



MASTER SERVICES AGREEMENT FOR ON-CALL CONSTRUCTION SERVICES

THIS CONTRACT (Contract), dated **September 16, 2024**, is between **City of Sandy (City)** and **J.W. Fowler (Contractor)**.

RECITALS

WITNESSETH, City desires to engage Contractor to supply equipment procurement and construction services for the Work set forth in future Task Orders, hereinafter "Work"; and

WHEREAS, Contractor is competent and capable to perform said services and holds all applicable licenses from the State of Oregon;

WHEREAS, City and Contractor have entered into this Master Services Agreement upon which future Task Orders will be issued and thereby made a part of this Agreement.

NOW, THEREFORE, City and Contractor, for the consideration hereinafter set forth, agree as follows:

1. CONTRACT DOCUMENTS

In the event of conflict or discrepancy in the requirements and provisions as set out by the contract, or the specifications, or the plans, such conflict shall be reconciled by the acceptance of the following order of precedence for the various Contract Documents:

- A. Change orders and written amendments to this Agreement;
- B. This Master Services Agreement (MSA) bearing the signature of the Owner and Contractor;
- C. Individual Task Order(s) comprising the Contract that sets forth Contract Price and Time, accepted and bearing the signature of the Owner and Contractor;
- D. The General Conditions of the Construction Contract as modified by Supplementary Conditions;
- E. Division 01 of the Technical Specifications
- F. Divisions 02-48 of the Technical Specifications
- G. Drawings, including noted written thereon;
- H. Insurance and any associated bonds;
- I. All other documents expressly adopted by this Contract or by the written consent of both parties.

2. DURATION

This Contract is effective through **December 31, 2026**, unless terminated earlier pursuant to the terms of the Contract. The Contract may be extended for one additional one-year term upon approval of the parties via written amendment.

3. COMPENSATION

The not-to-exceed amount of this Contract is to be a cumulation of all Task Orders not exceeding \$5 million and shall not be exceeded without pre-approval by the City or mutual amendment of this Contract. City will pay Contractor according to the rates outlined in the attached Task Order – Attachment A. Contractor's rates will remain fixed for the duration of each Task Order



assigned. Contractor's crews will not work overtime unless Contractor has previously obtained City's approval. All overtime will be governed by the provisions of ORS 279C.520.

Contractor will submit monthly invoices based upon Work completed. Contractor will invoice City monthly or per project, whichever is more frequent. City will pay invoices within 30 days of the date the invoice is received. The City will assign a purchase order number to this Contract, which should be referenced on all invoices. Invoices will include:

- A. Time period during which the services were performed;
- B. Total cost of services provided during the time period invoiced; and
- C. Location of the work site;
- D. Project number, if applicable
- E. Date and time spent at the work site;
- F. Name of City staff who requested the work; and
- G. Description of the work performed

4. CONTRACTOR RESPONSIBILITIES.

General

- A. Contractor shall provide all preparatory work and operations, including, but not limited to those necessary for the movement of personnel, equipment and supplies and any incidentals necessary to carry out the work as outlined in Task Order - Attachment A.
- B. Contractor shall warrant all Work against defects in performance for a period of one year following contract completion. Within the warranty period, if any defect in the Work arises, Contractor shall correct the defect promptly at no additional charge.

Work Assignment Procedures.

Execution of this Contract in no way entitles Contractor to work pursuant to Task Orders, nor requires City to issue any of the same. If there are conflicts between the terms of the Contract and any individual Task Order, the terms of the Contract shall take precedence.

Upon City's identification of a need for a construction project pursuant to this Contract, City shall provide all Contractors with request for pricing, which shall include, but not be limited to: (1) a cover letter including a project description, anticipated project timeline, technical constraints, and any other important matters that the City believes are reasonable and prudent to provide; (2) a partially filled out Task Order with project specific information included; and (3) any other qualifications that the City believes are necessary to sufficiently evaluate the Contractor's qualifications to perform the proposed project. Each Contractor shall respond to each request for pricing with all requested information, including a project cost estimate provided in the appropriate Task Order, within 30 days of receipt. City shall review each Contractor response and select the most qualified Contractor, as determined in the City's sole and absolute discretion. City reserves the right to negotiate the terms of a Contractor's response, including the project cost estimate, if doing so is in the best interest of the City, or to cancel a request altogether. City shall inform all Contractors of its Contractor selection. City and



the Contractor shall promptly execute a Task Order containing substantially the same terms provided in the Contractor's response to the request for pricing or otherwise negotiated between the parties, as further provided herein.

Work authorized under this Agreement shall be initiated by a fully executed Task Order signed by both the City and the Contractor. Task Orders shall include a description of the Work to be performed, to include the following:

- A. A description of the work
- B. Period of performance
- C. Items to be furnished by City, if applicable
- D. Compensation for performing the Work. This may include a detailed estimate of costs, estimated number of hours to complete the Work, labor rates, names or positions of individuals performing the work and any applicable expenses.

Contractor shall perform the Work using commercially reasonable efforts. Contractor shall be responsible for securing all permits, licenses, and other authorizations necessary to perform the Work. Contractor shall bear full responsibility for all subcontractors and employees performing Work on its behalf, and for prompt payments to the same.

5. CITY'S RESPONSIBILITIES

City will assist Contractor by placing at Contractor's disposal all reasonably available information pertinent to completing the Work, including any other relevant data and will promptly respond to questions and issues as they arise. Where possible, City will assist Contractor in obtaining information from sources outside the City.

6. GENERAL CONDITIONS

Force Majeure

Neither City nor Contractor shall be responsible for or liable for damages resulting from delays due to causes beyond their reasonable control, including, but not limited to, Acts of God, pandemics, acts or omissions of governmental authorities, strikes, lockouts, acts of the public enemy, wars, blockades or civil disturbances. In the event of such a delay, the completion date for each party's obligations shall be extended for a period equal to the length of the delay. Each party shall notify the other immediately upon discovering any event that the notifying party believes will result in such a delay.

Termination or Suspension of Work

City may terminate this Contract upon seven days written notice for substantial failure by Contractor to perform in accordance with the terms hereof within 14 days written notice to the Contractor. If any portion of the Work covered by this Contract is suspended, abated, abandoned or terminated, City will pay Contractor for the services rendered. Such payment will be based on the rates outlined in Exhibit B, or where the Contract cannot be applied, payment will be based on a reasonable estimate as mutually agreed, but in no case, will anticipated profit be paid for Work not performed.



Individual Task Order Suspension or Termination

City may terminate Task Orders upon seven days written notice to Contractor for substantial failure by Contractor to perform in accordance with the terms hereof, or otherwise contained therein. If any portion of the Work covered by the Task Order is suspended, abated, abandoned or terminated, City will pay Contractor for the services satisfactorily rendered. Such payment will be based on the rates outlined in the Task Order, or where the Contract cannot be applied, payment will be based on a reasonable estimate as mutually agreed, but in no case, will anticipated profit or other consequential damages be paid for Work not performed.

Addresses for Notice:

City	Contractor
Jennifer Coker, PE Public Works Director City of Sandy 39250 Pioneer Boulevard Sandy, OR 97055 e-mail: jcoker@ci.sandy.or.us	Bill Blankenship, Vice President of Operations J.W. Fowler 12775 Westview Drive Dallas, OR 97338 email: billb@jwfowler.com

Indemnification

Contractor shall indemnify, defend, save, and hold harmless City, its members, officers, boards, agents and employees against all liability, damages, injury, claims, suits, judgments or actions of whatsoever nature, loss or expenses, including attorney's fees, based upon or arising out of any negligent, grossly negligent, or willful act or omission by Contractor. Contractor shall obtain similar indemnification for anyone acting on Contractor's behalf in connection with, or incidental to, this Contract for the work to be performed hereunder for that person or entity's negligence. Provided however, that nothing herewith shall be construed to require indemnification of the City attributable to its own negligence.

Comprehensive Automobile Liability Insurance

Contractor shall maintain a comprehensive automobile liability policy with coverage of not less than \$1,000,000 combined single limit. The coverage shall include auto liability insurance for any vehicle, hired vehicles and non-owned vehicles. Subcontractors shall carry the same amount of coverage. Contractor and subcontractors shall present a certificate of insurance to the City showing evidence of this coverage and shall name the City and related parties listed below in paragraph 5.7 as additional insureds.

Comprehensive Commercial General Liability Insurance

Independent of 5.4 above, Contractor agrees to maintain comprehensive commercial general liability insurance in the amount of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, and aggregate products completed operations of \$2,000,000. Subcontractors shall carry the same amount of coverage. Contractor and subcontractors shall present a certificate of insurance to the City showing evidence of this coverage and shall name the City and related parties listed below in paragraph 5.7 as additional insureds.



Umbrella/Excess Liability Insurance

Independent of Paragraphs 5.4 and 5.5 above, Contractor agrees to maintain umbrella/excess liability insurance for comprehensive general liability and automobile liability in the amount of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Subcontractors shall carry the same amount of coverage. Contractor and subcontractors shall present a certificate of insurance to the City showing evidence of this coverage and shall name the City and related parties listed below in paragraph 5.7 as additional insureds.

Additional Insureds

The City, its officers, boards, agents, contractors and employees shall be named as additional insureds on all insurance policies, which shall remain in effect for the term of this Contract. Prior to execution of this Contract, Contractor shall provide the City with Certificates of Insurance. All insurance shall have a 30-day cancellation notice. The policy shall be issued by a company authorized to do business in the State of Oregon and shall protect Contractor against liability for contractual liability.

Workers' Compensation Coverage Requirements

Contractor is an independent contractor for purposes of the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for any workers' compensation coverage under this Contract. Prior to commencement of labor, Contractor shall provide City with proof of coverage with a policy limit not less than statutory.

Compliance with Government Laws and Regulations

1. Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; iii) the Health Insurance Portability and Accountability Act of 1996; iv) the Americans with Disabilities Act of 1990, as amended; v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. City's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.
2. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110).
3. Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work. Contractor had a current license with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time Contractor's bid was submitted to City.



4. Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors have a current license with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor. Contractor shall not employ any subcontractors currently listed on the Oregon Bureau of Labor and Industry's List of Debarred Contractors.
5. The following notice is applicable to Contractors who perform excavation Work.
ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
6. For contracts exceeding \$10,000, non-resident Contractors shall promptly report to the Department of Revenue for the State of Oregon on forms provided by the Department, the total contract price, terms of payment, length of contract and other information that the Department may require. Contractor shall mail a copy of these forms filed with the Department of Revenue to the City.
7. By signing this Contract, Contractor declares that it has complied with all of the State of Oregon's tax laws at the time of contract execution and will comply with same for the life of the Contract, including but not limited to ORS 305.620, and ORS Chapters 316, 317, and 318. Contractor acknowledges that failure to comply with the State of Oregon's tax laws before this Contract was executed or during the term of this Contract is considered a default for which the City may terminate this Contract and seek damages and other relief available under the terms of this Contract or under applicable law.
8. Failure to comply with any or all of the requirements listed above shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

7. WAGES AND LABOR

Prevailing Wage Rates on Public Works Projects

This Contract shall be subject to prevailing rate of wage rules and regulations. Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870 and Contractor must pay workers not less than the applicable prevailing rate of wage in accordance with ORS 279C.838 and 279C.840. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), can be downloaded from the State of Oregon's BOLI website, www.oregon.gov/boli. The rates that apply are those that are in effect on the effective date of the Contract. <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. If both state and federal prevailing wage rates apply to the Work, Contractor must pay all laborers, including those working on behalf of subcontractors, the higher of the applicable state or federal wage rate. If Contractor is required to pay prevailing wages, Contractor will ensure that its subcontractors also agree to do so in writing. If both state and federal wages apply to the Work, Contractor will ensure that its subcontractors agree in writing to pay the higher of the applicable state or federal wage rate.

Payroll Certification and BOLI Fee Requirements

1. In accordance with ORS 279C.830 and ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the City's Authorized



Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the applicable state or federal prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor or Subcontractor's best knowledge and belief. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month or upon job completion, with the Contractor's invoice, by the fifth business day of the following month. If certified payroll statements are not submitted, City will withhold 25% retainage of any amount earned by Contractor until such certified payroll statements are submitted. Once submitted, the 25% retainage will be paid to Contractor within 14 days of receipt of the certified payroll statements.

2. The Contractor and Subcontractors shall preserve the certified statements for a period of six years from the date of completion of the Contract.
3. City will pay the required fee to the Oregon Bureau of Labor and Industries.
4. Pursuant to ORS 279C.825 and in accordance with administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, Contractor must pay a fee to Owner (Owner must submit fee to the Bureau of Labor and Industries) equaling 1/10 of one percent of the Contract price, however, the fee shall not be less than \$250 nor more than \$7500, regardless of the Contract price. Owner may withhold the amount of this fee from any amounts due Contractor.

Public Contracting Law, Prompt Payment and Contract Conditions

1. Pursuant to ORS 279C.505 and as a condition to City's performance hereunder, the Contractor shall:
 - A. Make payment promptly, as due according to the applicable prevailing wage rates, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
 - B. Pay all contributions or amounts due to the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
 - C. Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against City, or assign any sums due by City, to Subcontractors, suppliers, or manufacturers, and will not make any Contract or act in any way to give Subcontractors a claim or standing to make a claim against the City.
 - D. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.



- E. Contractor and Subcontractors must give written notice to all persons furnishing labor under this Contract, of the number of hours per day and the days of the week required for performance of the Work per OAR 839-025-0020 (2) (a).
2. Pursuant to ORS 279C.515, and as a condition to City's performance hereunder, Contractor agrees:
 - A. 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 project as such claim becomes due, the proper officer(s) representing the City may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.
 - B. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 Days after receipt of payment from City or a contractor, the 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(3) 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 equal three times the discount rate on 90-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve City that includes Oregon on the date that is 30 Days after the date when payment was received from City or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.
 - C. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract shall contain a similar clause.
 3. Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:
 - A. A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 Days out of such amounts as are paid to the Contractor by City under the Contract;
 - B. An interest penalty clause that obligates the Contractor if payment is not made within 30 Days after receipt of payment from City, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from City or Contractor when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date



and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).

- C. A clause which requires each of Contractor's Subcontractor's to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.
4. 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 such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.
5. Contractor warrants that it is not delinquent in the filing or payment of any Oregon income taxes, Oregon personal property taxes, Oregon municipal taxes, or Oregon real property taxes and that it has otherwise complied with all Oregon tax laws and all tax laws of those Oregon municipalities to which Contractor is subject.

Payment for Medical Care

Pursuant to ORS 279C.530, and as a condition to City's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or contract for the purpose of providing or paying for such services.

Hours of Labor

As a condition to City's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference:

1. Pursuant to ORS 279C.520 and as a condition to City's performance hereunder, no person shall be employed to perform Work under this Contract for more than 10 hours in any one day or 40 hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:
 - A. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive Days, Monday through Friday; or
 - B. For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive Days, Monday through Friday; and
 - C. For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.
2. This section will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining contract with any labor organization.



3. This Section shall not excuse Contractor from completion of the Work within the time required under this Contract.

Drug Testing Program

Pursuant to ORS 279C.505, Contractor shall demonstrate that an employee drug testing program is in place. The Contractor shall demonstrate that it has a drug-testing program in place by executing a certification on a form provided by the City, which shall become a term or condition of the Contract. Failure to maintain such a program shall constitute a material breach of Contract.

Performance and Payment Bonds

1. The City reserves the right to request a performance and payment bond for particular dollar value assignments.
2. If a Task Order value exceeds \$100,000 then, prior to commencement of Work, the Contractor shall provide the City a full Performance Bond and a full Payment Bond each equal to the full amount of the Task Order. The Contractor shall maintain the Performance and Payment Bonds in full force from sureties licensed to do business in Oregon. The Parties understand and agree that the obligation of the Contractor's surety shall be for the faithful performance of the Task Order, as well as for faithful payments to employees and Subcontractors for their performance of all services under a respective Task Order, pursuant to requirements of Oregon Revised Statutes (ORS) 279C.375.
3. Bond forms furnished by the City and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.
4. Pursuant to ORS 279C.605, any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.
5. The Contractor will:
 - A. File a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work under the Task order, unless exempt under ORS 279C.836(2) (7) or (8), in an amount of not less than \$30,000.
 - B. Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Contractors Board pursuant to ORS 279C.836 before starting work as part of the Task Order, unless exempt under ORS 279C.836(2), (7) or (8).

Retainage

1. Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.570.
2. City may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, City may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the City's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of



Contractor's surety; except that when the Work is 97-1/2 percent completed the City may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, City shall respond in writing within a reasonable time.

3. In accordance with the provisions of ORS 279C.560 and related Oregon administrative rules, Contractor may request in writing:
 - A. to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with City or in an escrow account, satisfactory to City, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of City;
 - B. that retainage be deposited in an interest-bearing account, in a bank, savings bank, trust company or savings association for the benefit of City, with earnings from such account accruing to the Contractor; or
 - C. that the City allow Contractor to deposit a surety bond for the benefit of City, in a form acceptable to City, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.570.

Where the City has agreed to the Contractor's election of option (a) or (b), City may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the City has agreed to Contractor's election of option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the Project. If Contractor elects option (b), the City will not place the retainage into an escrow account.

4. The retainage held by City shall be included in and paid to the Contractor as part of any final payment of the Task Order's Contract Price. The City shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence 30 days after the Work under the Task Order has been completed and accepted and to run until the date when final payment is tendered to Contractor. The Contractor shall notify City in writing when the Contractor considers the Work complete and City shall, within 15 days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Task Order. If City does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.
5. In accordance with the provisions of ORS 279C.560, City shall reduce the amount of the retainage if the Contractor notifies the City that the Contractor has deposited in a bank or trust company, in a manner authorized by the City, bonds and securities of equal value of a kind approved by the City.

Remedies

All remedies provided in this Agreement are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be executed independently, concurrently or successively. Any forbearance by a Party from exercising a right under this Agreement or otherwise afforded by applicable law, shall not be a waiver of, or preclude, the exercise of that or any other right or remedy hereunder.



8. MISCELLANEOUS CONDITIONS

City and Contractor agree that this Contract is subject to the following conditions which together with the provisions hereof and the appendices hereto represent the entire Contract between City and Contractor; and they may only be altered, amended, or repealed by a duly executed written instrument.

City and Contractor Representatives

The City's Representative is Jennifer Coker, PE, Public Works Director, e-mail: jcoker@ci.sandy.or.us and is empowered to act for the City in accordance with the provisions of this Contract, where such acts are not contrary to laws or ordinances. Contractor's Representative shall be *to be determined*, phone, email.

Independent Contractor Status.

1. Contractor shall be free from direction and control over the means and manner of providing the labor or service, subject only to the specifications of the desired results. Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Contractor shall furnish the tools or equipment necessary for the contracted services. Contractor certifies that Contractor is an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Contract. Contractor is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285.
2. By signing this Contract, Contractor declares that it has complied with all of the State of Oregon's tax laws at the time of contract execution and will comply with same for the life of the Contract, including but not limited to ORS 305.620, and ORS Chapters 316, 317, and 318. Contractor acknowledges that failure to comply with the State of Oregon's tax laws before this Contract was executed or during the term of this Contract is considered a default for which the City may terminate this Contract and seek damages and other relief available under the terms of this Contract or under applicable law.

Subcontractors

1. Contractor shall include in each subcontract with a Subcontractor, including a material supplier, the following terms:
 - A. A payment clause that obligates the Contractor to pay the Subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the City pays to the Contractor under this Contract.
 - B. A clause that requires the Contractor to provide all Subcontractor with a standard form that the Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor.
 - C. A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if the Contractor;



- a. Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
 - b. Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
- D. An interest penalty clause that obligates the Contractor, if the Contractor does not pay the Subcontractor within 30 days after receiving payment from the City, to pay the Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clauses included in the subcontract under paragraph A of this subsection. The Contractor or Subcontractor is not obligated to pay an interest penalty if the only reason the Contractor or Subcontractor did not make payment when payment was due is that the Contractor or Subcontractor did not receive payment from the City or Contractor when payment was due. This interest penalty:
- a. Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and
 - b. Is computed at the rate specified in ORS 279C.515 (2).
2. Contractor is further obligated to require its Subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection 1 of this section in each of Subcontractor's subcontracts and to require each of Subcontractor's subcontracts to include such clauses in the Subcontractors' subcontracts with each lower-tier subcontractor or supplier.
3. Any subcontracts required by Contractor in connection with performance of the work shall be limited to such individuals or firms that the City accepted when Contractor was awarded the Contract. Any substitution in subcontractors will be subject to the prior written approval of the City. All subcontractors will carry the same insurance required by this Contract and shall name the City as an additional insured before performing the work. Contractor shall verify that all subcontractors are eligible to work on prevailing wage projects.

Record Keeping and Access to Records

Contractor shall maintain books and accounts of payroll costs, travel, subsistence, field, contracted services of others and reimbursable expenses pertaining to the Work in accordance with generally accepted professional practices and appropriate accounting procedures. Said books and account shall be available to City or its authorized representative, at all reasonable times for inspection, audit, or copying at the office of Contractor. Records shall be maintained and available for three years from the date of Contract expiration.

Equal Employment Opportunity

Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, age, mental or physical handicap, or national origin.

No Third-Party Beneficiaries.

City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.



Attorney Fees.

If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any such amount which a court, including any appellate court, may adjudge reasonable as attorney fees.

Severability.

The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

Changes.

Neither this Contract, including any of the contract documents shall be waived, altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by both parties. No changes to the Contract will be effective until approved in writing by City via amendment.

Non-appropriation of Funds

The continuance of this Contract is contingent upon the appropriation of funds by the City's Board of Commissioners to fulfill the requirements of the Contract. If the City's Board of Commissioners fails to appropriate sufficient monies to provide for the continuance of the Contract, or if such appropriation is reduced to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, the effect of such reduction would provide insufficient monies for the continuation of the Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which the funds are not appropriated.

Assignment

This Contract is binding on the heirs, successors, and assigns of the parties hereto. City or Contractor may not assign this Contract without prior written consent of the other party.

Jurisdiction

This Contract shall be administered and interpreted under the laws of the State of Oregon. Litigation arising from this Contract shall be administered according to the arbitration rules of the Circuit Court of the State of Oregon for the County of Washington.

Dispute Resolution

1. Should any dispute arise between the parties to this Contract, it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved



other than first through mediation and, only in the event said mediation efforts fail, through litigation.

2. Written notice of the dispute shall be provided to the other party. Within 10 days of the notice, the parties shall meet and attempt to resolve the matter. If not resolved, either party may request mediation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation shall be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process.
3. Mediation shall be completed within 60 days of the notice of the dispute.
4. If a party requests mediation and the other party fails to respond within 10 days, or if the parties fail to agree on a mediator within 10 days, or if mediation is unsuccessful, then an impasse will be declared and either party shall be free to commence litigation. Venue and jurisdiction for any dispute shall be the Washington County Circuit Court. The party shall have any rights at law or in equity with respect to any disputes not covered by this Section.

Waiver

The failure of City to enforce any provision of this Contract shall not constitute a waiver by City of that or any other provision.

Merger

This Contract and attached exhibits constitute the entire contract between the parties. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties.

Survival of Covenants

The covenants of this Contract shall survive the expiration or termination of the Contract with respect to compensation, confidentiality, non-appropriation of funds, record keeping, access to records and indemnification.

Authorization

The person signing this Contract on behalf of Contractor hereby covenants and warrants that he/she is authorized to do so, and that his/her signature will fully bind Contractor to the terms and conditions of this Contract. Upon City's request, Contractor shall provide City with evidence reasonably satisfactory to the City's confirming the foregoing covenants and warranties.

Entire Contract

This Contract represents the entire understanding of the City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Contract may not be modified or altered except in writing signed by both parties.



Electronic Signature

This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. An electronic signature shall be considered an original signature. Executed signature pages may be delivered using PDF or similar file type transmitted via electronic mail, cloud-based serve, e-signature technology or other similar electronic means.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in duplicate by their respective authorized officers or representatives as of the day and year first above written.

CITY OF SANDY

J.W. FOWLER

By:
City Administrator

By: 
Vice President of Operations