



Home of the Tualatin River National Wildlife Refuge

REQUEST FOR PROPOSAL (RFP)

CITY OF SHERWOOD, OREGON REQUEST FOR PROPOSALS PRE-MANUFACTURED PEDESTRIAN BRIDGE 99W PEDESTRIAN CROSSING PROJECT Project No. 334

Proposals due Friday, June 18th, 2021 at 4:00 PM (local time)



Owner:

City of Sherwood

Engineering Department

22560 SW Pine Street

Sherwood, OR 97140 www.sherwoodoregon.gov/bids

TABLE OF CONTENTS

- I.** GENERAL INFORMATION
- II.** GENERAL SCOPE OF WORK
- III.** RFP SUBMITTAL DATE AND SUBMITTAL REQUIREMENTS
- IV.** CITY'S RIGHT TO ACCEPT, REJECT AND AWARD PROPOSALS
- V.** PRE-PROPOSAL INTERPRETATIONS
- VI.** CONTRACT PAYMENT SCHEDULE
- VII.** INSURANCE COVERAGE
- VIII.** CONTRACT REQUIREMENTS
- IX.** PROPOSAL INSTRUCTIONS
- X.** EVALUATION CRITERIA
- XI.** APPENDIX - SAMPLE CONTRACT FOR CONSTRUCTION SERVICES

CITY OF SHERWOOD, OREGON
REQUEST FOR PROPOSALS
PRE-MANUFACTURED PEDESTRIAN BRIDGE
99W PEDESTRIAN CROSSING PROJECT
Project No. 334

I. GENERAL INFORMATION

In June of 2014, the City of Sherwood adopted its updated Transportation Master Plan (MP), which provides guidance on transportation growth for the next 20 year planning cycle. Part of the MP included fifty-one project listings for pedestrian connectivity and safety, and two Hwy 99W intersection transportation improvement projects. The MP boundary was set to the existing City Limits and Urban Growth Boundary.

In 2017, the Sherwood School District brought forth plans to construct a 2,400 student Senior High School on the west side of Highway 99W, west of Elwert Road and north of Kruger Road. At that time, the area was located outside the City limits and UGB boundary, but within the City's Urban Reserves area. As such, the MP could not and did not include any impacts from the future development of this area within the MP's 2035 planning year.

Because the majority of the High School student population is located east of Highway 99W, particularly along the Sunset Boulevard corridor, the City is concerned with how to ensure residents of all ages can safely cross 99W in this vicinity. Therefore, at the direction of City Council, the Sherwood Engineering Department has been tasked with overseeing the development of 100% design level plans for a prefabricated pedestrian bridge over the Pacific Highway located near its intersection with SW Elwert Road and SW Sunset Boulevard.

Preliminary feasibility work has been conducted that identifies the project components including a 620 foot total length span(s) over both Highway 99W and Elwert Road with access ramps and stairs.

Subsequent to the feasibility study being completed, the City determined that utilizing pre-fabricated bridge structures would be the most cost effective method.

II. GENERAL SCOPE OF WORK

The City of Sherwood is seeking the services of a qualified pre-fabricated bridge contractor to perform the following:

1. Prepare a complete pre-fabricated pedestrian bridge design package, including cost estimates for fabrication, transport to the project site, and construction installation of the bridge. The concept plan identified a total span of approximately 620 feet in two (minimum) span segments. It will be the contractors responsibility to confirm the actual number of spans as part of the design process.
2. Coordination with a civil engineering firm under a separate contract with the City of Sherwood to provide design requirements for the pedestrian bridge access ramps and stairs, and bridge footings/foundations between the bridge structure and the public sidewalks and right-of-way.
3. Conduct public outreach process during the pre-fabricated bridge design task, which may include:
 - a. Two (2) City Council work session presentations to confirm pre-fabricated bridge design assumptions (i.e., style, color, materials, lighting, etc.).

- b. One (1) public open house to present bridge design options and obtain comments.
 - c. One (1) City Council public presentation of final bridge design plan.
4. Utilizing the existing project concept plan and City Council recommendations, prepare 100% design plans for a pre-fabricated pedestrian bridge which meet ODOT, Washington County, and City design standards for use within State, County and City right-of-way.
 5. Coordinate and utilize the topographical survey and geotechnical information provided by the civil engineering firm contracted to perform the site civil design.
 6. Prepare a 100% design plan estimate that includes design and fabrication costs, permitting costs, transport costs, construction/installation/inspection costs, any other miscellaneous costs that may be incurred by the bridge manufacturer.
 7. Perform initial project management services towards obtaining the necessary jurisdictional agency permits for working within various jurisdictional right-of-ways, public and private easements, and vegetated corridors.

III. RFP SUBMITTAL DATE AND SUBMITTAL REQUIREMENTS

Submit one (1) original and four (4) copies as well as a PDF version saved on a thumb drive of the consultant's proposal in an envelope marked as follows:

**CITY OF SHERWOOD, OREGON
REQUEST FOR PROPOSAL
PRE-MANUFACTURED PEDESTRIAN BRIDGE
99W PEDESTRIAN CROSSING PROJECT**

Project No. 334

Addressed to: City of Sherwood
Engineering Department
22560 SW Pine Street
Sherwood, Oregon 97140
Attention: Robert Galati, P.E., City Engineer

Project Manager is Craig Christensen, P.E., Civil Engineer

All proposals must be received no later than 4:00 p.m. (local time), June 18th, 2021. Proposals received after this date and time will not be accepted. Faxed or emailed proposal submittals are not acceptable.

Funding for the purchase and installation of a pre-fabricated pedestrian bridge is allocated from the City's budget for fiscal year (FY) 2021/2022 & 2022/2023. Award of the Construction Contract is anticipated to occur in June 2021. It is anticipated that a final executed contract will occur within 30-days after award.

Project design and preparation of construction ready documents and associated estimates must be completed prior to December 31st, 2021.

Contractor submitting proposals, which are evaluated as being highly responsive to the RFP, may be requested to make an oral presentation to the project's management team.

Proposals shall remain in effect for a period of sixty (60) days after the closing date. Each responding Contractor may withdraw their proposal in writing at any time before the closing date and time.

The proposal must state that the Manufacturer is an Equal Opportunity Employer and will comply with all Federal, State, and local laws, rules, and regulations.

Contractor selection shall be made on the basis of qualifications only, as outlined in 279C.110 and the procedures set forth in OAR 137-048-0130 and ORS 137-048-0210 (Informal Selection Procedure).

IV. CITY'S RIGHT TO ACCEPT, REJECT, AND AWARD PROPOSALS

The City reserves the right to:

- Accept or reject any or all proposal received as a result of this RFP.
- To negotiate contract terms with qualified Contractor.
- Take into consideration any or all information supplied by the Contractor in his/her proposal and the City's investigation into the experience and responsibility of the Contractor. In addition, the City may accept or reject proposals based on minor variations from the stated specifications, when such action is deemed to be in the City's best interest. Further, the City reserves the right to waive informalities in the submitted proposal.
- Award a contract to the respondent who the City determines to be the most responsive and responsible to this RFP. The successful Contractor shall commence work only after an agreement with the City is negotiated, a contract fully executed, and a Notice to Proceed has been issued.
- Cancel the RFP process entirely if deemed in the best interest of the City.

Incurring Costs: Neither the City of Sherwood, nor its agents are liable for costs incurred by the Contractor prior to execution of a contract and issuance of a Notice to Proceed.

V. PRE-PROPOSAL INTERPRETATIONS

The City is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner, except by Addenda.

Addenda, if necessary, will be issued on the City's RFP project webpage <https://www.sherwoodoregon.gov/bids> not less than three (3) days prior to the RFP closing date. It is the responsibility of the Contractor to check the webpage for any posted addenda, and ensure that the submitted proposal includes said addenda. Questions must be received not less than five (5) calendar days prior to the RFP closing date.

Questions shall be submitted to: Robert Galati, P.E., City Engineer
Email: galatib@sherwoodoregon.gov

VI. CONTRACT PAYMENT SCHEDULE

Payment for work will be made monthly upon receipt of Contractor's billing statement, consistent with City procedures and as established by the Finance Department. Each statement must include a summary of progress completed through the date of the billing statement and shall be submitted to the City's project manager. Monthly payments will be based on the costs incurred as summarized in the summary of progress report.

VII. INSURANCE COVERAGE

The selected Contractor will be required to provide Errors and Omissions, Professional Liability Insurance in the amount of \$2,000,000 for this project as well as other insurance coverage including Workers Compensation.

The Contractor shall carry, at a minimum, comprehensive or commercial general liability, personal injury, and property damage insurance in the amount of \$2,000,000 aggregate total for all claims arising out of a single accident or occurrence. The Contractor shall include the City, its officers, agents, and employees as named insured on insurance policies issued for this project, or shall furnish an additional insured endorsement naming the same as an additional insured to the Contractor's existing public liability and property damage insurance.

The Contractor shall carry, at a minimum, automobile liability in the amount of \$2,000,000 aggregate total for all claims arising out of a single accident or occurrence.

In addition, the Contractor shall insure the work for 100 percent of the replacement value for the life of the contract against all loss or damage by fire, theft, vandalism, and malicious mischief.

Before the contract is executed, the Contractor shall furnish to the City a certificate of insurance for limits set out above, which is to be in force and applicable to the project.

VIII. CONTRACT REQUIREMENTS

The successful Contractor will complete a City standard contract in the form of a Contract for Construction Services, which shall incorporate a contract, a Scope of Work, a list of tasks, a work schedule, and certificate of insurance.

The City will issue the Notice to Proceed after execution of the Contract.

The Contract shall not be assigned in part or in total and the Contractor shall be solely responsible for the work of sub-contractors.

IX. PROPOSAL INSTRUCTIONS

The Contractor must submit a definitive proposal for the end results that are set forth in this RFP. The proposal must describe the intended performance of the Contractor on the activities prescribed and the resources to perform the activities. The selected Contractor must have demonstrated experience in this type of project. The professional staff necessary to perform the requirements of this project must be available for timely response to questions and in preparing the project documents. The Contractor must have available a project manager with demonstrated skill in managing the preparation and delivery of required project documents and services.

The City expects the Contractor to maintain the same project manager and key team members through the duration of this project. Sub-contractor's proposed by the Contractor shall be listed in the proposal.

Required Information: The proposal shall include, as a minimum, the following items:

1. The name of the person(s) authorized to represent the Contractor in negotiating and signing any contract that may result from this document.
2. A description of the organization, size, and structure of the Contractor's team.
3. A statement that the proposal includes all terms and conditions of the RFP.
4. A problem statement from the Contractor's perspective, of the objectives of the proposed Contractor work, the Contractor's proposed methodology, and a work plan for completing the work. If the Contractor chooses to modify the objectives section, those modifications shall be explained. The Contractor should clearly define the assumptions behind the proposal.
5. At least three (3) references of former clients with summaries or samples of previous work that demonstrates the Contractor's ability to provide the services necessary to fulfil the project objectives.

6. A list of the tasks, responsibilities, and qualifications of any proposed sub consultant(s).
7. A work schedule clearly showing and defining which tasks they will perform for their proposed Scope of Work. Details shall include Contractor and sub-consultant staff descriptions and associated tasks.

X. EVALUATION CRITERIA

Submitted proposals will be reviewed by at least three (3) City staff members (including the Community Development Director, the Public Works Director, and the City Engineer) and will be scored and ranked according to the following criteria:

1. Introductory Letter (5 points)
2. Manufacturer Firm Capabilities (20 points)
3. Manufacturer Project Team (10 points)
4. Project Approach (60 points)
5. Supporting Information (5 points)

Total Possible Points Awarded (100 points)

XII. APPENDIX – *Sample Contract for Construction Services*

APPENDIX TO RFP



[Insert Division]
[Insert Department]
 22560 SW Pine St.
 Sherwood, OR 97140
 503-925-2308

CONTRACT FOR CONSTRUCTION SERVICES

PROJECT NAME: _____

CONTRACT PARTIES: **City of Sherwood** and _____ [hereafter called Contractor]
 [hereafter called City]

C.O.S. PROJECT MANAGER: _____

ACCOUNT #:	FUND #:	DEPT:	JOB #:
VENDOR #:			

SCOPE of WORK: Attached as Exhibit A **FEE SCHEDULE:** Attached as Exhibit B

SCHEDULE of WORK: effective date: _____ expiration date: _____

PAYMENT: City agrees to pay Contractor based on the Fee Schedule an amount not to exceed \$ _____ for the Scope of Work.

A performance bond and a payment bond, each in the amount of 100% of the maximum contract payment amount set forth immediately above, and a maintenance bond effective for two years from the date of project completion in the amount of 10% of the maximum contract payment amount set forth immediately above, are are not required for this Contract.

This Contract is is not subject to State of Oregon prevailing wage requirements. Workers must be paid not less than the applicable prevailing wage rates in accordance with ORS 279C.838 and 279C.840. Federal funds are are not being used for this project. If federal funds are being used, workers must be paid not less than the higher of the applicable state or federal rate.

CONTRACTOR DATA, REGISTRATION, and SIGNATURE

CONTRACTOR FIRM: _____ **CCB #:** _____

ADDRESS: _____

VOICE: _____ **FAX:** _____

CONTACT: _____ **TITLE:** _____

I, the undersigned, agree to perform the work outlined in this Contract in accordance with the terms and conditions listed on pages 2-7 and made part of this Contract, and in accordance with the exhibits attached and made part of this Contract. I certify, under penalty of perjury, that I/my business is not in violation of any Oregon tax laws; and certify that I am an independent contractor as defined in ORS 670.600.

CONTRACTOR: _____ signature _____ date _____

CITY OF SHERWOOD APPROVALS (consult the City's Delegation of Contracting Authority policy for requirements)

CITY ENGINEER:	_____	_____
	signature	date
DEPARTMENT DIRECTOR:	_____	_____
	signature	date
FINANCE DIRECTOR:	_____	_____
	signature	date
CITY MANAGER:	_____	_____
	signature	date
CITY ATTORNEY <i>Approved as to Form:</i>	_____	_____
	signature	date

STANDARD CONTRACT PROVISIONS

(These provisions not to be altered without approval of the City Attorney.)

1. **Access to Records**

The Contractor shall maintain, and the City of Sherwood ("City") and its duly authorized representatives shall have access during normal business hours to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon reasonable request. Payment for cost of copies is reimbursable by the City.
2. **Audits**
 - (a) The City, either directly or through a designated representative, at City's expense except as provided in subsection 2(b), may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by section 1, **Access to Records**. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.
 - (b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City. If the payments to the Contractor were in excess of the amount to which the Contractor was entitled by five percent (5%) or more, then Contractor shall additionally repay to the City the reasonable costs of the audit performed under subsection 2(a).
 - (c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, **Early Termination of Contract** and section 7, **Remedies**.
3. **Effective Date and Duration**

The passage of the Contract expiration date, or early termination of this Contract, shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
4. **Payments**

City agrees to pay Contractor based on the fee schedule in Exhibit B, attached hereto and incorporated herein by reference, in a total sum not to exceed the amount indicated on the cover page of this Contract, for the scope of work identified in Exhibit A, attached hereto and incorporated herein by reference. Contractor shall submit detailed written invoices to City for work performed, referencing the work performed and the fee schedule in Exhibit B, at a frequency not to exceed one invoice per calendar month, and no later than sixty (60) calendar days after performance of the work referenced in the invoice. Within thirty (30) calendar days of receipt of each invoice, City shall submit payment to Contractor or shall notify Contractor in writing of any dispute with regard to such invoice.
5. **Early Termination of Contract**
 - (a) The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.
 - (b) The City, by written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion, such termination to be effective thirty (30) calendar days after the effective date of such notice or at such later date as specified in such notice.
 - (c) City may terminate this Contract by written notice to Contractor, such termination to be effective immediately upon the effective date of such notice or at such later date as specified in such notice, upon the occurrence of any of the following events:
 - (1) City fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay for Contractor's work;
 - (2) Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;
 - (3) Contractor no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation, or other law to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed, or changed in such a way that Contractor no longer meets requirements for such license or certificate.
 - (4) City determines, in its sole discretion, that Contractor has violated section 25, **Information Technology**.
 - (d) Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) calendar days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
 - (e) Upon receiving a written notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice. Upon termination of this Contract,

Construction Services Contract
Revised December 2020
Page 2 of 7

APPENDIX TO RFP

Contractor shall deliver to City all documents, information, works in progress, and other property that are or would be deliverables had the Contract been completed.

6. Payment on Early Termination

- (a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Contract** hereof, the City shall pay the Contractor for work performed in accordance with the Contract prior to the termination date.
- (b) In the event of termination under subsection 5(d), **Early Termination of Contract** hereof, by the Contractor due to a breach by the City, the City shall pay the Contractor as provided in subsection (a) of this section.
- (c) In the event of termination under subsection 5(d), **Early Termination of Contract** hereof, by the City due to a breach by the Contractor, the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.
- (d) In the event of early termination, all of the Contractor's work product will become and remain property of the City.

7. Remedies

- (a) In the event of termination under subsection 5(d), **Early Termination of Contract**, hereof, by the City due to a breach by the Contractor, the City may complete the work itself, by contract with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the City the amount of the excess.
- (b) The remedies provided to the City under section 5, **Early Termination of Contract** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- (c) In the event of breach of this Contract by the City, the Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 5(d), **Early Termination of Contract** and section 6(b), **Payment on Early Termination** hereof.

8. Subcontracts and Assignment

Contractor shall not subcontract, assign or transfer any of the work scheduled under this Contract, without the prior written consent of the City. Notwithstanding City approval of a sub-contractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if sub-contractors are employed in the performance of this Contract, the Contractor and its sub-contractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. Contractor further agrees that Contractor will be solely responsible for ensuring any sub-contractors fully comply with the terms of this Contract, and that Contractor will be solely liable for actions or omissions of sub-contractors under this Contract. City reserves the right to review the subcontractors proposed, and the Contractor shall not retain a subcontractor to which City has a reasonable objection.

9. Compliance with Applicable Law

In connection with its activities under this Contract, Contractor shall use the standard of care in its profession to comply with all applicable federal, state and local laws and regulations.

10. Indemnity - Standard of Care

If Contractor's services involve engineering or planning consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or planning contractors performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Contract. Contractor represents that all of its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by City will not operate as a waiver or release.

Contractor acknowledges responsibility for liability arising out of the performance of this Contract and shall defend, indemnify, and hold harmless City and its officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses (including attorney's fees and witness costs at both trial and on appeal, whether or not a trial or appeal ever takes place, including any hearing before federal or state administrative agencies) arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from, attributable in whole or in part to, or in any way connected with Contractor's and Contractor's officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this Contract, to the fullest extent permitted by law, and except to the extent otherwise void or unenforceable under ORS 30.140. Contractor's activities are deemed to include those of subcontractors. The City may, at any time at its election assume its own defense and settlement in the event that it determines that Contractor is not adequately defending the City's interests, or that an important governmental principle is at issue, or that it is in the best interests of the City to do so. If any aspect of this indemnity is found to be illegal or invalid for any reason whatsoever, such illegality or invalidity does not affect the validity of the remainder of this indemnification.

APPENDIX TO RFP

This section will survive the termination or revocation of this Contract, regardless of cause.

- 11. Insurance**
Contractor shall obtain at its expense, and maintain for the term of this contract, occurrence form commercial general liability and commercial automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles, for the protection of Contractor, the City, its Councilors, officers, agents, volunteers, and employees. Such coverage shall be primary and non-contributory. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Contractor's operations, in an amount not less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate. Such insurance shall name the City as an additional insured. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract, who are subject employers under the Oregon Workers' Compensation Law, shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126. Employers' Liability Insurance with coverage limits of not less than \$1,000,000 each accident shall be included. Contractor shall obtain, at Contractor's expense, and keep in effect until final acceptance by the City, "all risk" Builder's Risk Insurance (including earthquake and flood) covering the real and personal property of others in the care, custody, and control of the Contractor. Coverage shall include theft and damage to building interiors, exterior, in transit and offsite storage. The minimum amount of coverage to be carried shall be equal to the maximum compensation under this Contract, as specified on the cover page of this Contract. Contractor shall be financially responsible for any deductible applied to loss. This insurance shall include the City, the Contractor, and its sub-contractors as their interests may appear. All policies will provide for not less than thirty (30) calendar days' written notice to the City before they may be canceled. Prior to commencing work under this Contract, and thereafter upon request, Contractor shall furnish the City certificates of insurance and necessary endorsements evidencing the effective dates, amounts, and types of insurance required by this Contract.
- 12. Ownership of Work Product**
All work products of the Contractor, which result from this Contract, are the exclusive property of the City; provided, that Contractor is hereby granted an irrevocable, royalty free, worldwide, perpetual license to use, reproduce, copy, distribute and make derivatives of its work product, regardless of whether Contractor has resigned, this Contract has been terminated, Contractor's scope of services has been modified, or Contractor's services under this Contract have been completed.
- 13. Nondiscrimination**
Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
- 14. Successors in Interest**
The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.
- 15. Severability**
The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. Waiver**
The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.
- 17. Errors**
The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.
- 18. Governing Law; Forum**
The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon, without regard to conflicts of law principles. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Washington County, Oregon or, only if there is no Oregon state court jurisdiction, the United States District Court for the District of Oregon, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. Any trial will be to the court without a jury.

APPENDIX TO RFP

19. **Amendments**
The City and the Contractor may amend this Contract at any time only by written amendment executed by the City and the Contractor.
20. **License**
Prior to beginning work under this Contract, the Contractor shall provide a Construction Contractor's Board (CCB) license number in the space provided on page one of this Contract.
21. **Payment to Vendors and Sub-contractors**
Contractor must promptly pay any persons supplying services, material, or equipment to Contractor in its performance of the work under this Contract. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.
22. **Exhibits**
Each document that is attached to this Contract as an Exhibit shall be labeled with an Exhibit letter and listed below. Provisions and covenants contained in Exhibits are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein. If any item in an Exhibit contradicts this Contract, this Contract shall take precedence over the conflicting item in the Exhibit.
- List of Exhibits**
Exhibit A – Scope of Work/Contract Drawings
Exhibit B – Fee Schedule
23. **Merger Clause**
This Contract and attached exhibits constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature of its authorized representative, hereby acknowledges that he or she has read this Contract, understands it and agrees to be bound by its terms and conditions.
24. **Mediation**
- (a) Should any dispute arise between the parties to this Contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.
 - (b) The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) calendar days, or if the parties fail to agree on a mediator within ten (10) calendar days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.
25. **Information Technology**
If Contractor access to City's information technology systems is necessary for the performance of this Contract:
- (a) Contractor agrees to sign and be bound by the terms of the City's then-current Contractor Security Policy, as it may be amended by City from time to time during the course of this Contract.
 - (b) Contractor shall use the standard of care in its profession to safeguard any and all usernames, passwords, and other confidential information relating to accessing said systems; will limit access to such information to the smallest number of Contractor's employees and/or subcontractors as is reasonably practical; and will provide City with the names of all such employees and/or subcontractors who will be provided such information;
 - (c) Contractor will not attempt to access any City information technology resources beyond those necessary for performance of this Contract; and
 - (d) Contractor will be solely liable for any damages to City's information technology systems, data breaches, and any other losses or damages relating to Contractor's access to City's information technology systems.
26. **Notice**
Any notice required to be provided to City under this Contract shall be provided to the City Project Manager specified on the cover page of this Contract at the address for the City specified on the cover page of this Contract. Any notices required to be provided to Contractor under this Contract shall be provided to the Contractor Contact specified on the cover page of this Contract at the address for the Contractor specified on the cover page of this

Construction Services Contract
Revised December 2020
Page 5 of 7

APPENDIX TO RFP

Contract. Notices shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal. Either party may alter the person designated for receipt of notices under this Contract by written notice to the other party.

27. Miscellaneous Terms

- (a) Contractor Identification. Contractor shall furnish Contractor's employer identification number to City, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Contractor's Social Security number.
- (b) Duty to Inform. Contractor shall give prompt written notice to City if, at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the Contract, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Contractor shall constitute neither agreement with nor acquiescence in Contractor's statement or claim, and shall not constitute a waiver of any of City's rights.
- (c) Independent Contractor. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract.
- (d) Time is of the Essence. Time is of the essence under this Contract.
- (e) Authority. The parties signing this Contract are authorized to sign and to bind their respective contracting parties to the terms of the Contract.
- (f) Conflict of Interest. Except with City's prior written consent, Contractor shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Contractor's professional judgment with respect to this Contract, including, without limitation, concurrent employment on any project in direct competition with the subject of this Contract.
- (g) No Third-Party Beneficiaries. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

28. Statutory Provisions

- (a) As provided by ORS 279C.505, Contractor shall:
 - (1) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in this Contract.
 - (2) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of this Contract.
 - (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
 - (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
 - (5) Demonstrate that an employee drug testing program is in place.
- (b) As provided by ORS 279C.530, Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services. It is a condition of this Contract that all employers working under this Contract are either subject employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (c) As provided by ORS 279A.110, Contractor may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women, or an emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. If Contractor violates this subsection, City may regard the violation as a breach of contract that permits the City to: (1) terminate this Contract; or (2) exercise any remedies for breach of contract that are reserved in this Contract.
- (d) As provided by ORS 279C.520:
 - i. A person may not 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 when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279C.100, the employee shall be paid at least time and a half pay:
 - (1) For all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the work week is five (5) consecutive days, Monday through Friday; or
 - (2) For all overtime in excess of ten (10) hours in any one day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and

APPENDIX TO RFP

- (3) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
 - ii. Contractor must give notice in writing to employees who work on this Contract, either at the time of hire or before commencement of work on this 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.
 - iii. Contractor must comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. Contractor's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles City to terminate this Contract for cause.
 - iv. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.
 - (e) Contractor must give notice in writing to employees who work on this Contract, either at the time of hire or before commencement of work on this 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.
 - (f) As provided by ORS 279C.510, if this is:
 - (1) A contract for demolition, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.
 - (2) A contract for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
 - (g) As provided by ORS 279C.515:
 - (1) 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 this Contract as the claim becomes due, the City 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 this Contract.
 - (2) If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or the Contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the ten (10) day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
 - (3) If the Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
 - (4) Paying a claim in the manner authorized in this section does not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.
 - (h) As provided by ORS 279C.580, Contractor shall include in each subcontract for property or services Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:
 - (1) A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of amounts the City pays to Contractor under this contract.
 - (2) A clause that requires Contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor.
 - (3) A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor:
 - a. Notifies the subcontractor in writing at least 45 days before the date on which Contractor makes the change; and
 - b. Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
 - (4) An interest penalty clause that obligates Contractor, if Contractor does not pay the first-tier subcontractor within thirty (30) days after receiving payment from the City, to pay the first-tier subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or a first-tier subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or a first-tier subcontractor did not make payment when payment was due is that Contractor or a first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty:
 - a. Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and
 - b. Is computed at the rate specified in ORS 279C.515(2).

APPENDIX TO RFP

Additionally, Contractor, in each of Contractor's subcontracts, shall require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards set forth above in each of the first-tier subcontractor's subcontracts and shall require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractor's subcontracts with each lower-tier subcontractor or supplier.

- (i) Construction Contractors Board (CCB) requirements: Contractor must have a payment bond filed with CCB when required by ORS 279C.380 and 279C.390. Contractor and each subcontractor must have a public works bond filed with CCB before starting work under this Contract, unless exempt under state law.

[SIGNATURES ON COVER PAGE TO CONTRACT]

SAMPLE