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Rule: OAR 340-142-0030, OAR 340-142-0040(1)

Justification: Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.

58.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

Rule: OAR 340-041, OAR 340-012, OAR 340-048

Justification: DEQ must ensure that pollution does not enter waterways

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232, within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Ari Sindel, at 503-367-7584, by email at ari.sindel@deg.oregon.gov, or at the address on this letterhead.

Sincerely,



Steve Mrazik,
Water Quality Manager
Northwest Region

ec: Trey Fraley, USACE
Richard Fitzgerald, DSL
Dana Kurtz, Anderson Perry & Associates, Inc.



401 Water Quality Certification Turbidity Monitoring Report

Project Name:	USACE Project #	DSL Project #
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Name of Inspector(s):	Turbidimeter Model:	Calibration Standard Type (Circle One) Formazin Solution or Gelex	Calibration Standard Expiration Date:
Sampling Date:	Calibration Values: _____ NTU (Standard) = _____ NTU (Reading) _____ NTU (Standard) = _____ NTU (Reading) _____ NTU (Standard) = _____ NTU (Reading)	*Upstream (Background) Point Location: Latitude: Longitude:	*Downstream (Compliance) Point Location: Latitude: Longitude:

In-Water Work Start Time:	In-Water Work End Time:	Description of In-Water Work:
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Upstream Sample		Downstream Sample		Change in Turbidity (NTU)	Observation of waterbody		NOTES (Describe any modifications made to BMPs)
Time	Turbidity (NTU)	Time	Turbidity (NTU)		Tidal Stage	Note any plume, sheen, floatables, color	

* Include a figure with the turbidity sampling forms showing the sampling locations.

401 Water Quality Certification Turbidity Monitoring Report

Turbidity: The Applicant must implement appropriate Best Management Practices (BMPs) to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidity is prohibited except as specifically provided below.

Monitoring: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two hour intervals each day during daylight hours when in-water work is being conducted, including while dewatering or work area isolation measures are in place. A properly calibrated turbidimeter is required unless another monitoring method is proposed and authorized by DEQ.

Representative Background Point: The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet upcurrent of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring downcurrent at the compliance point described below.

Compliance Point: The must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet downcurrent from the disturbance at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

Compliance: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances of the turbidity water quality standard are allowed as shown in the monitoring table shown here.

Reporting: The Applicant must record all turbidity monitoring required by subsections (a) and (b) above in daily logs, kept on file for the duration of the permit cycle. The daily logs must include calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, NMFS, USFWS, and ODFW upon request.

BMPs to Minimize In-stream Turbidity: The Applicant must implement the following BMPs, unless otherwise accepted by DEQ:

- i. Sequence/Phasing of Work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
- ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or using a closed-lipped environmental bucket must be implemented;
- iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
- iv. Machinery may not be driven into the flowing channel, unless authorized by DEQ; and
- v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

MONITORING WITH A TURBIDIMETER EVERY 2 HOURS	
TURBIDITY LEVEL	Restrictions to Duration of Activity
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

20220628_TutillaCreek_SewerCrossing_2022-172


Final Audit Report

2022-06-28


Created:	2022-06-28
By:	Chamille Hartman (chamille.hartman@deq.state.or.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJy7ccnPS6fIV4ETbgN2TXw24b1Yd74V


"20220628_TutillaCreek_SewerCrossing_2022-172" History

 Document created by Chamille Hartman (chamille.hartman@deq.state.or.us)
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 Document e-signed by Steve Mrazik (steve.mrazik@deq.state.or.us)
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Oregon

Kate Brown, Governor

Department of State Lands

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(541) 388-6112

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www.oregon.gov/dsl

BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS OF THE STATE OF OREGON

State Land Board

In the Matter of Removal-Fill Permit)
Application 62796-RF) Proposed Permit Decision and Order;
) Notice of Right to a Hearing
By City Of Pendleton)

Kate Brown
Governor

Shemia Fagan
Secretary of State

Tobias Read
State Treasurer

Short and Plain Statement of the Permitting Decision: The permit application is approved because the Department of State Lands (DSL or the Department) has determined that, when carried out in compliance with all terms and conditions outlined in the permit, the proposed removal-fill activity is consistent with the protection, conservation, and best use of the water resources of this state and will not unreasonable interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and recreation. See ORS 196.825.

I. Applicable Law:

- a. ORS Chapter 196 governs removal fill permits in Oregon. The Department administers Oregon's Removal-Fill Law, Oregon Revised Statutes (ORS) 196.795 to ORS 196.990, which protects the state's wetlands and waterways. See ORS 196.805. Unless an exception applies, a person may not remove material from waters of this state or fill waters of this state without a permit from DSL. ORS 196.810. Waters of this state include the all-natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, the Pacific Ocean that is in the boundaries of this state, and other water bodies. ORS 196.800; Oregon Administrative Rule (OAR) 141-085-0515; OAR 141-093-0100.
- b. Specifically, the statutes that govern removal-fill permits in Oregon, including the permit application at issue in this case, generally include the following:

ORS 196.795 (Administration of State Removal or Fill Permits; General Permits);
ORS 196.800 (Definitions);
ORS 196.805 (Policy);
ORS 196.810 (Removal from Bed or Banks of Waters; Permits; Exceptions);
ORS 196.812 (Removal of Large Woody Debris);
ORS 196.815 (Permit Applications; Fees);
ORS 196.816 (Removal of Materials for Purpose of Maintaining Drainage and Protecting Agricultural Land);
ORS 196.817 (Removal or Fill General Permits);
ORS 196.818 (Wetland Delineation Reports; Fees);
ORS 196.820 (Smith Lake, Bybee Lake Prohibition);
ORS 196.825 (Permit Criteria; Consultation with Other Agencies);
ORS 196.830 (Estuarine Resource Replacement; Other Permit Conditions);
ORS 196.835 (Issuance of Permits; Procedure);
ORS 196.845 (Investigations and Surveys of Location); and
ORS 196.850 (Waiver of Permit Requirement; Notice; Review).

The full text of these statutes may be viewed online at:
https://www.oregonlegislature.gov/bills_laws/ors/ors196.html.

The full text of these statutes may also be inspected in person during normal business hours at:
Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

- c. OAR Chapter 141, Divisions 85 and 93 implement the above statutory scheme and govern removal-fill permits in Oregon. The rules that govern removal-fill permits in Oregon, including the permit application at issue in this case, generally include the following:

Div. 85 Removal-Fill Authorizations:

OAR 141-085-0500 (General);
OAR 141-085-0506 (Policy);
OAR 141-085-0510 (Definitions);
OAR 141-085-0515 (Removal-Fill Jurisdiction by Type of Water);
OAR 141-085-0520 (Removal-Fill Jurisdiction by Volume of Material);
OAR 141-085-0525 (Measuring and Calculating Volume of Removal and Fill);
OAR 141-085-0530 (Exemptions for Certain Activities and Structures);
OAR 141-085-0534 (Exemptions for Certain Voluntary Habitat Restoration Activities);
OAR 141-085-0535 (Exemptions Specific to Agricultural Activities);
OAR 141-085-0540 (Types of Authorizations);
OAR 141-085-0545 (Fees; Amounts and Disposition);
OAR 141-085-0550 (Application Requirements for Individual Permits);
OAR 141-085-0555 (Individual Removal-Fill Permit Application Review Process);
OAR 141-085-0560 (Public Review Process for Individual Removal - Fill Permit Applications);
OAR 141-085-0565 (Department Determinations and Considerations in Evaluating Individual Permit Applications);
OAR 141-085-0575 (Permit Appeals);
OAR 141-085-0580 (Discovery in Contested Cases);
OAR 141-085-0585 (Permit Conditions, Permit Expiration Dates and Permit Transfer);
OAR 141-085-0590 (Renewal and Extension of Individual Removal-Fill Permits);
OAR 141-085-0595 (Permit Requirements and Interagency Coordination for Department of Environmental Quality Approved Remedial Action, Corrections Facilities, Solid Waste Land Fills and Energy Facilities);
OAR 141-085-0665 (Expedited Process for Industrial or Traded Sector Sites);
OAR 141-085-0676 (Emergency Authorizations);
OAR 141-085-0680 (Compensatory Mitigation (CM); Applicability and Principal Objectives);
OAR 141-085-0685 (Functions and Values Assessment);
OAR 141-085-0690 (Eligibility Requirements for CM);
OAR 141-085-0692 (Mitigation Accounting);
OAR 141-085-0694 (Special Requirement for CM);
OAR 141-085-0695 (Administrative Protection of CM Sites);
OAR 141-085-0700 (Financial Security for CM Sites);
OAR 141-085-0705 (Requirements for CM Plans);
OAR 141-085-0710 (Monitoring Requirements for CWM);
OAR 141-085-0715 (Mitigation for Temporary Impacts);
OAR 141-085-0720 (Mitigation Banking Purpose, Applicability and Policies);

OAR 141-085-0725 (Process for Establishing Mitigation Banks);
OAR 141-085-0730 (Establishment of Mitigation Credits);
OAR 141-085-0735 (Release, Use and Sale of Mitigation Credits);
OAR 141-085-0740 (Authorization for Mitigation Banks);
OAR 141-085-0745 (In-Lieu Fee Mitigation);
OAR 141-085-0750 (Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund);
OAR 141-085-0755 (Advance Mitigation); and
OAR 141-085-0768 (Advance Aquatic Resource Plans).

The full text of these rules may be viewed online at:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=15700>.

The full text of these rules may also be inspected in person during normal business hours at:
Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

II. Findings of Fact and Findings of Ultimate Fact:

1. The Department received a complete, written application from applicant on April 7, 2022 for the proposed removal-fill activity consisting of installing a new sewer line that will cross Tutuilla Creek (6.7 cubic yards removal and 7 cubic yards fill).
2. The Department circulated the complete application for 30-day public comment period April 14, 2022 to May 13, 2022 to parties including, affected local, state and federal agencies, affected tribal governments, adjacent landowners, and other parties requesting notification.
3. There were no comments that required a response to the Department.
4. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own investigations, the Department concludes as to the determinations in ORS 196.825(1) and (4), OAR 141-085-0565(3), and OAR 141-093-0115:
 - a. The project described in the permit application and as conditioned in the proposed permit, is consistent with the protection, conservation, and best use of the water resources of this state as specified in ORS 196.600 to 196.905;
 - b. The project described in the permit application and as conditioned in the proposed permit would not interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation.
5. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own investigations, the Department concludes, as to the considerations in ORS 196.825(3), OAR 141-085-0565(4), OAR 141-093-0115.
 - a. The applicant is a public body, and the Department has relied upon the public body's findings as to local public need and local public benefit.
 - b. There is not an identified economic cost to the public if the proposed fill or removal is not accomplished.

- c. The application describes three alternatives to the project for which the fill or removal is proposed. There are no practicable alternatives with lesser impact to waters of this state.
- d. The application describes one alternative site for the proposed removal or fill. There are no practicable alternative sites with lesser impact to waters of this state.
- e. The proposed project conforms to sound policies of conservation because adverse effects to the aquatic resources have been reduced to the extent practicable and the proposed permit contains operating conditions for best management practices to further minimize adverse effects. No interference with public health and safety was identified in the application evaluation and public review processes.
- f. There is not a conflict with existing public uses of the affected waters or adjacent land uses identified in the application evaluation and public review processes.
- g. The proposed fill or removal is compatible with the governing comprehensive plan and land use regulations as described in the Land Use Compatibility Statement
- h. The proposed fill and removal is not for streambank protection.
- i. No permanent adverse effects to aquatic resources are expected, therefore, compensatory mitigation is not required.

III. **Conclusions of Law:**

Based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565, and OAR 141-093-0115, DSL should approve the permit application as conditioned in the proposed permit.

IV. **Proposed Order:**

The Department proposes approving the permit application with conditions and based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565 and OAR 141-093-0130.

As described below, you have the right to request a hearing within 21 days. Prior to the expiration of the 21-day period, this proposed permit decision is not the final agency order on the matter, and the permittee should be aware that the decision could be changed prior to the expiration of the 21-day appeal period—either because the permittee requests a contested case hearing, or as otherwise allowed under the removal fill law. A permittee who begins work under a permit prior to issuance of a final order does so with acceptance of this risk.

V. **Hearing:**

You are entitled to request a hearing based on this Proposed Order as provided by the Oregon Administrative Procedures Act (ORS chapter 183) and the administrative rules implementing the Administrative Procedures Act, OAR Chapter 137, Division 3. See ORS 196.825(7); OAR 141-001-0005; OAR 141-001-0010; OAR 141-085-0575; OAR 141-093-0130.

If you want a hearing, you must file a written request for a hearing with the Department no later than 21 calendar days from the date of the permit decision. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130. If you are a corporation, partnership, limited liability company, unincorporated association, trust, or government body, you must either have an attorney licensed to practice law in Oregon submit a request for a contested case hearing on your behalf or ratify your hearing request within 28 days. See OAR 137-003-0550.

The Department has determined that due to the complexity of removal-fill permitting, a general denial of the matters or a general objection to all permit conditions in the request for a contested case proceeding does not provide sufficient information for a fair and efficient contested case and a more specific request is warranted. OAR 141-085-0575. All requests for a contested case proceeding under this section shall include a specific list of issues for the contested case proceeding. OAR 141-085-0575. The requester may amend their request to include additional issues or clarify existing issues within 15 days of the date that the case is referred to the Office of Administrative Hearings. OAR 141-085-0575.

You may mail a request for a hearing to:
Department of State Lands
Aquatic Resource Management Program
775 Summer Street NE STE 100
Salem, OR 97301.

If you request a hearing, you will be notified of the time and the place of the hearing. See OAR 137-003-0525. You may be represented by legal counsel at the hearing. ORS 183.417; OAR 137-003-0550. Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law. OAR 137-003-0550. Legal aid organizations may be able to represent you if you have limited financial resources. You will be given information on the procedures, right of representation, and other rights of parties relating to the substance and conduct of the hearing before commencement of the hearing. See ORS 183.413.

VI. Jurisdiction and Authority to Hold a Hearing:

The Department has jurisdiction over the issuance of removal-fill permits pursuant to ORS Chapter 196, and specifically, ORS 196.810. A permit decision constitutes an order in a contested case. See ORS 183.310(2)(a); ORS 196.825(7). If timely requested, a hearing is held as laid out in ORS 183.411 to ORS 183.471, OAR Chapter 137, Division 3, ORS Chapter 196, and OAR Chapter 141, Division 85. ORS 196.825(7).

VII. Final Order and Defaults:

If a request for a hearing is not received by the Department within this 21-day period, your right to a hearing shall be waived and this Proposed Order shall become the Final Order by default. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130.

If you request a hearing and then either withdraw your hearing request, notify the Department or administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Department may issue a final order by default. See ORS 183.417.

If the Department issues a final order by default, it designates its file on this matter, including any materials submitted by you that relate to this matter, as the record for purposes of supporting its decision.

If you proceed to a contested case hearing, a Final Order will not be issued until after the hearing concludes. See ORS 183.464; OAR 141-085-0575; OAR 141-093-0130.

VIII. Federal Servicemembers Civil Relief Act:

Active duty servicemembers have a right to stay contested case proceedings under the federal Servicemembers Civil Relief Act. See *generally* 50 USC 3901 *et seq.* For more information, contact the Oregon State Bar (800-452-8260), the Oregon Military Department (503-584-3571), or the nearest United States Armed Forces Legal Assistance Office (<http://legalassistance.law.af.mil>). The Oregon Military Department does not have a toll-free telephone number.

Department of State Lands
951 SW Simpson Ave., Suite 104
Bend, OR 97702
☎ 541-388-6112

Permit No.:	63796-RF
Permit Type:	Removal/Fill
Waters:	Tutuilla Creek
County:	Umatilla
Expiration Date:	06/27/2023

CITY OF PENDLETON

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE REFERENCED APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder must obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, DSL makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee must defend and hold harmless the State of Oregon, and its officers, agents and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the permittee must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the permittee of an obligation to secure appropriate leases from DSL, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 541-388-6112.

Patricia Fox, Southern Operations Manager
Aquatic Resource Management
Oregon Department of State Lands

Patricia
Fox

Digitally signed
by Patricia Fox
Date: 2022.06.27
13:03:46 -07'00'

Authorized Signature

ATTACHMENT A

Permit Holder: City of Pendleton

Project Name: Tutuilla Creek Sewer Crossing

Special Conditions for Removal/Fill Permit No. 63796-RF

READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. A copy of this permit must be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By signature on the application, Bob Patterson is acting as the representative of City of Pendleton. By proceeding under this permit, City of Pendleton agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL. In the event information in the application conflicts with these permit conditions, the permit conditions prevail.
2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes 10 linear feet of waterway impact(s) with associated removal and fill of material in T2N R32E Section 15AC, Tax Lot(s) 129, in Umatilla County, as referenced in the application, map and drawings (See Attachment B for project location(s)), dated April 7, 2022.
3. **Work Period in Jurisdictional Areas:** Fill or removal activities below the ordinary high-water elevation of Tutuilla Creek are recommended to be conducted between July 1 and September 30, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. If fish eggs are observed within the project area, work must cease, and DSL contacted immediately.
4. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation, or operating conditions to comply with conditions imposed by other permits resulting in removal-fill activity must be approved by DSL prior to implementation.
5. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project or require rectification in case of unforeseen adverse effects to aquatic resources or permit non-compliance.
6. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

7. **Stormwater Management Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ), if one is required by DEQ.

8. **Pre-construction Resource Area Fencing or Flagging:** Prior to any site grading, the boundaries of the avoided wetlands, waterways, and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

General Construction Conditions

9. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
10. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) must be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
- a. All exposed soils must be stabilized during and after construction to prevent erosion and sedimentation.
 - b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands.
 - c. To prevent erosion, use of compost berms, impervious materials, or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
 - e. Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch must be used so the seed does not wash away before germination and rooting.
 - f. Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands.
 - g. Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
 - h. All erosion control structures must be removed when the project is complete, and soils are stabilized and vegetated.
11. **Fuels, Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, material treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery and equipment staging, cleaning, maintenance, refueling, and fuel storage must be at least 150 feet from OHW or HMT and wetlands to prevent contaminants from entering waters of the state. Refueling is to be confined to a designated area to prevent spillage into waters of this state. Barges must have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this

state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

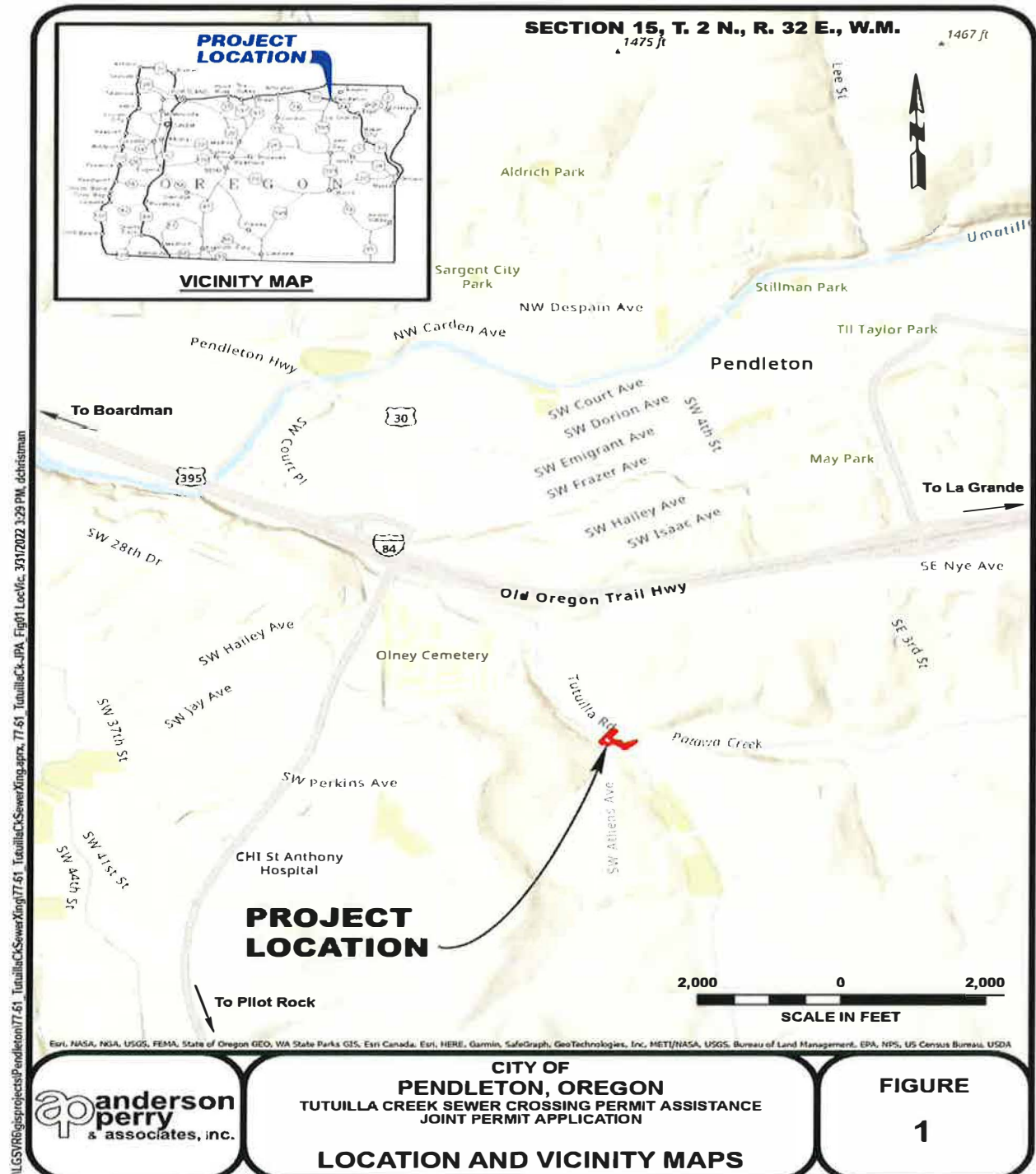
12. **Archaeological Resources:** If any archaeological resources, artifacts or human remains are encountered during construction, all construction activity must immediately cease. The State Historic Preservation Office must be contacted at 503-986-0674. You may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.
13. **Construction Corridor:** There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Figure(s) 2).
14. **Hazards to Recreation, Navigation or Fishing:** The activity must be timed so as not to unreasonably interfere with or create a hazard to recreational or commercial navigation or fishing.
15. **Operation of Equipment in the Water:** Heavy equipment may be positioned on or traverse the area below ordinary high water only when the area is completely in the dry and no standing or flowing water is present. All machinery operated below ordinary high water (OHW) elevation must use vegetable-based hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below OHW elevation. Any equipment found to be leaking fluids must be immediately removed from and kept out of OHW until repaired.
16. **Fish Passage Required:** The project must meet Oregon Department of Fish and Wildlife requirements for fish passage, as required in ORS 509.585.
17. **Raising or Redirecting Water:** The project must not cause water to rise or be redirected and result in damage to structures or property on the project site as well as adjacent, nearby, upstream, and downstream of the project site.
18. **Temporary Ground Disturbances:** All temporarily disturbed areas must be returned to original ground contours at project completion.

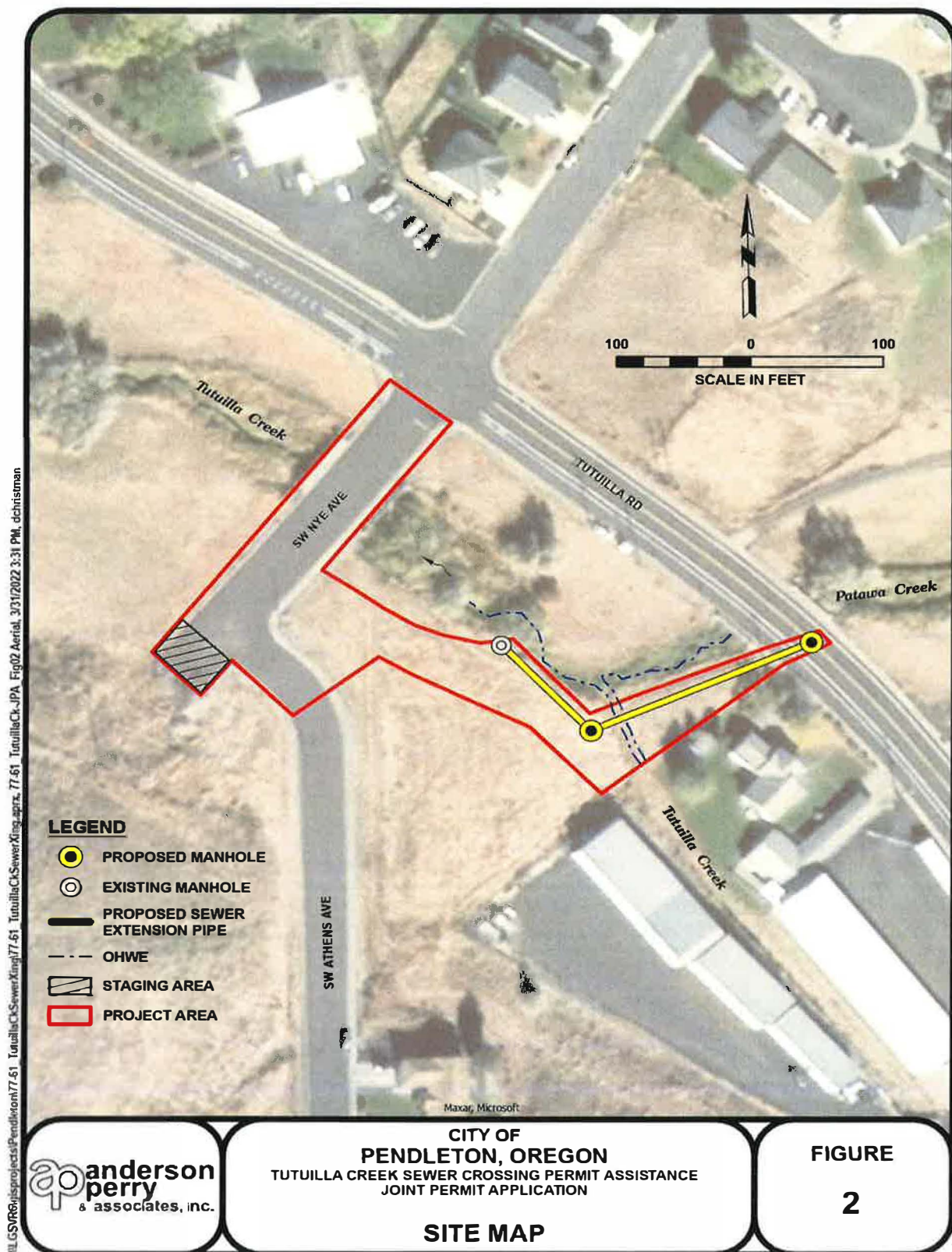
ATTACHMENT B

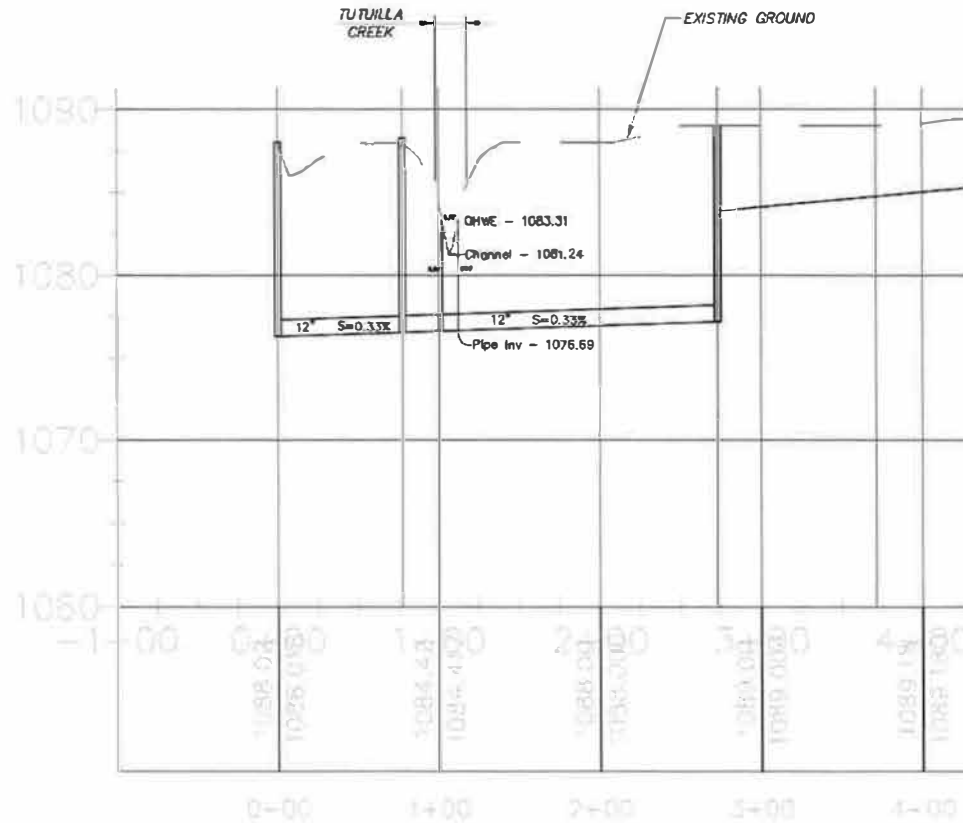
Permit Holder: City of Pendleton

Project Name: Tutuilla Creek Sewer Crossing

Maps and Drawings for Removal/Fill Permit No. 63796-RF







**anderson
perry**
& associates, inc.

**CITY OF
PENDLETON, OREGON**
TUTUILLA CREEK SEWER CROSSING PERMIT ASSISTANCE
JOINT PERMIT APPLICATION

FIGURE

5

REMOVAL/FILL BELOW OHWE





DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OR 97208-2946

August 11, 2022

Regulatory Branch
Corps No. NWP-2022-172

Mr. Bob Patterson
City of Pendleton
500 SW Dorion Avenue
Pendleton, Oregon 97801
bob.patterson@ci.pendleton.or.us

Dear Mr. Patterson:

The U.S. Army Corps of Engineers (Corps) received your request for Department of the Army authorization to place fill within 30 square feet of Tutuilla Creek to install a sewer line. The project is proposed in Tutuilla Creek located adjacent to SW Nye Avenue near Pendleton, Umatilla County, Oregon at Latitude/Longitude: 45.654130°, -118.794458°. This letter verifies your project as depicted on the enclosed drawings (Enclosure 1) is authorized by Nationwide Permit (NWP) No. 58, Utility Line Activities for Water and Other Substances (Federal Register, January 13, 2021, Vol. 86, No. 8).

The permittee is authorized to discharge 7 cubic yards of fill material within 30 square feet of Tutuilla Creek to install a sewer line. The permittee will excavate a 10-foot by 3-foot trench across the waterway, install the 12-inch sewer line, and backfill the trench with the native material. All excavated material will be temporarily stockpiled in the adjacent uplands.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed Nationwide Permit 58 Terms and Conditions (Enclosure 2); the Oregon Department of Environmental Quality (DEQ) 401 Water Quality Certification Conditions (Enclosure 3); and the following special conditions.

a. This Corps permit does not authorize you to take an endangered species in particular those species identified in Enclosure 4. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a biological opinion under ESA Section 7, with "incidental take" provisions with which you must comply). The National Marine Fisheries Service (NMFS) Stormwater, Transportation and Utilities programmatic biological opinion dated March 14, 2014 (NMFS Reference Number NWR-2013-10411), contains the mandatory terms and conditions to implement the reasonable and prudent measures that are provided in the "incidental take" statement associated with the

opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the applicable mandatory terms and conditions associated with the incidental take statement. Failure to comply with the applicable terms and conditions associated with incidental take of this opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its opinion and with the ESA.

b. Permittee shall fully implement all applicable Project Design Criteria (PDC) of the SLOPES V Stormwater, Transportation and Utilities programmatic biological opinion. A detailed list of the PDCs are enclosed (Enclosure 4). The applicable PDCs for the project include numbers: 5-7, 13-14, 18, 23, 25-27, 30-31, 33, and 43a-b.

c. Permittee shall complete and submit an Action Completion Report form, which is provided in Enclosure 4, within 60 days of completing all work below ordinary high water. Submit the form by email to cenwp.notify@usace.army.mil and include the Corps project number and county in the email subject line.

d. This Corps permit does not authorize you to take an endangered species, in particular the Bull Trout (*Salvelinus confluentus*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a biological opinion under ESA Section 7, with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service (USFWS) programmatic biological opinion dated June 29, 2017 (USFWS Reference Number 01EOFW00-2017-F-0370), titled Formal Consultation for Standard Local Operating Procedures for Endangered Species to Administer Stream Restoration; Stormwater, Transportation, or Utilities Actions; and In-Water or Over-Water Structure Actions and Effects to Bull trout and Bull Trout Critical Habitat (USFWS Bull Trout SLOPES) (Enclosure 5), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the "incidental take" that is also specified in the opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the applicable mandatory terms and conditions associated with the incidental take statement. Failure to comply with the applicable terms and conditions associated with incidental take of this opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with your Corps permit. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its opinion and with the ESA.

e. Permittee shall fully implement all applicable Project Design Criteria (PDC) of the USFWS Bull Trout SLOPES. A detailed list of the PDCs are enclosed (Enclosure 5).

The applicable PDCs for the project include numbers: 1-7G, 9-10G, 16G, 20-21G, 24G, and 3S.

f. Permittee shall complete and submit an Action Completion Form, which is provided in Enclosure 5, within 60 days of completing all work below ordinary high water. Submit the form by email to cenwp.notify@usace.army.mil and include the Corps project number and county in the email subject line.

g. All in-water work shall be performed during the in-water work period of July 1st to September 30th to minimize impacts to aquatic species. Exceptions to this time period requires specific approval from the Corps, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. The requirements of the Endangered Species Act were met through a programmatic biological opinion as listed in the special condition above. The complete text of the biological opinion is available for your review on our website (<https://www.nwp.usace.army.mil/environment/>). We have determined the project complies with the requirements of these laws provided you comply with all of the permit general conditions.

The DEQ has issued a 401 Water Quality Certification for this project. No further coordination with DEQ is required provided the work is performed in accordance with all of the enclosed conditions.

The Corps did not prepare a jurisdictional determination for this project. The Corps has treated the aquatic resource(s) to be affected by this project as jurisdictional waters of the U.S. If you believe the Corps does not have jurisdiction over some or all of the aquatic resources at the project site, you may request an Approved Jurisdictional Determination (AJD). If one is requested, please be aware that we may require the submittal of additional information to complete the AJD and work authorized in this letter may not occur until the Corps completes the AJD.

The verification of this NWP is valid until March 14, 2026, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 14, 2026, you will have until March 14, 2027, to complete the activity under the enclosed terms and conditions of this NWP. If the work cannot be completed by March 14, 2027, you will need to obtain a new NWP verification or authorization by another type of Department of the Army permit.

Our verification of this NWP is based on the project description and construction methods provided in your permit application. If you propose changes to the project, you must submit revised plans to this office and receive our approval of the revisions prior to performing the work. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act. You must also obtain all local, state, and other federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Compliance Certification* form (Enclosure 4). We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form available on our website (<https://regulatory.ops.usace.army.mil/customer-service-survey/>).

If you have any questions regarding this NWP verification, please contact Mr. Trey Fraley by telephone at (503) 808-4632 or by email at robert.h.fraley@usace.army.mil.

FOR THE COMMANDER, MICHAEL D. HELTON, PMP, COLONEL, CORPS OF ENGINEERS, DISTRICT COMMANDER:



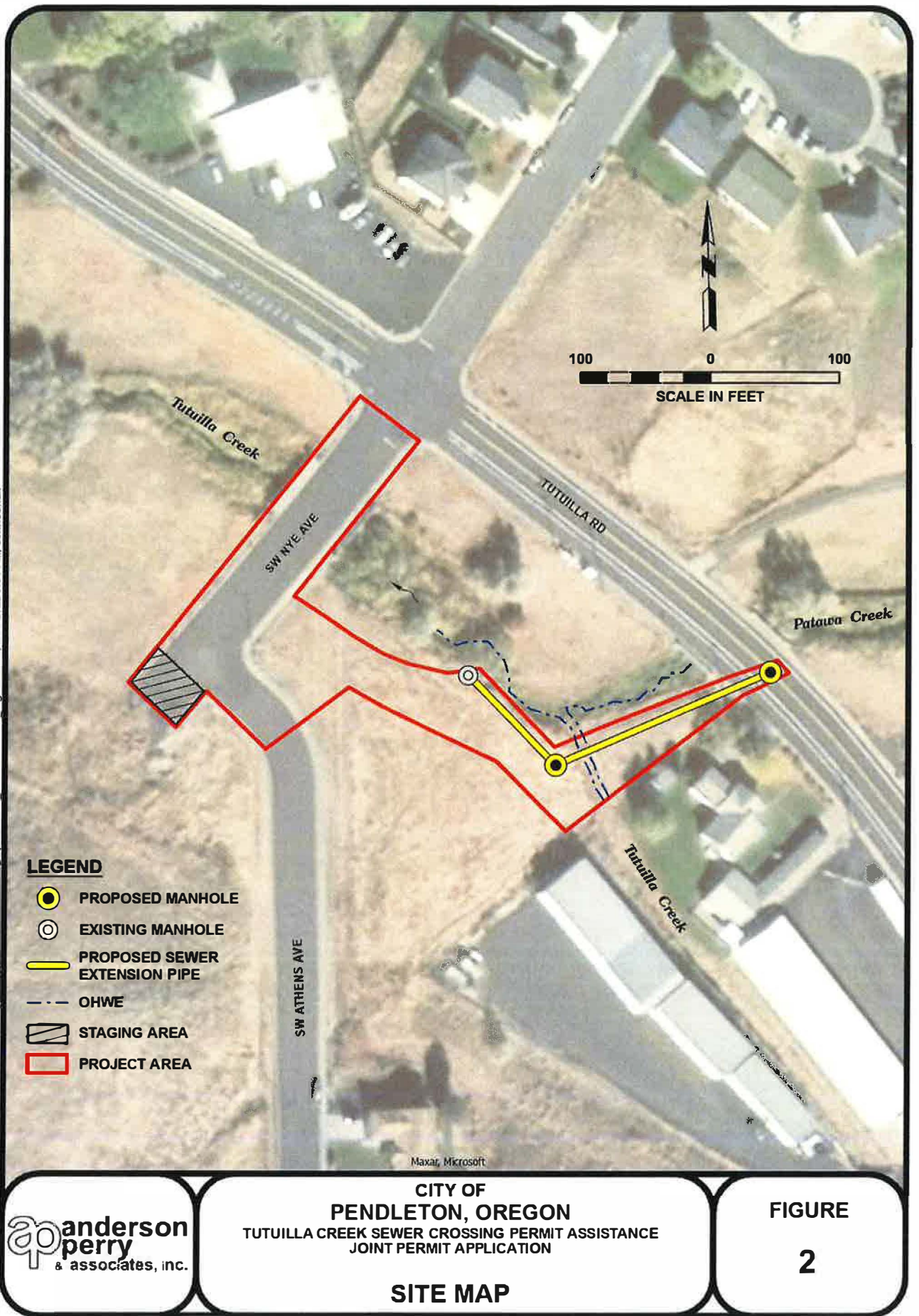
For: William D. Abadie
Chief, Regulatory Branch

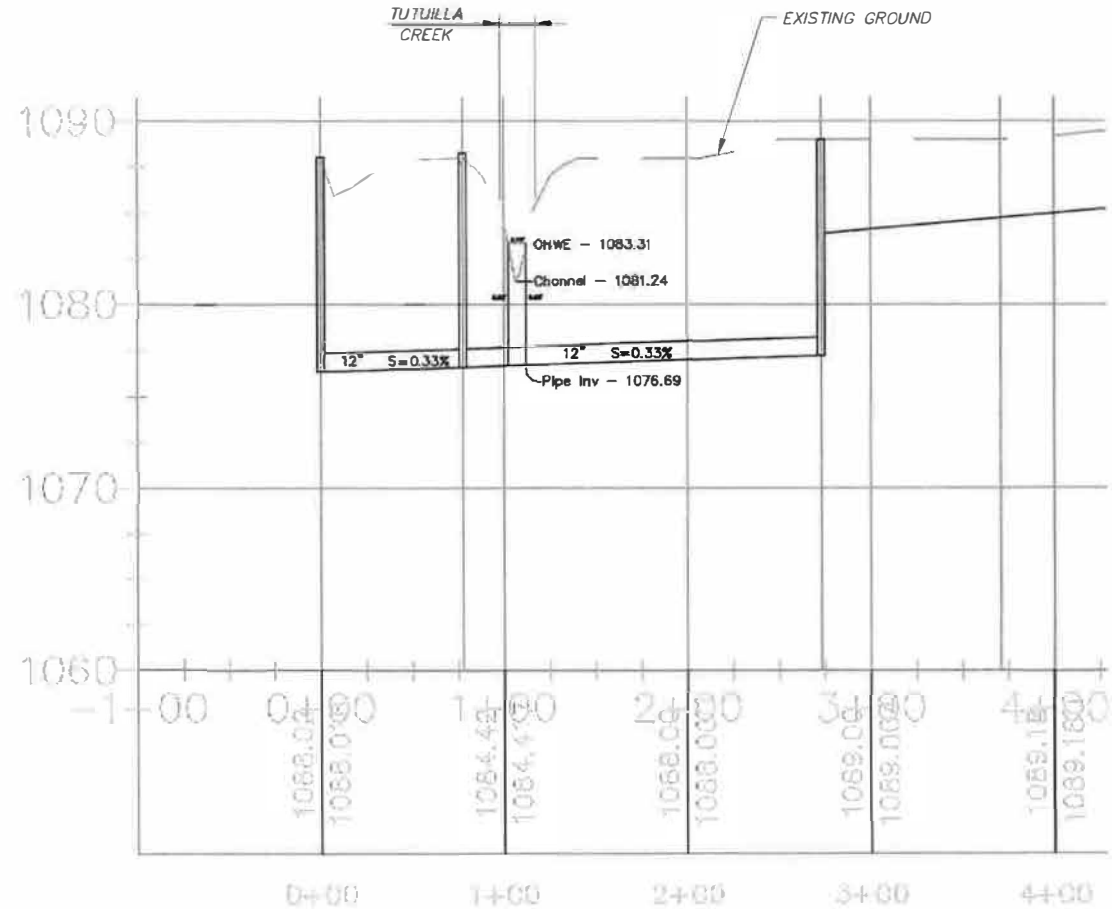
Enclosures

cc:

Anderson Perry & Associates Inc (Dana Kurtz, dkurtz@andersonperry.com)
Oregon Department of State Lands (Richard Fitzgerald,
Richard.W.Fitzgerald@dsl.oregon.gov)
Oregon Department of Environmental Quality (401applications@deq.oregon.gov and Ari
Sindel, ari.sindel@deq.oregon.gov)

\\LGSVR6\gis\projects\pendleton\77-61 TutuillaCkSewerXing\77-61 TutuillaCk-JPA Fig02 Aerial, 3/31/2022 3:31 PM, dchristman





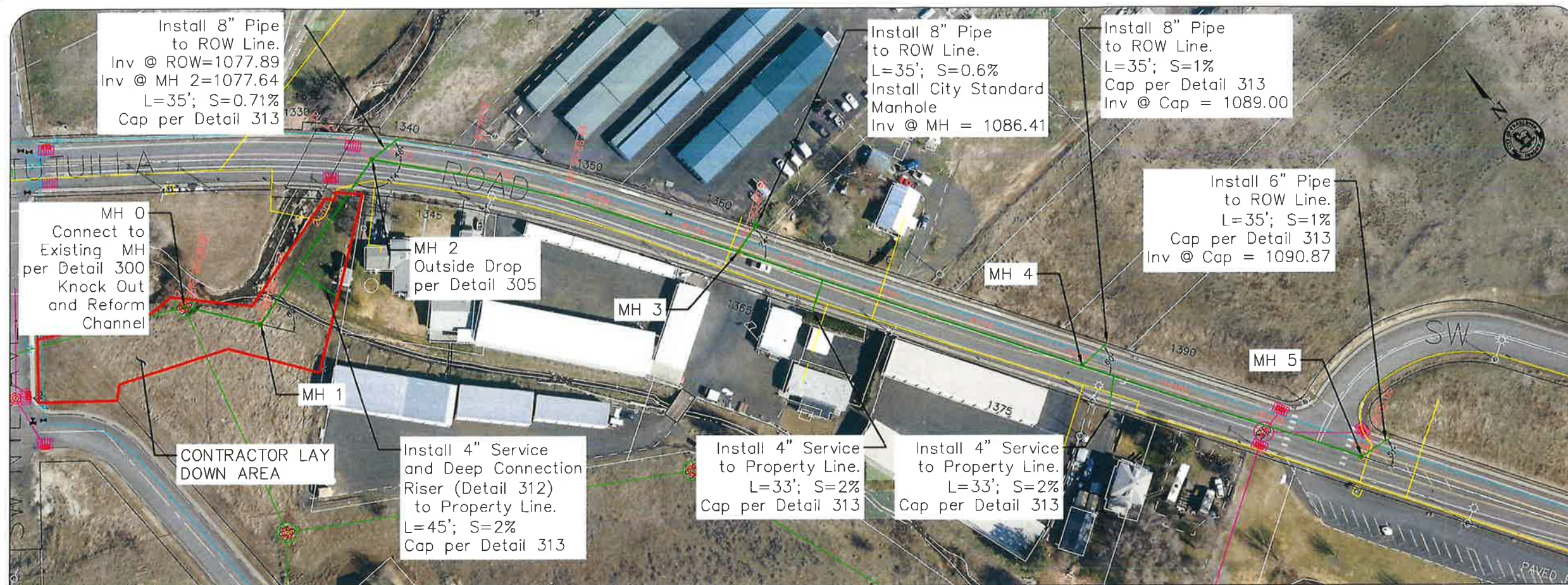
ap anderson
perry
& associates, inc.

CITY OF
PENDLETON, OREGON
TUTUILLA CREEK SEWER CROSSING PERMIT ASSISTANCE
JOINT PERMIT APPLICATION

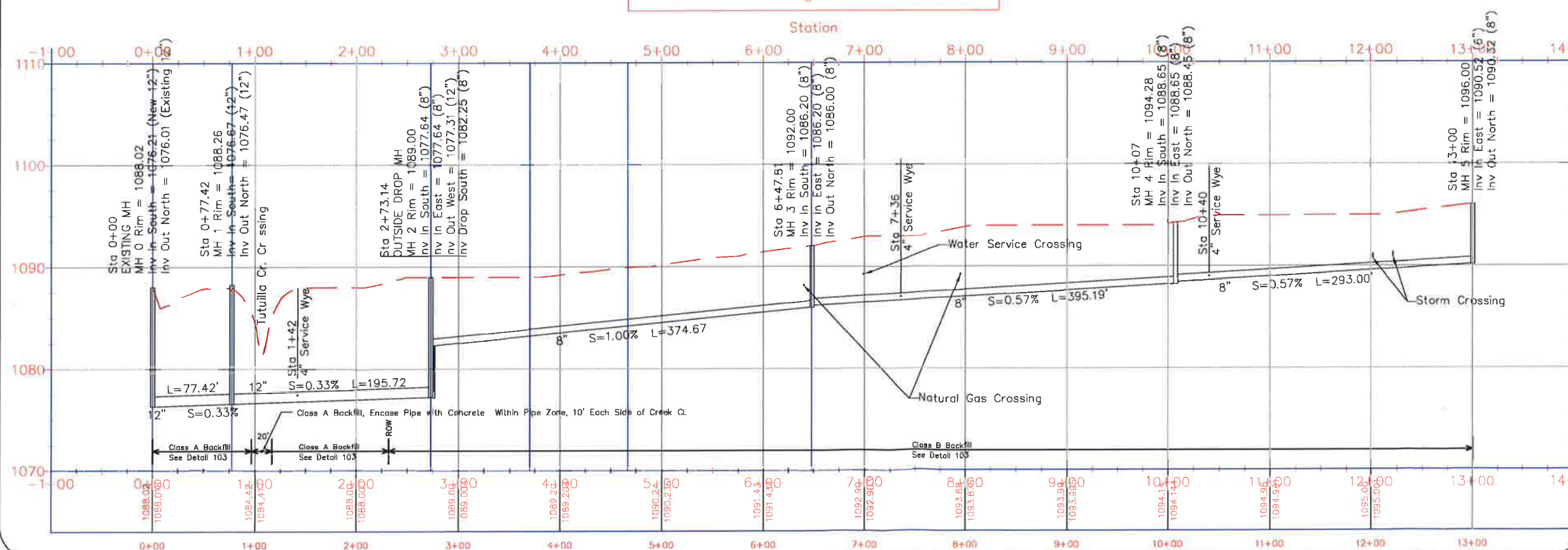
FIGURE

5

REMOVAL/FILL BELOW OHWE



New Sewer Alignment PROFILE



General Notes

BAR IS ONE INCH ON ORIGINAL DRAWING.
0 1"
IF NOT ONE INCH ON THIS SHEET, ADJUST SCALE ACCORDINGLY.



RENEWAL:
SIGNED:

No.	Revision/Issue	Date

Firm Name and Address

CITY OF PENDLETON
ENGINEERING DEPT
500 SW DORION AVE.
PENDLETON, OR 97801
(541) 966-0203

Project Name and Address

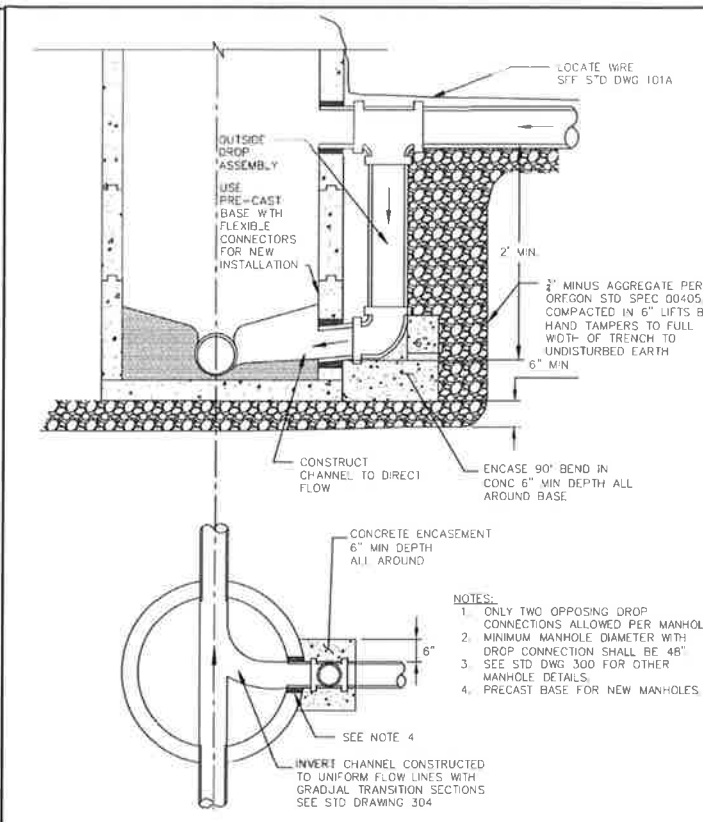
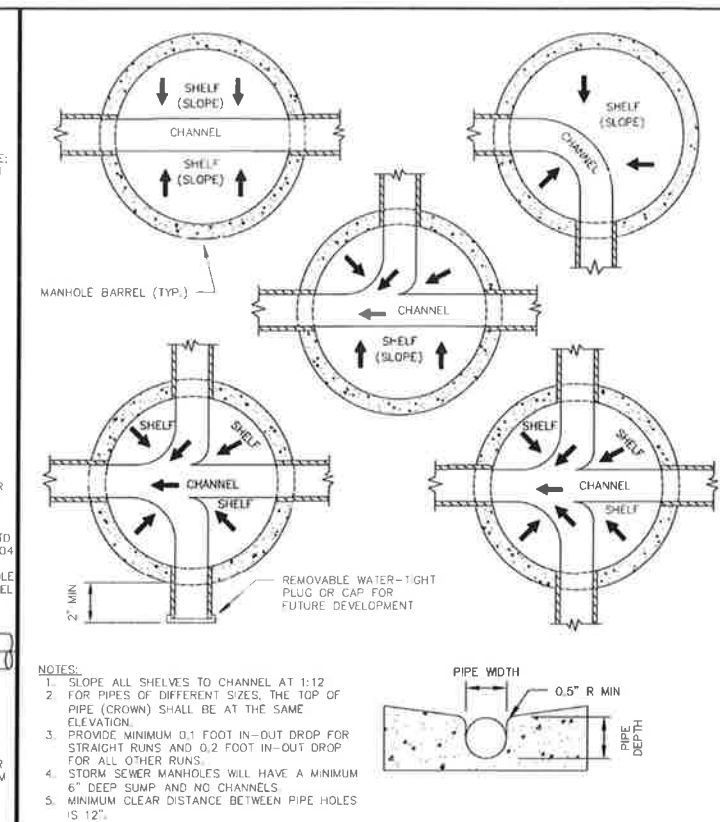
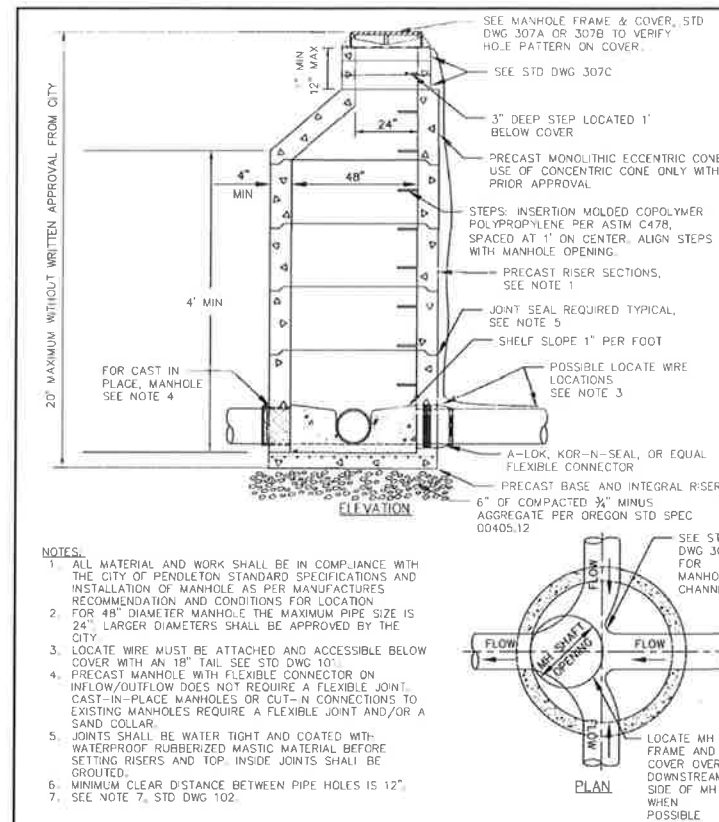
Project
TUTUILLA_SEWER

Date
AUG_2022

Scale
1"=60'(H)

Sheet

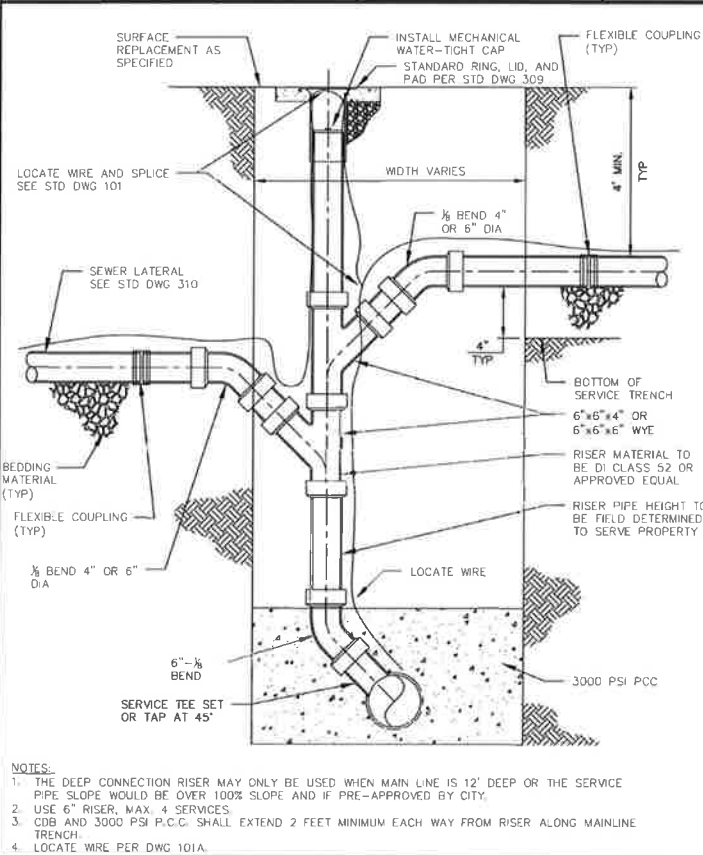
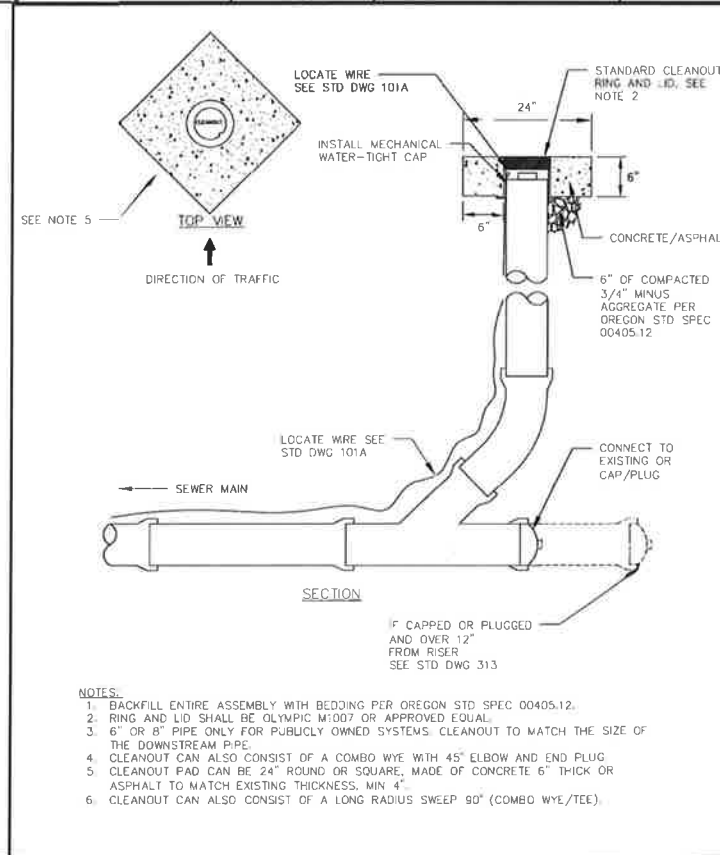
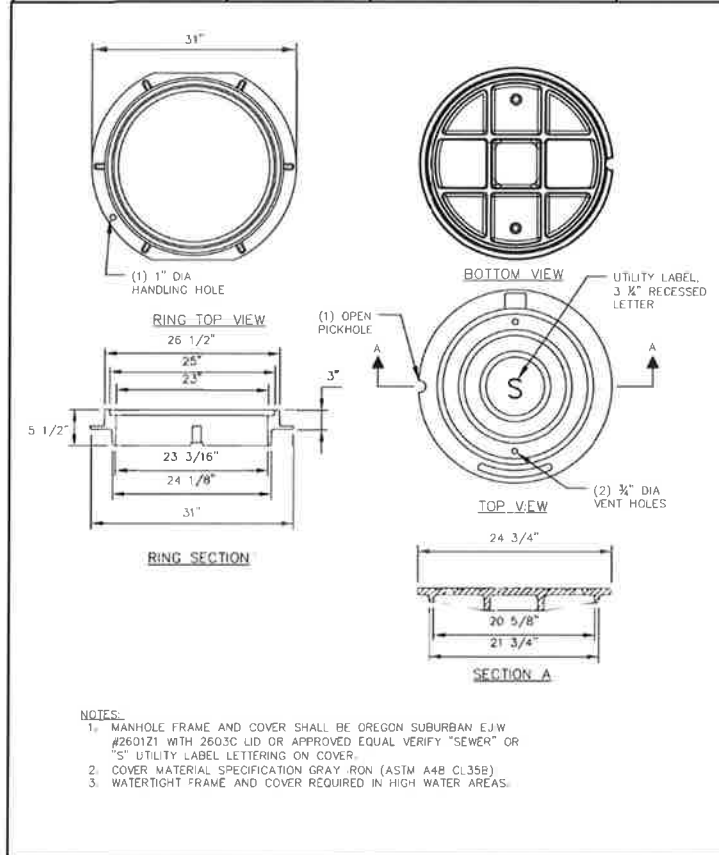
S-1



	APPROVED BY FEBRUARY 2019 APPROVAL DATE REVISED DATE	STANDARD 48" MANHOLE	NO SCALE DWG NO. 300

	APPROVED BY FEBRUARY 2019 APPROVAL DATE REVISED DATE	STANDARD MANHOLE CHANNEL	NO SCALE DWG NO. 304

	APPROVED BY FEBRUARY 2019 APPROVAL DATE REVISED DATE	STANDARD OUTSIDE DROP SEWER MANHOLE	NO SCALE DWG NO. 305



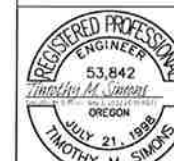
	APPROVED BY FEBRUARY 2019 APPROVAL DATE REVISED DATE	SEWER MANHOLE FRAME AND COVER	NO SCALE DWG NO. 307A

	APPROVED BY FEBRUARY 2019 APPROVAL DATE REVISED DATE	STANDARD CLEANOUT	NO SCALE DWG NO. 309

	APPROVED BY FEBRUARY 2019 APPROVAL DATE REVISED DATE	DEEP CONNECTION RISER	NO SCALE DWG NO. 312

General Notes

BAR IS ONE INCH ON ORIGINAL DRAWING.
 0 1"
 IF NOT ONE INCH ON THIS SHEET, ADJUST SCALE ACCORDINGLY.



RENEWAL:
 SIGNED: _____

No.	Revision/Issue	Date

Firm Name and Address

CITY OF PENDLETON
 ENGINEERING DEPT
 500 SW DORIAN AVE.
 PENDLETON, OR 97801
 (541) 966-0203

Project Name and Address

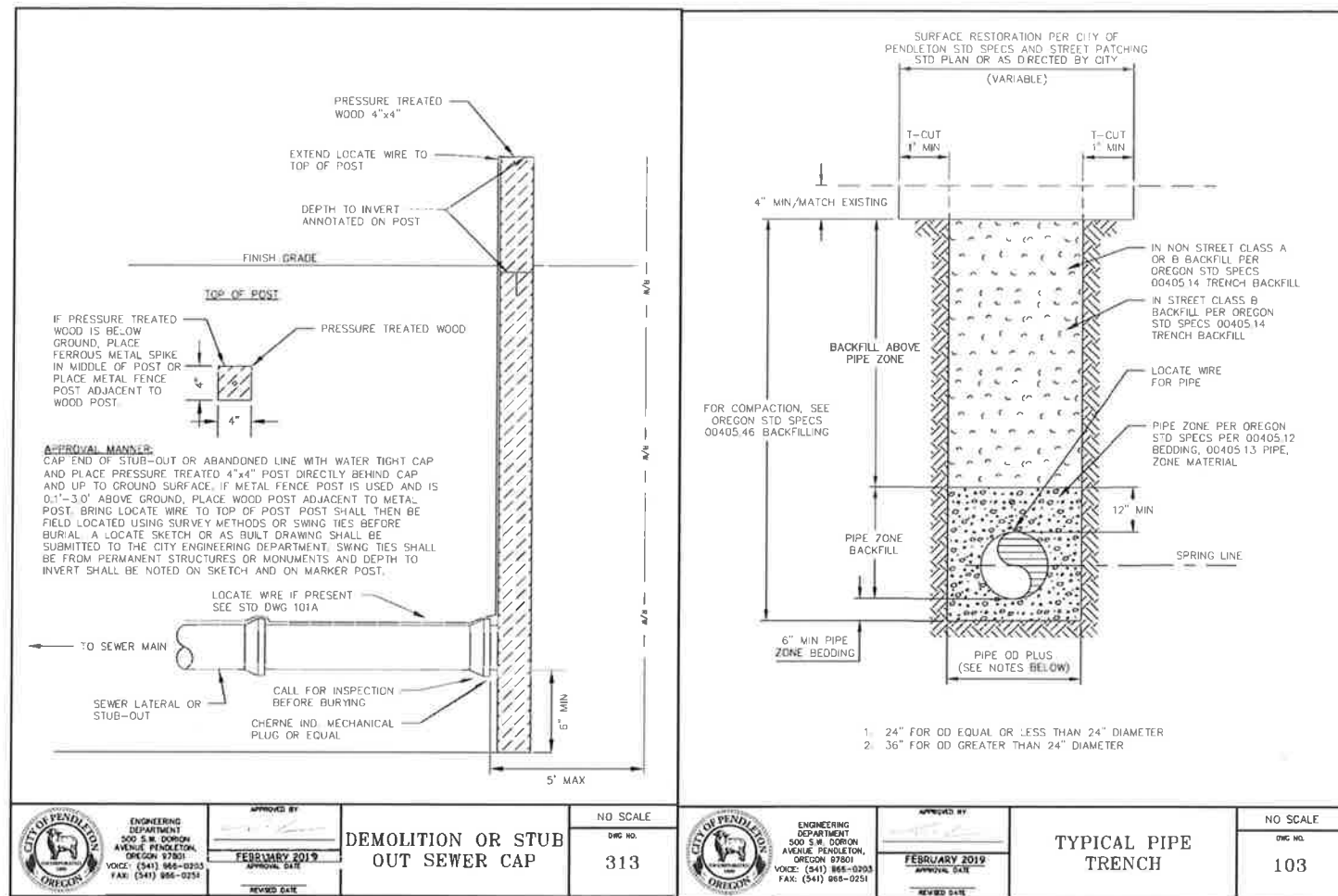
Project
 TUTUILLA SEWER

Date
 AUG 2022

Scale
 SCALE

Sheet

S-2



General Notes

BAR IS ONE INCH ON ORIGINAL DRAWING.
0 1"
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RENEWAL: _____
SIGNED: _____

No.	Revision/Issue	Date

Firm Name and Address

CITY OF PENDLETON
ENGINEERING DEPT
500 SW DORION AVE.
PENDLETON, OR 97801
(541) 966-0203

Project Name and Address

Project
TUTUILLA_SEWER

Date
AUG_2022

Scale
SCALE

Sheet

S-3