

**CITY OF COBURG
PUBLIC IMPROVEMENT CONTRACT**

PROJECT: Coburg Operations and Operations Storage Building Project

This Contract is between the City of Coburg, an Oregon Municipal Corporation (“City”) and Wildish Paving Co., dba Wildish Building Company (“Contractor”).

Recital

City of Coburg selected a contractor to perform work for the City by a competitive bid process. Contractor submitted the lowest qualified bid for the Project.

Contractor Information

Address: P.O. Bo 40310, Eugene, Oregon 97404 Phone:541-485-1700
Fax:541-683-7722 Contact: William R. Wildish E-Mail: contractadmin@wildish.com,
alexk@wildish.com
CCB No.: 34429 Fed ID (Tax) No. 93-0748342

TERMS & CONDITIONS OF CONTRACT

1. TERM – DURATION OF CONTRACT

This Contract shall be effective when signed by both parties and Contractor has submitted the required certificates of insurance and performance and payment bonds. It shall remain in effect until the work on the Project has been completed, the improvement accepted by the City, and the warranty period has expired. The expiration of the term does not affect any right that arose prior to expiration, and terms that by their nature survive expiration shall remain in effect after expiration.

- Work shall commence as stated in the notice to proceed from City to Contractor
- Work shall be substantially complete by June 28, 2024 and totally complete by July 26, 2024.

2. SCOPE OF WORK

Contractor shall construct **Coburg Operations Building and Operations Storage Building Project** (the “Project”) in the City of Coburg, Oregon. The Project is located at 91611 N Coburg Road, Coburg, Lane County, Oregon. The Project is described in more detail in the attached Contractor’s Proposal “Exhibit A” and as detailed in the City’s specifications and drawings for this Project. Contractor hereby agrees to furnish all of the materials, labor, water, tools, equipment, light, power, transportation, and other work needed to construct the Project. Collectively all documents herein, plans, referenced laws, statutes,

codes, procedures, material specifications, and schedules are applicable to the scope of Work.

3. PAYMENT

City shall pay Contractor according to the schedules and unit prices as quoted by Contractor "Exhibit A". The maximum total payment under this Contract without approved written change orders is **\$ 1,324,773**.

a. Application for Payment

Contractor shall invoice the City monthly for work performed, based on an estimate of the amount of work completed and the value of the completed work. Contractor shall direct the application for payment or invoice to:

Branch Engineering
310 5th Street
Springfield, OR 97477
Attn: Julie Leland
-OR- Via email:

juliel@branchengineerin.com

City shall make progress payment equal to the value of the completed work, less amounts previously paid, less retainage of five percent, less any deduction for claims and damages paid by the City of Coburg due to acts or omissions of the Contractor and for which he/she is liable under this Contract within 15 days of receipt of the invoice and the prevailing wage certificates certifying that he/she has paid not less than the prevailing rate of wages as required by ORS 279C.840. The form/application for payment shall be acceptable to the City of Coburg.

b. Application Free of Encumbrances

Contractor warrants and guarantees that all work, materials and equipment covered by any application for payment, will pass to City of Coburg at the time of payment free and clear of liens, claims, security interests and encumbrances.

c. Engineer Review & Approval of Application for Payment

City Engineer will, after receipt of each application for payment, either indicate in writing his/her approval of payment and present the application to the City of Coburg, or return the application to Contractor indicating in writing his/her reasons for refusing to approve payment. In the latter case, Contractor may make the necessary corrections and resubmit for application.

d. Payment on Estimated Quantities

Nothing contained in this contract shall be construed to affect the right, hereby reserved, to reject the whole or any part of the aforesaid work should such work be later found not to comply with any of the provisions of this Contract document. All estimated quantities of work for which progress payments have been made are subject to review and correction on the final estimate. Acceptance by the Contractor of progress payments based on periodic estimates of quantities of

work shall not, in any way, constitute acceptance of the estimated quantities used as the basis for computing the amounts of the progress payments.

e. Final Payment

Final payment shall be made in accordance with Section 111.5.00 of the General Conditions. (“General Conditions” are Section 400 of the Project Manual for the Coburg Operations Building and Operations Storage Building Project.)

4. STANDARD OF CARE

Contractor will provide services with the degree of skill and diligence normally employed by professional performing the same or similar services at the time the services are performed. Contractor shall, at all times during the term of this Agreement be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work. Be duly qualified expert.

5. COMPLIANCE WITH LAW

Contractor shall comply with applicable federal, state and local laws, ordinances, and regulation. When multiple standards apply, Contractor shall comply with the more stringent standard. Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and will all applicable requirements of federal, state and City civil rights and rehabilitation statutes, ordinances, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), (ORS 659A.142), and all regulations and administrative rules established pursuant to those laws. Contractor agrees to comply with ADA in its employment practices, and that it shall perform its contractual obligations consistently with ADA requirements and regulations, state law, and applicable regulations. In addition, Contractor shall comply with all applicable provisions of Oregon law for public contracts. This Agreement incorporates the provisions required to be in an agreement of this type by ORS 279B.200 through 279B.235 (**EXHIBIT B**).

a. Contractor Shall:

- Make payment promptly, as due to all persons supplying to the contractor labor or material for the performance of the work provided for the Contract.
- Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or Subcontractor incurred in the Contract.
- Not permit any lien or claim to be filed or prosecuted against the City.
- Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- Demonstrate that an employee drug testing program is in place. City has the right to audit and/or monitor the program. On request by the City, Contractor shall furnish a copy of the employee drug-testing program.
- Salvage or recycle construction and demolition debris, if feasible and cost-effective.

b. Prompt Payment/Contractor Refusal to Make Payment:

- If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the public improvement contract as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the contract.
- If Contractor or first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract within 30 days after receipt of payment from the City (or in a case of Subcontractor, from Contractor), Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall be nine percent per annum. The amount of interest may not be waived
- If Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or material in connection with, the person may file a complaint with the Construction Contractor Board (CCB), unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- The payment of a claim in the manner authorized in this section does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

c. Hours of Labor – Posting Hours of Labor:

- For work under this contract, a person may not be employed for more than 10 hours in any one day, or 40 hours of work in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in those cases, the employee shall be paid at least time and a half pay:
 1. For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
 2. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and
 3. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 4. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- Contractor is not required to pay overtime if the request for overtime pay is not filed within 90 days of completion of the Contract if Contractor has posted and maintained in place a circular with the information contained in ORS 279C.545 as required by ORS 279C.545(1).

- Contractors and Subcontractors must give notice in writing to employees who perform work under this contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

d. Medical Coverage to Employees:

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

e. Worker's Compensation:

All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless exempt under ORS 656.126. Contractor shall insure that each of its Subcontractors comply with these requirements.

6. ENVIRONMENTAL

Contractor shall comply with federal, state and local agencies ordinances, rules and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the Contract. The City reserves the right if environmental requirements (either new or existing ordinances) must be met after the award of the Contract, City, in accordance with ORS 279C.525, may (a) Terminate the Contract; (b) Complete the work itself; (c) Use non-City forces already under contract with the City; (d) Require that the underlying property owner be responsible for cleanup; (e) Solicit bids for a new Contractor; and (f) Issue the awarded Contractor a change order setting forth the additional work that must be undertaken. In addition, (a) City must make known environmental conditions at the construction site that may require Contractor to comply with environmental ordinances in their bid documents; (b) If not known at the time of award, Contractor shall immediately give notice of the discovered environmental condition to the City; (c) If an environmental emergency exists, City & Contractor shall follow the rules (4), (5), (6), (7) & (8) under ORS 279C.525. If the City chooses to terminate the contract under this subsection, Contractor, if no negligence or omission on his/her part, shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of work completed. If City causes work to be done by another entity, Contractor may not be held liable for actions or omissions of the other entity.

a. Recycle Materials:

Contractor will utilize where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's cost do not exceed the costs of non-recycled products by more than five percent (5%).

b. Obligation to Pay Subcontractor & Suppliers within 10 Days:

Contractor shall include in each first-tier subcontract, including contracts with material suppliers, a clause that obligates Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of the amounts paid to Contractor by City under this contract, and if payment is not made within 30 days after receipt of payment from City, to pay an interest penalty as specified in ORS 279C.515(2) to the first-tier Subcontractor. The interest penalty does not apply if the only reason the delay in payment is due to a delay in payment by City to Contractor. Contractor shall include in each of Contractor's subcontracts, a provision requiring the first-tier Subcontractor to include a similar payment and interest penalty clause and shall require Subcontractors to include similar clauses with each lower-tier Subcontractor or supplier.

c. Certifications:

By signing the Contract, Contractor will certify that all Subcontractors performing construction work will be registered by the Construction Contractors Board (CCB) or licensed by the State Landscape Contractors Board before the Subcontractor starts work on the Project.

- By signing the Contract, contractor will certify that Contractor and all Subcontractors will maintain all required licenses, permits, certifications or registrations throughout the terms of this agreement.
- By signing the Contract, Contractor will certify that it will comply with Oregon tax laws.

In addition: Contractor will be solely responsible for payment of any federal or state taxes required as a result of this Contract/Agreement.

7. INDEMNITY – HOLD HARMLESS

Contractor shall defend and hold harmless CITY, its agents, servants and employees from and against all claims, demands and judgment (including attorney fees), made or recovered against them including, but not limited to damages to real or tangible personal property or for bodily injury or death to any person, arising out of, or in any manner connected with this Agreement, to the extent that any such damage, injury or death is caused by, or sustained in connection with the performance of, Contractor, its employees, servants or agents. CITY shall promptly notify Contractor in a reasonable manner to facilitate the defense of any such claim.

8. **INSURANCE**

a. **General Liability**

Contractor shall purchase and maintain commercial general liability insurance with minimum coverage of \$1 million per occurrence and \$2 million aggregate. The policy shall name the City as an additional insured and cover acts and omissions of Contractor and its Subcontractors of any level. Contractor shall be liable for the full amount of any claims resulting from negligence or intentional misconduct of Contractor, its subcontractors, and their officials, agents and employees in the performance of this Contract, even if not covered by or in excess of insurance. In addition, Section 104.3.00, 104.4.00 and 104.5.00 of the General Conditions is applicable to this Contract.

b. **Workers Compensation**

Workers compensation insurance as required by ORS Chapter 656. Contractor shall ensure that each subcontractor obtains workers compensation insurance. The Contractor shall ensure that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing Work. In addition, Section "Oregon State Public Contract Provisions" – subsection "Workers' Compensation" and section "Independent Contractor – Non-Partnership" of this Contract is applicable.

c. **Builder's Risk**

Contractor shall provide builder's risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for amount equal to at least the value of the amount installed. Any deductible shall not exceed \$50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or \$50,000, whichever is greater. The policy shall include the City of Coburg as loss payee. In addition, Section 104.6.00 of the General Conditions is applicable to this Contract.

d. **Automobile Insurance**

If required, the combined single limit per occurrence shall be in an amount at least equal to the State/DMV requirements. In addition, Section 104.6.01 of the General Conditions is applicable to this Contract.

9. **BONDS**

a. **Payment and Performance Bonds**

Immediately upon execution of this agreement, Contractor shall provide a separate Performance Bond and a separate Payment bond in a form acceptable to the City of Coburg. Each bond shall be equal to 100% of the Contract amount. The Performance Bond and Payment Bond must be signed by the Surety's Attorney-in-fact, and the Surety's seal must be affixed to each bond. Bonds shall not be canceled without the City of Coburg's consent, nor will the City release them prior to Contract completion. Bonds must be originals – faxed or photocopied bond forms will not be accepted.

b. Public Works Bond

Contractor will file with the Construction Contractors Board (CCB) a Public Works Bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000 prior to starting work on this contract. Contractor is aware of the provisions of ORS 279C.600 and 279C.605 relating to notices of claim and payment of claims on public works bonds.

10. CONFLICT OF INTEREST

Contractor shall not give or offer any gift, loan, or other thing of value to any City official or employee. The Contractor shall not rent, lease, or purchase materials, supplies, or equipment, with or through any City official or employee.

11. IMPACT ON TRAFFIC AND PROPERTY

Contractor shall adopt reasonable means and comply with all laws, ordinances, and regulation in order to minimize interference to traffic and damage to both public and private property; And in accordance to 110.4.00 and 110.4.01 of the General Conditions, shall provide a traffic plan, maintain two-way traffic unless approved otherwise by the City of Coburg, and make every effort to maintain public safety and convenience. Contractor shall provide adequate noise control and shall control all obstructions to traffic in accordance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) if applicable.

12. PREVAILING WAGE

a. Basic Requirement

In accordance to ORS 279C.840, Contractor shall pay to workers in each trade or occupation the current, applicable State prevailing rate of wage as established by the Oregon State Bureau of Labor and Industries (BOLI). The wage rates applicable are those in effect at the time Project was first advertised.

b. Posting of Prevailing Wage Rates

Contractor, Subcontractor shall post the prevailing wage rates and fringe benefits in the locality where the labor is performed.

c. Certifications of Wage Rates to City of Coburg

Contractor shall furnish weekly to the City of Coburg certified statements, in writing on a form prescribed by the Commissioner of the Bureau of Labor, certifying: (a) The hourly rate of wage paid each worker whom the Contractor the Subcontractor has employed upon the public works improvement; and (b) That no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract.

d. If the Contractor has not filed the certified statements as required under this contract, The City of Coburg is required by law to retain 25% of any amount earned by the Contractor until the Contractor has complied. Final payment cannot be made without all applicable wage rates on file with the City.

e. Applicability of both Federal (Davis-Bacon) and State (BOLI) Prevailing Wage Rates

When a public works project is subject to the Davis Bacon Act (40 U.S.C.3141 et seq.), the Contractor and every Subcontractor shall pay the higher of the two (BOLI and Davis Bacon) prevailing wage rates.

f. Access to Wage Rate Records – Worker Interview Verification

Contractor shall allow the Bureau of Labor and Industries (or Federal Officials) to enter the office or business establishment of Contractor at any reasonable time to determine whether the prevailing rate of wage and or the higher of the State prevailing wage rate and the Davis-Bacon wage rate is actually being paid and shall make payment records available to BOLI or Federal Officials on request. Contractor shall require Subcontractors to provide the same right of entry and inspection. In addition, shall allow interviews with persons with each discipline (trade) to determine if the correct wage rate is actually being paid.

g. All BOLI Requirements Applicable

Contractor must comply with all laws and regulations relating to prevailing wages, whether or not set out in this Contract. Contractor is to use the most current Prevailing Wage Rates for Public Contracts in Oregon including any amendments to the prevailing rates at time of contract initiation. Further information regarding prevailing wages, including requirements applicable to Contractor, is available at:

http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx And available by contacting the Bureau of Labor & Industries at 971-673-0838.

13. WARRANTIES

All work shall be guaranteed for a period of one (1) year against defects in materials and workmanship. Contractor unconditionally warrants all work and materials for this Project, including additional work authorized under change orders, against any defects whatsoever, for one (1) year from the date of acceptance by the City of Coburg, except that manufacturers' warranties and extended manufacturer warranties as specified in the contract documents or otherwise is a standard manufacturer product warranty shall not be abridged. In addition to its right to proceed on the warranty, the City may recover for breach of contract or negligence even if defects do not become evident during the warranty period. The Contractor also agrees to hold the City of Coburg harmless from claims of any kind arising from damage due to said defects. In addition, Section 109.7.00 of the General Conditions is applicable to this Contract.

14. LIQUIDATED DAMAGES

Contractor agrees to pay liquidated damages in accordance to Section 110.9.00 of the General Conditions. The City of Coburg is authorized to deduct the amount of the liquidated damages from any amounts due and the Contractor and its Surety shall be liable for any excess. If the Contract is terminated for default (see following "Termination") and if the Work has not been completed by other

means on or before the expiration of Contract time or adjusted Contract time, liquidated damages will be assessed against the Contractor for the duration of time reasonably required to complete the work.

15. **TERMINATION OF CONTRACT AND SUBSTITUTED PERFORMANCE**

- **Termination for Default** – Termination of the Contract for default may result if the Contractor:
 - Violates any material provision of the Contract;
 - Disregards applicable laws and regulations or the Engineer's instructions;
 - Refuses or fails to supply enough materials, equipment or skilled workers for the prosecution of the Work in compliance to the Contract;
 - Fails to make prompt payment to Subcontractors;
 - Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
 - Has a receiver appointed because of the Contractor's insolvency;
 - Is adjudged bankrupt and the court consents to the Contract termination; or
 - Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions.

If the Contract is terminated by the City, upon demand the Contractor and Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of all materials and equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments.

If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the City because of the Contractor's breach of Contract; or
 - Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the City's payment terms, except that the Engineer will be entitled to withhold sufficient funds to cover costs incurred by the City as a result of the termination. Final payment to the Contractor will be made according to the City's payment terms.
- b. If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination of public convenience.**
- c. Termination for Public Convenience**
- The Engineer may terminate the Contract in whole or in part whenever the Engineer determines that termination of the Contract is in the best interest of the public.

- Notice: The Engineer will provide the Contractor and the Contractor's Surety seven (7) calendar days' written notice of termination for public convenience. After such notice, the Contractor and the Contractor's Surety shall provide the Engineer with immediate and peaceful possession of the Project Site, and of materials and equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments.
- Compensation: Compensation for Work terminated by the Engineer under this provision will be determined by the amount of Work completed/installed and materials and equipment furnished and the status of payment (paid/unpaid) for such Work, materials and equipment; less any outstanding labor or material claims against the Contractor.

d. Substituted Performance

According to the City's procedures, and upon the Engineer's recommendation that sufficient cause exists, the City, without prejudice to any of its other rights or remedies and after giving the Contractor and the Contractor's Surety ten (10) calendar days' written notice may:

- Terminate the Contract;
- Substitute the Contractor with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of materials on the Project Site;
- Take possession of materials not on the Project Site, for which the Contractor received progress payments;
- Take possession of equipment on the Project Site that is to be incorporated into the Work;
- Take possession of equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments; and
- Finish the Work by whatever method the City deems expedient.

If within the ten (10) calendar days' notice period provided above, the Contractor and/or its Surety corrects the basis for declaration of default to the satisfaction of the Engineer, or if the Contractor's Surety submits a proposal for correction that is acceptable to the Engineer, the Contract will not be terminated.

16. ASSIGNMENT

Contractor shall not assign or transfer its interests in this contract without written consent of City, which consent may be withheld in the City's sole, subjective discretion; nor shall the Contractor assign any monies due or to become due to him/her hereunder without the previous written consent of the City of Coburg.

17. INDEPENDENT CONTRACTOR – NON-PARTNERSHIP

By its execution of this Agreement, the Contractor shall perform all work under this Project as an Independent Contractor, as that term is used under the laws of the State of Oregon and in accordance with the standards set forth in ORS 670.600, and shall not be considered as an agent of the City of Coburg, nor shall

the Contractor's Subcontractors or employees be sub-agents of the City of Coburg. In addition:

- The Work to be rendered under this Project is that of Independent Contractor. Contractor is not an officer, employee, or agent of the City under ORS 30.265 or ORS 30.287, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its act and for the acts of its subcontractors, agents or employees during the performance of this Project. Contractor is an Independent Contractor for the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for workers' compensation coverage under any Contract/Agreement applicable to the Project.
- No Agency, Partnership or Joint Venture – Neither the City or Contractor by virtue of any Agreement applicable to this Project, is a partner or joint venture with the other party in connection with the activities carried out under this Project.
- Any Contract/Agreement applicable to this Project is not intended to entitle the Contractor nor any of its Subcontractors to any benefits generally granted to City Employees. **Contractor shall be responsible for all federal or state taxes** applicable to compensation or payment paid to Contractor under any Contract/Agreement applicable to this Project.

18. FORCE MAJEURE

Contractor shall not be held responsible for delay or default caused by fire, riot, act of God and war which is beyond Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

19. SEVERABILITY

In the event any of the provisions or portion of the Contract/Agreement are held to be unenforceable or invalid by any court of competent jurisdiction for any reason, such invalid or unenforceable provision shall in no way effect the validity or enforceability of the remaining provisions or portions.

20. WAIVERS

No term or condition of this Contract/Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of the Contract, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion. The failure of either Party to enforce any provision of the project documents shall not constitute a waiver by the City of that or any other provision.

21. MERGER

No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. A waiver, consent, modification or change, if made shall be effective only in the specific instance

and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Contractor by signature of its authorized representative hereby acknowledge that Contractor understands the Contract and agrees to be bound by its terms and conditions.

21. LIMITATION OF AUTHORITY

City retains its authority to execute all applications, contracts and other documents relating to the Project. Contractor has no right or authority, express or implied, to commit or otherwise obligate City or any of its partners, except as permitted by the express terms of this Contract, or as authorized in writing.

22. ATTORNEY FEES AND GOVERNING LAW

In the event an action, suit or proceeding, including appeal, is brought for failure to observe any of the terms of this Contract, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal. The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Contract must be brought in the appropriate court of the State of Oregon.

23. REMEDIES

The remedies provided for in the Contract are cumulative, and in addition to other remedies available at law. Contractor agrees that, due to the health, safety and welfare issues that relate to timely and acceptable completion of the Project to be constructed under this Contract, the City may not have an adequate remedy at law in the event of a breach of this Contract by Contractor, and that the City may obtain injunctive relief at the sole elections of the City.

24. COUNTERPARTS

The Contract may be signed in one or more counterparts (including change orders), each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

25. GENDER: SINGULAR - PLURAL

Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in the Contract, they shall be construed to read in whatever form is appropriate to make the Contract applicable to all the Parties and all circumstances, except where the context of the Contract clearly dictates otherwise.

26. INTERCHANGEABLE TERMS IN CONTRACT AND RELATED DOCUMENTS

Contract and Agreement are interchangeable;
City and Owner are interchangeable; and
Engineer, City Engineer are interchangeable – this can be further construed to include Project Manager and or the designee of the City Engineer.

27. NOTICES

All notices of a legal nature shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of such notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows: City of Coburg, P.O. Box 8316, Coburg, OR 97408, Attn: City Recorder, Phone: 541-682-7850. Service by mail shall be deemed complete on the date of actual delivery or three (3) business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served up receipt of the facsimile or E-Mail, followed by mail delivery.

**THE PARTIES SIGNING BELOW WARRANT, REPRESENT AND AGREE THAT
THEY HAVE AUTHORITY TO SIGN THIS AGREEMENT AND AGREE TO ALL
TERMS**

CONTRACTOR:

SIGNATURE: _____

BY: Willam R. Wildish

TITLE: Vice President

DATE: _____

CITY OF COBURG, OREGON

SIGNATURE: _____

BY: Adam Hanks

TITLE: CITY ADMINISTRATOR

DATE: _____

APPROVED AS TO LEGAL SUFFICIENCY:

CITY ATTORNEY

EXHIBIT A
Operations Storage Building Project

| ITEM No. | ITEM DESCRIPTION | QTY | UNIT | UNIT COST | TOTAL BID PRICE |
|-----------------------|---|------|-------------|-----------|-----------------|
| 1 | Mobilization, Bonds, and Insurance | 1 | Lump Sum | | \$49,450 |
| 2 | Authorized Additional Excavation | 0 | Cubic Yards | \$63 | |
| 3 | 3/4"-0 Aggregate Base | 1300 | Tons | \$33 | \$42,900 |
| 4 | Building #1 (complete) | 1 | Lump Sum | | \$866,300 |
| 5 | Building #2 (complete) | 1 | Lump Sum | | \$214,500 |
| 6 | Electrical (complete) | 1 | Lump Sum | | \$112,900 |
| 7 | Water (complete) | 1 | Lump Sum | | \$8,900 |
| 8 | Stormwater (complete) | 1 | Lump Sum | | \$11,800 |
| 9 | 4" Thick Concrete Walkway | 475 | Square Feet | \$11.09 | \$5,270 |
| 10 | 3' Wide, 6" Thick Reinforced Concrete Walkway | 130 | Square Feet | \$24.62 | \$3,200 |
| 11 | 6" Thick Concrete ADA Parking Stall | 1 | Lump Sum | | \$4,320 |
| 12 | Construction Staking | 1 | Lump Sum | | \$2,640 |
| 13 | Signing and Striping (complete) | 1 | Lump Sum | | \$2,530 |
| Base Bid Total | | | | | \$1,324,773 |

Alternate #1

| ITEM No. | ITEM DESCRIPTION | QTY | UNIT | UNIT COST | TOTAL BID PRICE |
|----------|--|-------|-------------|-----------|-----------------|
| A1.1 | 8" Thick, Reinforced Concrete Valley Gutter | 241 | Lineal Feet | \$70.50 | \$16,990 |
| A1.2 | Asphalt Paving 4" of Level 2, 1/2" Dense HMA | 6,750 | Square Feet | \$5.07 | \$34,200 |

| | | | | | |
|-------------------------------|--|-----|-------------|-----------|----------|
| A1.3 | 4" Thick Concrete Walkway | 575 | Square Feet | \$ 9.97 | \$ 5,730 |
| A1.4 | 6" Thick, Reinforced Concrete Driveway Apron | 250 | Square Feet | \$ 15.76 | \$ 3,940 |
| Alternate #1 Bid Total | | | | \$ 60,860 | |

Alternate #2

| ITEM No. | ITEM DESCRIPTION | QTY | UNIT | UNIT COST | TOTAL BID PRICE |
|-------------------------------|---|-----|-------------|-----------|-----------------|
| A2.1 | 3/4"-0 Aggregate (additional to Base Bid) | 155 | Tons | \$ 33.81 | \$ 5,240 |
| A2.2 | 3' Wide, 4" Thick Concrete Walkway | 120 | Square Feet | 12.75 | \$ 1,530 |
| A2.3 | Raise building FFE 6" | 1 | Lump Sum | | \$ 9,170 |
| Alternate #2 Bid Total | | | | \$ 15,940 | |

Total Amount of Base Bid \$ 1,324,773

Total Base Bid price written out in words

ONE MILLION THREE HUNDRED TWENTY FOUR THOUSAND SEVEN HUNDRED AND SEVENTY THREE DOLLARS

Total Amount of Alternate #1 Bid \$ 60,860

Total Alternate #1 Bid price written out in words SIXTY THOUSAND EIGHT HUNDRED AND SIXTY DOLLARS

Total Amount of Base Bid Plus Alternate #1 Bid \$ 1,385,633

Total Base Bid Plus Alternate #1 Bid price written out in words

ONE MILLION THREE HUNDRED EIGHTY FIVE THOUSAND SIX HUNDRED AND THIRTY THREE DOLLARS

Total Amount of Alternate #2 Bid \$ 15,940

Total Alternate #2 Bid price written out in words FIFTEEN THOUSAND NINE HUNDRED AND FORTY DOLLARS

Total Amount of Base Bid Plus Alternate #2 Bid \$ 1,340,713

Total Base Bid Plus Alternate #2 Bid price written out in words

ONE MILLION THREE HUNDRED FORTY THOUSAND SEVEN HUNDRED AND THIRTEEN DOLLARS

EXHIBIT B

RELEVANT PROVISIONS OF ORS CHAPTER 279B

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

1. Make payment promptly, as due, to all persons supplying to the contractor for labor or material for the performance of the work provided for in the contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.230 Condition concerning payment for medical care and providing workers' compensation.

1. Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
2. Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor.

1. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
2. In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

- a. Except as provided in subsection (4) of this section, contracts for services must obtain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.
- b. An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.