

Contract
CITY OF COBURG
PUBLIC IMPROVEMENT CONTRACT
PROJECT: Coburg Pavilion Park Project

This Contract is between the **City of Coburg**, an Oregon Municipal Corporation (“**City**”) and **Wildish Construction Co.** (“**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: 3600 Wildish Lane Eugene, OR 97408 Phone: 541-485-1700
Fax: 541-683-7722 Contact: Michael C. Wildish E-Mail: estimating@wildish.com
CCB No.: 695 Fed ID (Tax) No. 93-0491008

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 March 28, 2025 and totally complete by April 25, 2025.

2. SCOPE OF WORK

Contractor shall construct **Coburg Pavilion Park Project** (the “Project”) in the City of Coburg, Oregon. The Project is located south of E. McKenzie Road and west of N. Harrison Street at Coburg’s Pavilion Park. 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 **\$310,296.00**.

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@branchengineering.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 Pavilion Park 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 279C (**EXHIBIT B**).

6. RESPONSIBILITY FOR DAMAGES / INDEMNITY:

- a. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.
- b. The Contractor shall indemnify, hold harmless, and defend the Owner, its officers, employees and agents from any and all claims, losses, damages, attorney fees, costs and liabilities arising out of accidents, unforeseen difficulties, or intentional, reckless or negligent acts or omissions of the Contractor, its Subcontractors, suppliers, employees, or agents in performance of the Work. Claims include any assertion of a right to monetary damages or equitable relief or any combination thereof.
- c. Owner shall notify Contractor of any claim of which it is aware that requires Contractor to defend, indemnify and hold Owner harmless. Thereafter, Contractor shall notify Owner in writing within 30 days that it will defend, indemnify and hold Owner harmless. Contractor's failure to provide such notification is a breach of Contract. In the event the Contractor fails to give notice within 30 days, Owner may defend the claim and charge Contractor with any costs associated with that effort.
- d. Owner reserves the right to participate in any claim irrespective of the Contractor's obligations to indemnify, hold harmless, defend or notify. However, if Owner elects to participate in any claim after receiving notification from Contractor, Contractor is not obligated to indemnify Owner for the costs associated with that participation, although its other obligations to indemnify, hold harmless and defend remain intact.
- e. In claims against any person or entity indemnified under this Section 7 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section 7 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- f. If any provision of this Contract is determined to require either party to indemnify, defend, reimburse, hold harmless or provide insurance to the other party (or that party's insurers or sureties) in a manner that would violate applicable law (including but not limited to ORS 30.140), then the offending provision shall be construed such that it is given the broadest meaning and effect allowed by law.
- g. The indemnities and other covenants of this Section 6 shall survive the termination of the Contract.

7. 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.

8. 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.

9. 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.

10. 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.

11. PREVAILING WAGE

a. 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.

b. 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.

12. 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.

13. 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.

14. 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/un-paid) 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.

15. **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. City Rule 137-049-0200(2):

Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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 of 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:

BY: _____

TITLE: _____

DATE: _____

CITY OF COBURG, OREGON

BY: Adam Hanks

TITLE: CITY ADMINISTRATOR

DATE: _____

Proposed

EXHIBIT A

220-1

Section 220
SCHEDULE OF BID ITEMS – Coburg Pavilion Park Project

ITEM No. ODOT SPEC	ITEM DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL BID PRICE
1 00210	Mobilization, Bonds, And Insurance	1	Lump Sum	40,000.00	40,000.00
2 00225	Temporary Work Zone Traffic Control, Complete	1	Lump Sum	1,000.00	1,000.00
3 00280	Erosion Control	1	Lump Sum	3,000.00	3,000.00
4 00305	Construction Staking & Surveying	1	Lump Sum	8,500.00	8,500.00
5 00310	Saw Cutting (Includes second cut)	170	LF	2.00	340.00
6 00310	Adjust Valve Boxes	2	Each	100.00	200.00
7 00330	General Excavation	64	CU YD	50.00	3,200.00
8 00330	Earthwork-Berm	131	CU YD	25.00	3,275.00
9 00350	Subgrade Geotextile	483	SQ YD	1.00	483.00
10 00446	Infiltration Trench	1	Lump Sum	5,000.00	5,000.00
11 00495	Trench Resurfacing- 4" HMAC	27	SQ YD	200.00	5,400.00
12 00596 A	Rockwall-Complete	1	Lump Sum	12,000.00	12,000.00
13 00641	Aggregate - 3/4"-0" Quarry Rock	75	Ton	120.00	9,000.00
14 00641	Aggregate - 1 1/2"-0" Crushed River Rock	91	Ton	190.00	17,290.00
15 00641	Aggregate - 1/4"-10" Crushed River Rock	60	Ton	190.00	11,400.00
16 00759	Concrete Walk, 4-Inch Thick Concrete	1617	SQ FT	20.00	32,340.00
17 00759	Concrete Pad, 4-Inch Thick Concrete	386	SQ FT	20.00	7,720.00
18 00759	Concrete Mowstrip, 6-Inch Thick Concrete	143	SQ FT		

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19 00759	Concrete ADA Parking Stall & Access Aisle- 6-Inch Thich PCC	574	SQ FT	22.00	12,628.00
20 00760	Straight/Standard Curb "H"=16"	7	LF	60.00	420.00
21 00860	Permanent Pavement Markings: 4" White Longitudinal Striping for ADA/Disabled Parking Access Aisle & Parking Stall	136	LF		
22 00860	Permanent Pavement Markings: ADA Parking Legend & "No Parking", Type B-HS	1	Lump Sum		
23 00905	Install New ADA Sign on New PSST Post on New Anchor Foundation-Complete	1	Lump Sum	1,100.00	1,100.00
24 00950	Remove and Relocate Existing Ornament Light - Complete (see sheet C6.0)	1	Lump Sum		
25 00970	Lighting & Electrical- Complete (see sheet C6.0)	1	Lump Sum	62,000.00	62,000.00
26 01030	Site Restoration, Permanent Seeding and Topsoil	1	Lump Sum		
27 01040	Landscape-Complete	1	Lump Sum	40,000.00	40,000.00
28 01040	Boulder	19	Each		
29 01120	Irrigation System	1	Lump Sum	34,000.00	34,000.00
30 01120	Irrigation System- Repairs	1	Lump Sum		
Base Bid Total				\$	310,296.00

Alternate #1

ITEM No.	ITEM DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL BID PRICE
A1 00310	Saw Cutting (Includes second cut)	258	LF		
A2 00745	Level 2, 1/2" HMAC	31	Ton		
A3 00860	Permanent Pavement Markings. 4" White Longitudinal Striping for On-Street Parking Stalls "Tee Stripe" (non-ADA Spaces)	11	LF		
A4 00970	Light Bollards- Complete (A* see sheet C6.0)	8	Each		

220-3

A5 00970	Pavilion Receptacle Circuit	1	Lump Sum	
Alternate #1 Bid Total				\$

Total Amount of Base Bid \$ 310,296.00

Total Base Bid price written out in words
Three hundred and Ten thousand two hundred and ninety six

~~Total Amount of Alternate #1 Bid \$ _____~~

~~Total Alternate #1 Bid price written out in words _____~~

~~Total Amount of Base Bid Plus Alternate #1 Bid \$ _____~~

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

**Note: All Unit Price Bids should be considered as "Furnished and Installed".
Billing is to be as complete units and partial bills will not be paid.**

No bid will be received and considered responsive by the City unless bidders signs and certifies, as follows:

We hereby certify to do the work as specified and at the price as quoted in conformance to all the City, State and Federal Regulations that are applicable and will indemnify the 'City of Coburg' against all claims arising out of any actions caused by our company during the performance of this contract.

Bidder IS IS NOT a "resident Bidder" as defined in ORS 279A.120 (CIRCLE ONE).

We hereby certify that Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148, as applicable.

Company Wildish Construction Co.

Address 3600 Wildish Lane Eugene, OR 97408

Email Address estimating@wildish.com

By *Michael C. Wildish*
(Signature of Authorized Official)

Date 9/13/24

By Michael C. Wildish
(Type or Print Name)

Phone 541-485-1700

Federal I.D. # 93-0491008

Fax 541-603-7722

ADDENDUM #1 Schedule of Bid Items
220-4

Surety Company (Performance Bond) LIBERTY MUTUAL INSURANCE COMPANY

Contact at Surety STEVE JARAMILLO Phone 206-473-4340

CCB# 695 No. Years Registered w/CCB 52

The Contracting agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered and in good standing with the Oregon Construction Contractors Board (CCB), or is licensed by the State Landscape Contractors Board, as specified in Rule 137-049-0230.

Are there any outstanding claims against your firm: Yes No

Protest of Contractor Selection/Contract Award must be made by Written Notice within Five (5) Days of the Posted Award Date in accordance with City Public contracting Rules 137-049-0260 and 137-049-0450, respectively.

All the prospective bidders will have specific line items to bid on and the award will be made on the lowest qualified bid on the total bid items. The City will reserve the right to add or delete items as the project goes forward.

1. Liquidated Damages: See General Conditions 110.9.00.
2. Please invoice referencing the above exact line-item numbers and line items. All quantities must be approved by the Project Engineer before invoicing.

EXHIBIT B

Public Contracting Code

Requirements for Public Improvement Contracts Over \$50,000

137-049-0800

Required Contract Clauses

Contracting Agencies shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.505 to ORS 279C.545 & ORS 279C.800 to 279C.870

137-049-0810

Waiver of Delay Damages Against Public Policy

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.315

137-049-0815

BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth. ORS 279A.065

Stats. Implemented: ORS 279C.830

137-049-0820

Retainage

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond, security, or other instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond, security, or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection

- (4)(a) of this rule; or
- (b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) **Deposit in interest-bearing accounts.** Either upon election of the Contractor pursuant to ORS 279C.560(5) or as required when the Contract Price exceeds \$500,000 pursuant to ORS 279C.570(2), a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, or interest-bearing escrow account pursuant to ORS 279C.570(2). Earnings on such an account shall accrue to the Contractor from the date the Contractor's related payment request is fully approved by the Contracting Agency, until the date the retainage is paid to the Contractor. For purposes of this Section, a payment of retainage is deemed to be "paid" by a Contracting Agency when the payment is transmitted to the Contractor or otherwise applied against an obligation of the Contractor under the Contract.

(4) **Alternatives to cash retainage.** In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

- (i) Bills, certificates, notes or bonds of the United States.
- (ii) Other obligations of the United States or agencies of the United States.
- (iii) Obligations of a corporation wholly owned by the Federal Government.
- (iv) Indebtedness of the Federal National Mortgage Association.
- (v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
- (vii) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) **Recovery of Costs.** Pursuant to ORS 279C.560(3), a Contracting Agency may reduce the final payment to recover from the Contractor all additional costs incurred as a result of Contractor's election to:

- (i) submit an alternative to cash retainage pursuant to section (4) of this rule; or (ii) to deposit cash retainage in an interest-bearing account pursuant to section (3) of this rule for Contracts not in excess of \$500,000 by reducing the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & ORS 279C.845

Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

137-049-0830

Contractor Progress Payments

(1) **Request for progress payments.** Each month the Contractor shall submit to the Contracting

Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Contracting Agency will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

137-049-0840 Interest

(1) **Prompt payment policy.** A Contracting Agency shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Contracting Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) **Interest on final payment.** Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) **Settlement or judgment interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

137-049-0850 Final Inspection

- (1) **Notification of Completion; inspection.** The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.
- (2) **Acknowledgment of acceptance.** When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570(8)

137-049-0860 Public Works Contracts

(1) **Generally.** ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of

the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

- (a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
- (b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
- (c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).
- (d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
- (e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.
- (f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

(3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

- (a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):
 - (A) Physically contained within or attached to hard copies of procurement Specifications;
 - (B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or,
 - (C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.
- (b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.
- (c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 – ORS 279C.870

137-049-0870

Specifications; Brand Name Products

- (1) **Generally.** The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).
- (2) **Equivalents.** A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345

137-049-0880

Records Maintenance; Right to Audit Records

- (1) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and

places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit.** The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440

137-049-0890

Contracting Agency Payment for Unpaid Labor or Supplies

(1) **Contract incomplete.** If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.515

137-049-0900

Contract Suspension; Termination Procedures

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) **Reasons for termination.** The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) **Payment.** When a Contract, or any divisible portion thereof, is terminated pursuant to this section

(2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative.** The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

137-049-0910

Changes to the Work and Contract Amendments

(1) **Definitions for Rule.** As used in this rule:

(a) "**Amendment**" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "**Changes to the Work**" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority.** Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments.** Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279C.335 & ORS 279C.400(1)