

**ADDENDUM NO. 2**

**CITY OF PENDLETON**

**Airport Reservoir and Booster Pump Station Project  
Issued: November 22, 2021**

**Bid Opening Date: DECEMBER 9, 2021 @ 2:00 pm**

**TO ALL PLANHOLDERS:**

**This Addendum provides the following clarifications/revisions, corrections and changes to the Bid Documents. All bidders shall acknowledge receipt and acceptance of this Addendum by completing the spaces and signing where indicated below and submitting it with the Proposal. Bids submitted without signing for the Addendum may be considered informal.**

CITY OF PENDLETON



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Bob Patterson, PE  
Public Works Director  
City of Pendleton  
500 SW Dorion Avenue  
Pendleton, OR 97801

**BIDDER'S ACKNOWLEDGMENT:**

\_\_\_\_\_  
Company Name (please print)

\_\_\_\_\_  
Bidder's Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State

**ADDENDUM NO. 2**  
**TO THE**  
**CONTRACT DOCUMENTS**  
**FOR**  
**NEW AIRPORT RESERVOIR AND BOOSTER STATION**  
**FOR**  
**THE CITY OF PENDLETON, OREGON**

THIS ADDENDUM IS HEREBY MADE A PART OF THE CONTRACT DOCUMENTS TO THE SAME EXTENT AS THOUGH IT WERE ORIGINALLY INCLUDED THEREIN.

BIDDERS MUST ACKNOWLEDGE RECEIPT OF ALL ADDENDA ON THE BID PROPOSAL FORM. BID PROPOSALS THAT FAIL TO ACKNOWLEDGE ALL ADDENDA MAY BE CONSIDERED IRREGULAR AND MAY BE REJECTED.

ISSUED THIS 22ND DAY OF NOVEMBER 2021.

**MURRAYSMITH**  
888 SW 5th, Suite 1170  
Portland, OR 97204  
(503) 225-9010

**ITEM NO. 1 – INFORMATION FOR BIDDERS, SECTION 6, BIDDER’S QUALIFICATIONS**

- A. **REPLACE** Section 6, Bidder’s Qualifications, in its entirety and with the attached Section 6, Bidder’s Qualifications - ADDENDUM NO. 2, 11/22/2021.

For clarification, the following modifications have been made to the Bidder’s Qualifications:

1. Minimum Experience Requirement has been modified from the successful completion of a minimum of three (3) Reference Projects as the Prime Contractor for the installation of a publicly owned Water Reservoir and/or Booster Pump Station with at least one original contract amount greater than \$6,000,000 within the past seven (7) years to at least one final contract amount greater than \$4,000,000 within the past seven (7) years.
2. An additional Minimum Experience Requirement for the Bidder to have successfully completed a minimum of two (2) municipal utility projects with a final contract amount greater than \$1,000,000 within the past seven (7) years.
3. A second page for noting Reference Projects has been provided.

**ITEM NO. 2 - INFORMATION FOR BIDDERS, SECTION 14, SPECIAL CONDITIONS**

- A. **REPLACE** Section 14, Special Conditions, in its entirety with the attached Section 14, Special Conditions - ADDENDUM NO. 2, 11/22/2021.

For clarification, the following modifications have been made to the Special Conditions:

1. The insertion of Article 10, Application for Payment, on page 2 of 7.
2. Renumbering of subsequent articles of the Special Conditions.

**BIDDER'S QUALIFICATIONS**  
**(To be submitted with Bid)**

**Bidder's shall complete this Bidder's Qualifications Document and submit it with their Bids, along with Statements of Qualifications Forms for the following specialty contractors: 1) Reservoir Contractor, 2) Tank Painting Contractor, 3) Transmission Main Contractor, and 4) Controlled Blasting Contractor found in this Section. Additional pages may be provided, but this form shall be filled out completely.**

Murraysmith is the owner's design consultant for this project. Below is a list of Murraysmith's prequalified Tank Contractors and Tank Painting Contractors for this project. These companies have all completed Murraysmith's SOQ review and approval process and/or have successfully completed at least one Murraysmith-designed project to make this list.

**Reservoir Contractors:**

1. McDermott (CB&I Storage Solutions), Everett, WA
2. T Bailey, Inc., Anacortes, WA
3. Paso Robles Tank, Inc., Paso Robles, CA

**Tank Painting Contractors:**

1. Coatings Unlimited, Inc., Kent, WA
2. S & K Painting, Inc., Oregon City, OR
3. J & L Co. Northeast, Inc., Spokane, WA
4. HCI Industrial & Marine Coatings, Inc., Brush Prairie, WA
5. Long Painting Company, Portland, OR
6. Purcell Painting & Coatings, Vancouver, WA
7. National Industrial Painting, Inc, University Place, WA
8. Coastal Services, Inc., Vancouver, WA

**For prequalification approval, Murraysmith will review Statement of Qualification Forms, included in this Section, to be submitted on or before 5:00 pm local time Monday, November 29, 2021. Completed SOQ Forms can be submitted by PDF via email to the Murraysmith Project Manager, Lael Alderman, at this email address:**

**[Lael.Alderman@murraysmith.us](mailto:Lael.Alderman@murraysmith.us)**

An addendum listing all prequalified contractors will be issued by the close of Thursday, December 2, 2021 for 1) Reservoir Contractors, 2) Tank Painting Contractors, 3) Transmission Main Contractors, and 4) Controlled Blasting Contractors.

**ALL BIDS MUST BE SUBMITTED WITH PREQUALIFIED SPECIALTY CONTRACTORS NOTED ON THE BID PROPOSAL FORM.** If a prequalified specialty contractor is not noted in the Addendum issuance, Bidder must submit a Statement of Qualifications for the specialty contractor with their bid and it will be assessed as part of the Proposal. (see attached forms)

**IF A BID IS SUBMITTED WITHOUT NOTING PREQUALIFIED SPECIALTY CONTRACTORS,** that bid will be deemed NON-RESPONSIVE and be REJECTED. In the absence of a specialty contractor not being listed in the Addendum issuance, a Statement of Qualification must also be submitted with the Bid for the specialty contractor consideration and will be reviewed with the Bid Proposal and Bidder's Qualifications. **ALL BIDS MUST INCLUDE REFERENCE TO THE FOUR SPECIALTY CONTRACTORS TO BE DEEMED RESPONSIVE AND NOT BE REJECTED.**

**BIDDER'S QUALIFICATIONS**

Due to the nature of this project, the Owner has determined that two minimum Bidder Qualifications criteria must be met for a Bid to be considered responsive.

These include:

1. **Minimum Experience Requirement:** Bidders shall have successfully completed a minimum of three (3) Reference Projects as the Prime Contractor for the installation of a publicly owned Water Reservoir and/or Booster Pump Station with at least one final contract amount greater than \$4,000,000 within the past seven (7) years. Additionally, Bidders shall have successfully completed a minimum of two (2) municipal utility projects with a final contract amount greater than \$1,000,000 within the past seven (7) years. Completion shall be measured by the date the project was determined to be substantially complete by the Owner.
  
2. **Project Manager and Onsite Construction Superintendent:** The Bidder shall provide an experienced Project Manager and Onsite Construction Superintendent that has served in the same role a minimum of one of the three Reference Projects while employed by the Bidder. Attach a detailed resume and current workload summary for the proposed Project Manager and Onsite Construction Superintendent. No substitution of the Project Manager and Onsite Construction Superintendent shall be allowed by the Owner at any time during construction. The Owner reserves the right to approve the Contractor's proposed Project Manager and Onsite Construction Superintendent. The Owner reserves the right to request a formal interview with the Bidder's proposed Project Manager and Onsite Construction Superintendent prior to award of the Contract.

Failure to provide Qualifications acceptable to the Owner may result in the Bid being declared non-responsive by the Owner. Determination of a non-responsive Bid shall be at the sole discretion of the Owner.

Owner reserves the right with final payment to deduct \$75,000 if the Project Manager and/or Onsite Construction Superintendent leave the project prior to substantial completion issuance and provide \$25,000 bonus if they stay.

**BIDDER'S GENERAL RECORD OF EXPERIENCE:**

The Bidder has been engaged in the contracting business, under the present business name for \_\_\_\_\_ years and has completed work of a similar nature in the proposal over a period of \_\_\_\_\_ years.

The Bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to him, except as follows (Attach additional pages if required):

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**REFERENCE PROJECTS:**

The Bidder shall complete this form with the required information, demonstrating compliance with the minimum experience requirements summarized herein and in the Bid Proposal. Reference projects shall have been completed within the past seven (7) years. Provide general and contact information for additional due diligence by the OWNER prior to award of the Contract.

1.

Project Name	Owner & Project Representative with Phone Number
Project Description	Year Completed
Original Bid Amount	Final Contract Amount
Project Manager	
Onsite Construction Superintendent/Foreman	

2.

Project Name	Owner & Project Representative with Phone Number
Project Description	Year Completed
Original Bid Amount	Final Contract Amount
Project Manager	
Onsite Construction Superintendent/Foreman	

3.

Project Name	Owner & Project Representative with Phone Number
Project Description	Year Completed
Original Bid Amount	Final Contract Amount
Project Manager	
Onsite Construction Superintendent/Foreman	

4.

Project Name	Owner & Project Representative with Phone Number
Project Description	Year Completed
Original Bid Amount	Final Contract Amount
Project Manager	
Onsite Construction Superintendent/Foreman	

5.

Project Name	Owner & Project Representative with Phone Number
Project Description	Year Completed
Original Bid Amount	Final Contract Amount
Project Manager	
Onsite Construction Superintendent/Foreman	

6.

Project Name	Owner & Project Representative with Phone Number
Project Description	Year Completed
Original Bid Amount	Final Contract Amount
Project Manager	
Onsite Construction Superintendent/Foreman	

**PROJECT MANAGER:**

The Bidder's proposed Project Manager that will be the Bidder's primary representative throughout construction is \_\_\_\_\_, who has completed \_\_\_\_\_ similar projects. A resume is attached.

**ONSITE CONSTRUCTION SUPERINTENDENT:**

The Bidder's proposed Onsite Construction Superintendent that will be the Bidder's primary representative throughout construction is \_\_\_\_\_, who has completed \_\_\_\_\_ similar projects. A resume is attached.

Signed: \_\_\_\_\_  
(Same signature as on bid proposal form)

END OF BIDDER'S QUALIFICATIONS



## 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 Public Works 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 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 8.00)** 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. **Application for Payment**

After presentation of the application for payment to Owner with Engineer's recommendation, the amount recommended (subject to Owner set-offs) will become due upon Owner's deposit receipt of State Revolving Funds (typically 14 but up to 28 calendar days) or 35 calendar days, whichever comes first.

11. 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.

12. 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.**

13. 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.

14. 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 10 hours in any one day, or 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 hours a day or 40 hours in any one week when the work week is five 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 10 hours a day or 40 hours in any one week when the work week is four 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) Thanksgiving Day on the fourth Thursday in November.
  - (vii) Christmas Day on December 25.
- 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)

**15.** 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)

**16.** 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) or the applicable Federal Davis-Bacon Wage Rates as set forth under the Davis-Bacon and Related Acts (40 U.S.C. 3141 et seq.), **whichever is higher**. All bidders must comply and agree that the requirements and conditions of employment be observed and prevailing wage rates, as established by the U.S. Department of Labor and the Oregon Bureau of Labor and Industries be paid under this Contract. (See Sections 16.00 and 17.00)

U.S. Department of Labor wage determinations may be obtained online at: <https://sam.gov/content/wage-determinations> or <https://beta.sam.gov>. See Section 16.00 for a copy of the wage determinations in effect on June 18, 2021.

The existing prevailing wage rates in effect on July 1, 2021, including any appropriate amendments, are as published by the Oregon Bureau of Labor and Industries. (See Section 17.00) Copies of the existing prevailing wages are also available online at [www.oregon.gov/boli](http://www.oregon.gov/boli) or upon request by calling (971) 673-0839.

**17.** 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.

**18.** 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

**19. 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.

**20. 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.

**21.** 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.

**22.** 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.

**23.** 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.

**24.** This agreement and the parties 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.

**25.** Normal working hours are Monday through Friday, 8:00 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.

**26.** 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.

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

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

**30. 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.

**31. 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)**

**32. 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>

**33.** 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.

**34. 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.

**35. 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](http://www.oregonlegislature.gov)

For information about DOR requirements, contact: [www.oregon.gov/DOR](http://www.oregon.gov/DOR)

**36.** 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.

DATED: \_\_\_\_\_, 2022.

Contractor: \_\_\_\_\_

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