

CONTRACT FORMS

**SECTION 00 52 43 - AGREEMENT  
FOR  
PORTLAND TO SANDY WATER FILTRATION TRANSMISSION SYSTEM  
FOR  
CITY OF SANDY**

**THIS AGREEMENT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2025

by and between The City of Sandy, OR (hereinafter called Owner)

and N8 Holmlund Inc DBA N8 Excavation (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1—WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**PORTLAND TO SANDY WATER FILTRATION TRANSMISSION SYSTEM  
SANDY, OREGON**

The Work to be performed under this Contract consists of furnishing all labor, materials, and equipment necessary for the installation of approximately 5,500 lineal feet (LF) of 16-inch diameter ductile iron (DI) water transmission main along SE Bluff Road between the intersections of SE Proctor Road and SE Hudson Road, in a combined trench with a 3-inch diameter, PVC fiber conduit, the required pipe and conduit appurtenances, and other work as described below. The project location is indicated on the Drawings..

**ARTICLE 2—THE PROJECT**

The Project, of which the Work under the Contract Documents is a part, consists of, but is not limited to, the following:

- Approximately 5,500 LF of 16-inch diameter DI transmission main along SE Bluff Road, from the intersections of SE Proctor Road to SE Hudson Road;
- Approximately 5,500 LF of 3-inch diameter Polyvinyl chloride (PVC) communication conduit in a shared trench with the water transmission pipeline;
- Miscellaneous transmission system piping and appurtenance connections within the project area;
- Abandonment and removal of existing water mains; and
- Other miscellaneous work as shown and specified, including erosion control, temporary and permanent paving, striping and pavement markings restoration, and other restoration measures as required

### ARTICLE 3—ENGINEER

The Project has been designed by Consor North America, Inc., One SW Columbia Street, Suite 1700, Portland, Oregon 97204, who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### ARTICLE 4—CONTRACT TIMES

- 4.1 Time is of the Essence: All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.2 Work shall be substantially completed on or before **April 1, 2026**. Substantially completed, as defined generally within Paragraph 15.03 of the General Conditions of the Agreement, hereinafter termed the General Conditions, and more specifically herein, shall be when the Engineer and Owner agree that the entire Work is operational following successful testing and start-up and the Owner is able to take possession of and have full operational use of the facilities. The Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **May 31, 2026**. As further identified in the General Conditions, the number of days or the dates by which Contractor shall (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work shall be referred to as the "Contract Times."

The above completion dates are based on the following:

- Notice of Award no more than 45 days after Bid Opening Date, and
- Owner Signing of Agreement and Issuance of Notice to Proceed within 30 days after Notice of Award.

Where the Owner is prevented from signing of Agreement and issuing Notice to Proceed due to a delay in receiving signed agreements, bonds, and insurance certificates from Contractor in the form required by the Contract Documents, the Contract Times will not be extended.

Where the Contractor is prevented from starting to perform the Work due to a reasonable and documented delay in issuance of Notice to Proceed beyond the control of the Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay, and such extension of the Contract Times shall be Contractor's sole and exclusive remedy for such delay.

- 4.3 *Liquidated Damages.* Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. Owner and Contractor also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner

Five Hundred dollars (\$ 500)

for each day that expires after the time specified in Paragraph 3.2 for Substantial Completion until the Work is substantially complete.

2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 4.2 for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner

One Thousand dollars (\$ 1,000)

for each day that expires after the time specified in in Paragraph 3.2 for completion and readiness for final payment.

#### **ARTICLE 5—CONTRACT PRICE.**

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the attached Bid Proposal, said sum being the Contract Price:

<u>Two Million Six Hundred Eighty Seven Thousand Dollars and Zero Cents</u>	<u>\$2,687,000</u>
(use words)	(use figures)

As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Engineer as provided in Paragraph 13.03 of the General Conditions. Unit prices have been computed as provided in Paragraph 13.03 of the General Conditions.

#### **ARTICLE 6—PAYMENT PROCEDURES.**

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.1 *Progress Payments; Retainage.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER monthly during construction as provided in Paragraphs 6.1.1.and 6.1.2. below. All such payments will be measured by the schedule of values established in Paragraph 2.03 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

6.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 15.01 of the General Conditions:

a) 95% of Work completed (with the balance of 5% being retainage).

6.1.2. If the project is subject to state or federal prevailing rates of wages, the retained amount shall be increased to 25% of Work completed until CONTRACTOR has filed with OWNER certified statements as required by ORS 279C.845. OWNER will pay the excess amount retained under this requirement within fourteen (14) days after CONTRACTOR files with OWNER said certified statements.

- 6.2 *Final Payment.* Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 15.06.
- 6.3 *Consent of Surety:* Owner will make final payment, or return or release retainage at Final Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.
- 6.4 *Interest:* All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest from the date payment is due at the rate set forth in ORS 279C.570..

#### **ARTICLE 7—CONTRACTOR'S REPRESENTATIONS.**

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents.
- 7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4 CONTRACTOR has carefully studied (or assumes responsibility for having done so) all reports of explorations and tests of subsurface conditions at or contiguous to the Site, all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, all examination, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.
- 7.5 CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.7 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all

additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- 7.8 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.9 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### **ARTICLE 8—CONTRACT DOCUMENTS.**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to Article 11 of the General Conditions.
- 8.2 This Agreement (pages 1 to 8, inclusive)
- 8.3 Exhibits to this Agreement (pages \_\_\_\_ to \_\_\_\_, inclusive) (RESERVED)
- 8.4 Performance, Payment, and other Bonds, consisting of \_\_\_\_ pages
- 8.5 Prevailing Wage Rates
- 8.6 Notice to Proceed
- 8.7 Supplementary Conditions (pages 1 to 28, inclusive)
- 8.8 Standard General Conditions (pages 1 to 74, inclusive)
- 8.9 Specifications bearing the title Technical Specifications and consisting of 40 divisions and 255 pages, as listed in table of contents thereof
- 8.10 Drawings consisting of a cover sheet and sheets numbered 1 through 45, inclusive with each sheet bearing the following general title:

#### **PORTLAND TO SANDY WATER FILTRATION PLANT TRANSMISSION SYSTEM**

Attached Yes ☒ No  
(Circle One)

- 8.11 Addenda numbers 1 to 2, inclusive.
- 8.12 CONTRACTOR's Bid Proposal (pages 1 to 66, inclusive).
- 8.13 Documentation submitted by CONTRACTOR prior to Notice of Award (pages \_\_\_\_ to \_\_\_\_ inclusive). (RESERVED)

The documents listed in Paragraphs 8.1 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 11.01 of the General Conditions.

In the event of a conflict between the Contract Documents, the Contract Documents shall be given precedence in the order listed above.

#### **ARTICLE 9—MISCELLANEOUS.**

- 9.1 Terms used in this Agreement which are defined in Article I of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.3 By its signature on this Agreement, Contractor certifies that the service or services to be performed under the Contract Documents are those of an independent contractor as defined in ORS 670.600, and that Contractor is solely responsible for the work performed under the Contract Documents. Contractor represents and warrants that Contractor, its subcontractors, employees, and agents are not "officers, agents, or employees" of the City within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300). Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Agreement.
- 9.4 Nothing contained in these Contract Documents shall create a contractual relationship with or a cause of action in favor of a third party against City or Contractor. Contractor's Work under these Contract Documents shall be performed solely for City's benefit, and no other entity or person shall have any claim against Contractor because of the Contract Documents for the performance or non-performance of Work hereunder.
- 9.5 Entire Agreement. The Contract Documents represent the entire agreement of the parties with respect to the subject matter hereof, and supersede and replaces all prior and contemporaneous oral and written agreements with respect to such subject matter. No amendment, modification or variation of the terms and conditions of the Contract Documents shall be valid unless it is in writing and signed by all parties hereto.
- 9.6 Governing Law, Jurisdiction and Venue; Waiver of Jury Trial. The parties acknowledge that the Contract Documents have been negotiated and entered into in the State of Oregon. The parties expressly agree that the Contract Documents shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Oregon. Venue and jurisdiction for any action at law or in equity relating to this Agreement shall lie exclusively in the Circuit Court of the State of Oregon for Clackamas County, and not in any other state or federal court that may have concurrent jurisdiction. Should any action or proceeding arising under or as a result of this Agreement proceed to court, it shall be tried without a jury.
- 9.7 Attorney Fees. In the event action is instituted to enforce any term of the Contract Documents, the prevailing party shall recover from the losing party reasonable attorney's fees incurred in such action as set by the Trial Court and, in the event of an appeal, as set by the Appellate Court.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2025 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

City of Sandy

\_\_\_\_\_

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Attest:

Attest:

\_\_\_\_\_

\_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



(If OWNER is a public body,  
attach evidence of authority  
to sign and resolution or other  
documents authorizing  
execution of Agreement.

Contractor License No.: 186472

Agent for service of process:

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(If CONTRACTOR is a corporation, attach evidence of authority to sign).

## SECTION 00 61 13.13 - PERFORMANCE BOND

<b>Seller</b> Name: Address ( <i>principal place of business</i> ):		<b>Surety</b> Name: Address ( <i>principal place of business</i> ):	
<b>Buyer</b> Name: CITY OF SANDY Mailing address ( <i>principal place of business</i> ): 39250 Pioneer Boulevard Sandy, OR 97055		<b>Contract</b> PORTLAND TO SANDY WATER FILTRATION TRANSMISSION SYSTEM, PROJECT # W23001  Contract Price: Effective Date of Contract:	
<b>Bond</b> Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16			
Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.			
<b>Seller as Principal</b>		<b>Surety</b>	
_____ <i>(Full formal name of Seller)</i>		_____ <i>(Full formal name of Surety) (corporate seal)</i>	
By: _____ <i>(Signature)</i>		By: _____ <i>(Signature)(Attach Power of Attorney)</i>	
Name: _____ <i>(Printed or typed)</i>		Name: _____ <i>(Printed or typed)</i>	
Title: _____		Title: _____	
Attest: _____ <i>(Signature)</i>		Attest: _____ <i>(Signature)</i>	
Name: _____ <i>(Printed or typed)</i>		Name: _____ <i>(Printed or typed)</i>	
Title: _____		Title: _____	
Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.			

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Seller performs the Construction Contract, the Surety and the Seller shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Buyer Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Buyer first provides notice to the Seller and the Surety that the Buyer is considering declaring a Seller Default. Such notice may indicate whether the Buyer is requesting a conference among the Buyer, Seller, and Surety to discuss the Seller's performance. If the Buyer does not request a conference, the Surety may, within five (5) business days after receipt of the Buyer's notice, request such a conference. If the Surety timely requests a conference, the Buyer shall attend. Unless the Buyer agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Buyer's notice. If the Buyer, the Seller, and the Surety agree, the Seller shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Buyer's right, if any, subsequently to declare a Seller Default;
  - 3.2. The Buyer declares a Seller Default, terminates the Construction Contract, and notifies the Surety; and
  - 3.3. The Buyer has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a Seller selected to perform the Construction Contract.
4. Failure on the part of the Buyer to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Buyer has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Seller, with the consent of the Buyer, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent Sellers;
  - 5.3. Obtain bids or negotiated proposals from qualified Sellers acceptable to the Buyer for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Buyer and a Seller selected with the Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Buyer the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Buyer as a result of the Seller Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new Seller, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Buyer and, as soon as practicable after the amount is determined, make payment to the Buyer; or
  - 5.4.2 Deny liability in whole or in part and notify the Buyer, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Buyer to the Surety demanding that the Surety perform its obligations under this Bond, and the Buyer shall be entitled to enforce any remedy available to the Buyer. If the Surety proceeds as provided in Paragraph 5.4, and the Buyer refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Buyer shall be entitled to enforce any remedy available to the Buyer.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Buyer will not be greater than those of the Seller under the Construction Contract, and the responsibilities of the Buyer to the Surety will not be greater than those of the Buyer under the Construction Contract. Subject to the commitment by the Buyer to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Seller for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Seller's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Seller.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Buyer or others for obligations of the Seller that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Buyer or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Seller Default or within two years after the Seller ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1. *Balance of the Contract Price*—The total amount payable by the Buyer to the Seller under the Construction Contract after all proper adjustments have been made including allowance for the Seller for any amounts received or to be received by the Buyer in settlement of insurance or other claims for damages to which the Seller is entitled, reduced by all valid and proper payments made to or on behalf of the Seller under the Construction Contract.

14.2. *Construction Contract*—The agreement between the Buyer and Seller identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3. *Seller Default*—Failure of the Seller, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5. *Contract Documents*—All the documents that comprise the agreement between the Buyer and Seller.

15. If this Bond is issued for an agreement between a Seller and subcontractor, the term Seller in this Bond will be deemed to be Subcontractor and the term Buyer will be deemed to be Seller.

16. Modifications to this Bond are as follows: None

# SECTION 00 61 14.01 - PAYMENT BOND

<b>Seller</b> Name: Address ( <i>principal place of business</i> ):	<b>Surety</b> Name: Address ( <i>principal place of business</i> ):
<b>Buyer</b> Name: CITY OF SANDY Mailing address ( <i>principal place of business</i> ): 39250 Pioneer Boulevard Sandy, OR 97055	<b>Contract</b> PORTLAND TO SANDY WATER FILTRATION TRANSMISSION SYSTEM, PROJECT # W23001  Contract Price: Effective Date of Contract:
<b>Bond</b> Bond Amount: Date of Bond: ( <i>Date of Bond cannot be earlier than Effective Date of Contract</i> ) Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18	
Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Seller as Principal	Surety
( <i>Full formal name of Contractor</i> )	( <i>Full formal name of Surety</i> ) ( <i>corporate seal</i> )
By: _____ ( <i>Signature</i> )	By: _____ ( <i>Signature</i> )( <i>Attach Power of Attorney</i> )
Name: _____ ( <i>Printed or typed</i> )	Name: _____ ( <i>Printed or typed</i> )
Title: _____	Title: _____
Attest: _____ ( <i>Signature</i> )	Attest: _____ ( <i>Signature</i> )
Name: _____ ( <i>Printed or typed</i> )	Name: _____ ( <i>Printed or typed</i> )
Title: _____	Title: _____
Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Seller promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Buyer from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Seller shall have no obligation under this Bond.
3. If there is no Buyer Default under the Construction Contract, the Surety's obligation to the Buyer under this Bond will arise after the Buyer has promptly notified the Seller and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Buyer or the Buyer's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Seller and the Surety.
4. When the Buyer has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Buyer against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Seller
    - 5.1.1. have furnished a written notice of non-payment to the Seller, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct contract with the Seller have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Buyer to the Seller, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Buyer, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Seller may have or acquire as to a Claim, except as

to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Buyer to the Seller under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Seller furnishing and the Buyer accepting this Bond, they agree that all funds earned by the Seller in the performance of the Construction Contract are dedicated to satisfying obligations of the Seller and Surety under this Bond, subject to the Buyer's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Buyer, Claimants, or others for obligations of the Seller that are unrelated to the Construction Contract. The Buyer shall not be liable for the payment of any costs or expenses of any Claimant under this Bond and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Seller and Buyer shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions

16.1. *Claim*—A written statement by the Claimant including at a minimum:



- 16.1.1. The name of the Claimant;
  - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
  - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
  - 16.1.4. A brief description of the labor, materials, or equipment furnished;
  - 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 16.1.7. The total amount of previous payments received by the Claimant; and
  - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Seller or with a subcontractor of the Seller to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Seller and the Seller's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Buyer and Seller identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Buyer and Seller.
17. If this Bond is issued for an agreement between a Seller and subcontractor, the term Seller in this Bond will be deemed to be subcontractor and the term Buyer will be deemed to be Seller.
18. Modifications to this Bond are as follows: None

