

**RESOLUTION NO. 2925**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH R.C. CONTRACTING, LLC TO CONSTRUCT THE MUNICIPAL PARKING LOTS SLURRY SEAL PROJECT.**

WHEREAS, the City of Wilsonville (City), in accordance with its Emergency Debris Management Plan utilized the WES Transit Station Parking Lot as its primary debris management location for the February 2021 Ice Storm; and

WHEREAS, the City, in order to mitigate for the impacts associated with using the site as a debris management location for the recent February 2021 Ice Storm is responsible for conducting repairs to the WES Transit Station Parking Lot,; and

WHEREAS, the City owns and is also responsible for the maintenance of its other municipal parking lot, including the Police / Public Works / Community Center parking lot, the Art Tech Campus parking lot, the River Chase Park parking lot and the Boeckman Well parking lot; and

WHEREAS, the City wishes to leverage the potential cost savings and minimize the community impact by compiling these similarly related projects into a single uniform project; and

WHEREAS, the City of Wilsonville (City) wishes to assure the long term condition, usability and safety of its assets; and

WHEREAS, the City issued a formal bid for this project in accordance with the city's and state's procurement rules.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

- Section 1. The procurement process for the Project duly followed Oregon Contracting Rules, and C.R. Contracting, LLC. was determined to be the lowest responsive bidder
- Section 2. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City

of Wilsonville, a construction contract with C.R. Contracting, LLC for a not-to-exceed amount of \$207,225.38.

Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this 4<sup>th</sup> Day of October 2021, and filed with the Wilsonville City Recorder this date.

DocuSigned by:  
  
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Julie Fitzgerald, Mayor

ATTEST:

DocuSigned by:  
  
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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

EXHIBIT:

A. Municipal Parking Lots Slurry Seal Project - Construction Contract

## CITY OF WILSONVILLE CONSTRUCTION CONTRACT

This Construction Contract (“Contract”) for the Municipal Parking Lots Slurry Seal Project (“Project”) is made and entered into on this \_\_\_\_ day of October 2021 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **C.R. Contracting LLC**, an Oregon limited liability company (hereinafter referred to as “Contractor”).

### RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

### AGREEMENT

#### **Section 1. Contract Documents**

This Contract includes and incorporates by reference all of the foregoing Recitals and all of the following additional “Contract Documents”: Invitation to Bid or Specifications and Contract Documents for Municipal Parking Lots Slurry Seal Project, dated August 11, 2021, including Plans and Details bound separately; Contractor’s Bid submitted in response thereto; 2017 City of Wilsonville Public Works Standards; City of Wilsonville Special Provisions; Project Specific Special Provisions; Oregon Department of Transportation 2018 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

## **Section 2. Term**

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than December 5, 2021, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than December 5, 2021, and at Final Completion by January 5, 2022. See **Section 24** for the definitions of Substantial Completion and Final Completion.

## **Section 3. Contractor’s Work**

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Project.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

3.3. The existence of this Contract between the City and Contractor shall not be construed as the City’s promise or assurance that Contractor will be retained for future services beyond the Work described herein.

3.4. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor’s employees assigned to perform any of the Work provided in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

## **Section 4. Contract Sum, Retainage, and Payment**

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor the fixed price of TWO HUNDRED SEVEN THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS AND THIRTY-EIGHT CENTS (\$207,225.38) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Contractor’s unit pricing is set forth in **Exhibit A**, attached hereto and incorporated by reference herein.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a

reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 25**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 24**.

4.4. Except as provided in **Subsection 7.2**, the Contract Sum includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees required to perform the Work on the Project.

4.5. Contractor's Contract Sum and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

4.6. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in the 2017 City of Wilsonville Public Works Standards, 2018 ODOT Standards, and in ORS 279C.570.

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

## **Section 5. Filing of Certified Statement**

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

## **Section 6. Reports to Department of Revenue**

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

## **Section 7. City's Rights and Responsibilities**

7.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

7.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

7.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

7.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

7.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2020-21. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 22**.

## **Section 8. City's Project Manager**

The City's Project Manager is Martin Montalvo. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

## **Section 9. Contractor's Project Manager**

Contractor's Project Manager is Russel Davis. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

## **Section 10. Project Information**

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

## **Section 11. Duty to Inform**

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

## **Section 12. Subcontractors and Assignments**

12.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 13.3**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.



12.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

### **Section 13. Contractor's Responsibilities**

This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Those required provisions include but are not limited to all of the following:

13.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

13.2. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

13.3. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

13.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with, and be subject



to, the provisions of this **Section 13** and meet the same insurance requirements of Contractor under this Contract.

13.5. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

13.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

13.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

13.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

13.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

13.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

13.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

13.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

13.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

13.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

13.15. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

13.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

13.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

13.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

13.17.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

13.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

13.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

13.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 13.17.1, 13.17.2, and 13.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

13.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

13.21. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

13.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

13.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

13.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

13.25. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

13.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

13.27. COVID-19 Safety Measures. Contractor must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Contractor's employees and/or subcontractors, City employees, and the public. Contractor must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Contractor is required to stop or delay work due to a COVID-19 related event, Contractor shall not be entitled to any additional payment, remobilization costs, or delay damages.

13.28. Because this Contract is funded, in part, by federal funds, Contractor must comply with all required federal provisions, as set forth in **Section 14**, below, some of which may overlap with those stated in this Section. Should a conflict exist, the stricter provision shall apply unless otherwise specifically pre-empted by federal law.

#### **Section 14. Required Federal Provisions**

This Contract is funded, in whole or in part, with federal funds. Contractor must therefore comply with all of the following, in addition to the provisions listed above:

14.1. **Buy America.** Contractor agrees to comply with 49 USC § 5323(j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in Federal Transit Administration-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 USC § 5323(j)(2)(C) and 49 CFR § 661.11. All steel must originate in the USA and not leave the USA at any point. Contractor shall have submitted the appropriate Buy America certification to the City before commencement of any Work. Contractor must have submitted to the City the appropriate Buy America certification with its Bid, as bids that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. See **Exhibit B**.

14.2. **Clean Air and Clean Water.** Contractor agrees to comply with the inspection and other requirements of the Clean Air Act, as amended (42 USC § 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (33 USC § 1251 *et seq.*). Contractor agrees it will not use any violating facilities, it will report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (EPA) “List of Violating Facilities,” and it will report any violation of use of prohibited facilities to the City. Contractor understands and agrees that the City will, in turn, report each violation, as required, to assure notification to the Federal Transit Administration and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000, financed in whole or in part with federal assistance provided by the FTA.

14.3. **Energy Conservation.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

14.4. **Recovered Materials.** Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended (42 USC § 6962), and U.S. Environmental Protection Agency, “Comprehensive Procurement Guideline for Products Containing Recovered Materials” (40 CFR Part 247).

14.5. **Lobbying Restrictions.** Contractor certifies, to the best of its knowledge and belief, that:

14.5.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.



14.5.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

14.5.3. Contractor will require that the language of this certification be included in the award documents for all sub-awards, at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

14.6. **Access to Records.** The following federal access to records requirements apply to this Contract:

14.6.1. Record Retention. Contractor agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

14.6.2. Retention Period. Contractor agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. Contractor will maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records will be maintained until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

14.6.3. Access to Records. Contractor agrees to provide the City, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of Contractor which are related to performance of this Contract for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. Contractor also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.



14.6.4. Access to the Sites of Performance. Contractor agrees to permit the FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

14.7. **Contract Work Hours and Safety Standards.** For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor will comply with the Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708), as supplemented by the Department of Labor regulations at 29 CFR Part 5. Under 40 USC § 3702 of the Act, Contractor will compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

14.7.1. Liquidated Damages. In the event of any violation of the requirements of this Section, Contractor and any subcontractor responsible therefor will be liable for the unpaid wages. In addition, the Contractor and subcontractor will be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the requirements of this Section in the sum of ten dollars (\$10) for each calendar day on which such individual was required to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by this Section.

14.7.2. Withholding. The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in this Section.

14.7.3. Subcontracts. Contractor and all subcontractors will require the inclusion of the language of this **Section 14.7** within subcontracts of all tiers. Contractor will be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements of this Section.

#### 14.8. **Civil Rights Requirements.**

Under this Contract, Contractor will, at all times, comply with the following requirements and will include these requirements in each subcontract entered into as part thereof.

14.8.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), Section 303 of the Age Discrimination Act of 1975, as amended (42 USC § 6102), Section 202 of the Americans with Disabilities Act of 1990, as amended (42 USC § 12132), and federal transit laws at 49 USC § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age, disability, or national origin. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

14.8.2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 USC § 2000e *et seq.*), and federal transit laws at 49 USC § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" (41 CFR Chapter 60), and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965; 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

14.8.3. Age. In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act" (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance" (45 CFR Part 90); and federal transit law at 49 USC § 5332, Contractor agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

14.8.4. Disabilities. In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements the FTA may issue.

#### 14.9. **Disadvantaged Business Enterprises.**

If the City must adopt a Disadvantaged Business Enterprise (DBE) program, the parties will execute a written amendment so that this Contract becomes subject to the City's DBE program.

#### 14.10. Program Fraud and False or Fraudulent Statements or Related Acts.

14.10.1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 USC § 3801 *et seq.*), and U.S. Department of Transportation regulations, “Program Fraud Civil Remedies” (49 CFR Part 31), apply to its actions pertaining to this Project. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted Project for which the Services are being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

14.10.2. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 USC Chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on Contractor, to the extent the Federal Government deems appropriate.

14.10.3. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### 14.11. Suspension and Debarment.

14.11.1. Contractor must comply with and facilitate compliance with U.S. Department of Transportation regulations, “Nonprocurement Suspension and Debarment” (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR Part 180). Contractor is required to verify that its principals, affiliates, and any subcontractors are eligible to participate in this federally funded Contract and are not presently declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

14.11.2. Contractor is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, Contractor has certified as follows:

***The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that Contractor knowingly rendered an***

*erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.*

**14.12. Trafficking in Persons.**

14.12.1. Contractor agrees that it and its employees that participate in the \_\_\_\_\_ program covered under this Contract may not:

14.12.1.1. Withholding monthly progress payments;

14.12.1.2. Engage in forms of trafficking in persons during the period of time that this Contract is in effect;

14.12.1.3. Procure a commercial sex act during the period of time that this Contract is in effect; or

14.12.1.4. Use forced labor in the performance of the Contract or any subcontracts thereunder.

14.12.2. Contractor agrees to comply, and assures the compliance of each subrecipient, with federal requirements and guidance, including:

14.12.2.1. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g); and

14.12.2.2. The terms of this Section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

14.12.3. Contractor agrees to, and assures that each subrecipient will:

14.12.3.1. Inform the FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and

14.12.3.2. Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, suppliers, and subcontractors at every tier, including this requirement to flow down the clause.

**14.13. Safe Operation of Motor Vehicles.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. Contractor

agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

**14.14. Substance Abuse Testing.** Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Oregon Department of Transportation, or the City, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program, as required under 49 CFR Part 655, and review the testing process. Contractor agrees further to certify annually its compliance with Part 655 before February 1<sup>st</sup> and to submit the Management Information System (MIS) reports before March 1<sup>st</sup> to Nicole Hendrix, Transit Management Analyst, City of Wilsonville, 29799 SW Town Center Loop East, Wilsonville, OR 97070. To certify compliance, Contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the *Federal Register*.

**14.15. Federal Changes.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in any Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

**14.16. Bonding Requirements.** The bonding requirements for this Contract can be found in **Section 20**, below.

**14.17. Violation and Breach of Contract; Termination.** The clauses concerning violation and breach of this Contract and termination of this Contract can be found in **Section 22**, below.

**14.18. No Obligation by the Federal Government.**

14.18.1. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

14.18.2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.



14.19. **Federal Transit Administration (FTA) Terms Controlling.** Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

## **Section 15. Davis-Bacon/BOLI Prevailing Wages and the Copeland Anti-Kickback Act**

15.1. Because this Contract is federally funded, in part, the higher of Davis-Bacon or Oregon BOLI wages will apply to some or all individuals performing Work under this Contract. It is the responsibility of Contractor to be in full compliance with the higher of Davis-Bacon or BOLI requirements, and Contractor shall defend, indemnify, and hold harmless the City from any claims based on Contractor's failure or alleged failure to comply. The Davis-Bacon Act is codified at 40 USC § 3141 *et seq.* See the Davis-Bacon requirements enumerated in 29 CFR § 5.5(a), attached hereto as **Exhibit C** and incorporated by reference herein.

15.2. This Contract is also a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Bureau of Labor and Industries (BOLI), effective July 1, 2021, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can currently be found at the following website address: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Services, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Services, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840. In addition, because this Contract is also covered by the federal Davis-Bacon Act (40 USC § 3141 *et seq.*), the Contractor and all subcontractors shall pay workers or others performing Services contemplated by this Contract the higher of the state or federal prevailing rate of wage, as determined by the Commissioner of the Bureau of Labor and Industries, in accordance with ORS 279C. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

15.3. Contractor will also comply with the Copeland "Anti-Kickback" Act (40 USC § 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed



in the construction, completion, or repair of public work to give up any part of the compensation to which he or she is otherwise entitled.

## **Section 16. Subcontractor Requirements**

16.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

16.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

16.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the 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 outlined in **Subsection 16.1.1** above. A contractor or first-tier subcontractor may 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 the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end 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).

16.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 16.1.1 and 16.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

16.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

16.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

16.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

## Section 17. Environmental Laws

17.1. Contractor shall perform all Work in compliance with permits for the Project issued by the US Army Corp of Engineers, Oregon Department of State Lands, and Oregon Department of Environmental Quality, and shall maintain a copy of these permits on the job site at all times.

17.2. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service  
 Defense, Department of  
 Environmental Protection Agency  
 Bureau of Sport Fisheries and Wildlife  
 Bureau of Land Management  
 Bureau of Reclamation  
 Occupational Safety and Health Administration  
 Coast Guard

Agriculture, Department of  
 Soil Conservation Service  
 Army Corps of Engineers  
 Interior, Department of  
 Bureau of Outdoor Recreation  
 Bureau of Indian Affairs  
 Labor, Department of  
 Transportation, Department of  
 Federal Highway Administration

STATE AGENCIES:

Environmental Quality, Department of  
 Forestry, Department of  
 Human Resources, Department of  
 Soil and Water Conservation Commission  
 State Land Board

Agriculture, Department of  
 Fish and Wildlife, Department of  
 Geology and Mineral Industries, Department of  
 Land Conservation and Development Commission  
 National Marine Fisheries Service (NMFS)  
 State Engineer  
 Water Resources Board

LOCAL AGENCIES:

County Courts  
 Port Districts  
 County Service Districts  
 Water Districts

City Council  
 County Commissioners, Board of  
 Metropolitan Service Districts  
 Sanitary Districts  
 Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

17.3. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

17.4. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

17.5. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

17.6. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing Work under this Contract.

## **Section 18. Indemnity**

18.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 18.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

18.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

## **Section 19. Insurance**

19.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

19.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an “occurrence” form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

19.1.2. Professional Errors and Omissions Coverage. Contractor agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Work hereunder with a limit of no less than **\$2,000,000** per claim. Contractor shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Contractor. Such policy shall have a retroactive date effective before the commencement of any work by Contractor on the Work covered by this Contract, and coverage will remain in force for a period of at least three (3) years after termination of the Contract.

19.1.3. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

19.1.4. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality (“DEQ”) and Federal Environmental Protection Agency (“EPA”) clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

19.1.5. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

19.1.6. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

19.1.7. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

19.1.8. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

19.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

## **Section 20. Bonding Requirements**

20.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

20.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.



20.3. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

20.4. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

## Section 21. Warranty

21.1. Contractor shall provide a full warranty for all Work for a period of two (2) years from the date of Final Acceptance of all Work.

21.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of two (2) years from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The two (2) year warranty period shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair.

21.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this Section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

21.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.



## **Section 22. Early Termination; Default**

22.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

22.1.1. By mutual written consent of the parties;

22.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

22.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

22.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

22.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

22.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 28**, for which Contractor has received payment or the City has made payment.

## **Section 23. Suspension of Work**

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

## **Section 24. Substantial Completion, Final Completion, and Liquidated Damages**

24.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete, and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed and the parking lots are fully functional and may be utilized, with only minor punch list items remaining that do not significantly impact public use. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before December 5, 2021 or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Subsections 24.3 and 24.4** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

24.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial and Final Completion.

24.3. Liquidated damages shall apply against Contractor and accrue to the City at the rate of Four Hundred Dollars (\$400) for each day that expires after the time specified for Substantial Completion of all Work until the Work reaches Substantial Completion.

24.4. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of January 5, 2022, or any written extension thereof granted by the City, Contractor shall pay the City Eight Hundred Dollars (\$800) for each day that expires after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

24.5. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Completion. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

24.6. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to circumstances beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that would preclude any reasonable Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

## **Section 25. Contract Modification; Change Orders**

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

## **Section 26. Dispute Resolution**

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

## **Section 27. Access to Records**

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts during the term of this Contract and for a period of four (4) years after

termination of the Contract, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

**Section 28. Property of the City**

28.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Contractor under this Contract shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation.

28.2. Contractor shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all Work performed by Contractor pursuant to this Contract without the express written permission of Contractor.

**Section 29. Notices**

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville  
Attn: Martin Montalvo, Public Works Operations Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To Contractor: C.R. Contracting LLC  
Attn: Russel Davis, President  
64435 Strickler Avenue, Suite 100  
Bend, OR 97703

**Section 30. Miscellaneous Provisions**

30.1. Integration. This Contract contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City’s sole discretion, will apply.

30.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

30.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

30.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

30.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

30.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

30.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

30.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

30.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

30.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

30.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

30.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon,

except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

30.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

30.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

30.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

30.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

30.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

30.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

30.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.



30.20. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

30.21. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

**CONTRACTOR:**

**CITY:**

C.R. CONTRACTING LLC

CITY OF WILSONVILLE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

Employer I.D. No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Barbara Jacobson, City Attorney  
City of Wilsonville, Oregon

## Municipal Parking Lot Slurry Seal Project

## BID SCHEDULE

Bid Item No.	Spec Section	Bid Items	QTY	Unit	Unit Cost	Total Cost
1.0	00210	Mobilization	1	LS	\$18,950.00	\$18,950.00
2.0	00210	Project Information Sign - Large	2	EA	\$250.00	\$500.00
3.0	00225	Temporary Work Zone Traffic Control	1	LS	\$5,500.00	\$5,500.00
4.0	00280	Erosion Control	1	LS	\$2,895.00	\$2,895.00
5.0	00290	Pollution Control Plan	1	LS	\$750.00	\$750.00
<b>WES Parking Lot</b>						
6.0	00310	Removal of Concrete Curb, Sidewalks, and Driveways	370	LF	\$14.86	\$5,498.20
6.1	00330	General Excavation	10	CY	\$250.00	\$2,500.00
6.2	00759	Concrete Curbs, Curb and Gutter	370	LF	\$37.50	\$13,875.00
6.3	00748	3 Inch Asphalt Concrete Pavement Repair	123	SY	\$115.00	\$14,145.00
6.4	00746	Crack Sealing Flexible Pavement (estimated)	3,000	LF	Incidental to Spec 00706	
6.5	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (WES Parking Lot)	19,154	SY	\$3.35	\$64,165.90
6.6	00860	Pavement Marking, 4 inch White Paint	8,238	LF	\$0.95	\$7,826.10
6.7	00860	Pavement Marking, 8 inch White Paint	69	LF	\$1.50	\$103.50
6.8	00860	Pavement Marking, 6 inch Double Yellow Paint	340	LF	\$1.50	\$510.00
6.9	00867	Pavement Legend, Type B-HS: ADA Parking	14	EA	\$300.00	\$4,200.00
6.10	00867	Pavement Legend, Type B-HS: "C" Compact Parking	109	EA	\$75.50	\$8,229.50
6.11	00867	Pavement Legend, Type B-HS: STOP Bar	18	SF	\$35.25	\$634.50
6.12	00867	Pavement Legend, Type B-HS: Right Turn Arrow	2	EA	\$396.50	\$793.00
6.13	00867	Pavement Legend, Type B-HS: Straight/Thru Arrow	2	EA	\$341.96	\$683.92
<b>PD / PW Parking Lot</b>						
7.0	00746	Crack Sealing Flexible Pavement (estimated)	4,000	LF	Incidental to Spec 00706	
7.1	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (PD/PW Parking Lot)	6,617	SY	\$4.15	\$27,460.55
7.2	00860	Pavement Marking, 4 inch White Paint	1,375	LF	\$0.95	\$1,306.25
7.3	00867	Pavement Legend, Type B-HS: ADA Parking	4	EA	\$300.00	\$1,200.00
7.4	00867	Pavement Legend, Type B-HS: Pavement Bar Continental Crosswalk	200	SF	\$29.75	\$5,950.00
<b>River Fox Parking Lot</b>						
8.0	00746	Crack Sealing Flexible Pavement (estimated)	200	LF	Incidental to Spec 00706	

### Municipal Parking Lot Slurry Seal Project

8.1	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (River Fox Park Parking Lot)	526	SY	\$5.95	\$3,129.70
8.2	00860	Pavement Marking, 4 inch White Paint	180	LF	\$3.50	\$630.00
8.3	00867	Pavement Legend, Type B-HS: ADA Parking	1	EA	\$300.00	\$300.00
<b>Art Tech Parking Lot</b>						
9.0	00746	Crack Sealing Flexible Pavement (estimated)	1,000	LF	Incidental to Spec 00706	
9.1	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (Art Tech Parking Lot)	2,206	SY	\$5.06	\$11,162.36
9.2	00860	Pavement Marking, 4 inch White Paint	324	LF	\$3.00	\$972.00
9.3	00867	Pavement Legend, Type B-HS: ADA Parking	3	EA	\$300.00	\$900.00
<b>Boeckman Well Parking Lot</b>						
10.0	00706	Street Preparation and Application of Type II Asphalt Emulsion Slurry Seal (Boeckman Well Parking Lot)	294	SY	\$8.35	\$2,454.90

<b>Mobilization</b>	\$	28,595	-	00
<b>WES Parking Lot Sub Total</b>	\$	123,164	-	62
<b>PD/PW Parking Lot Sub Total</b>	\$	35,916	-	80
<b>River Fox Parking Lot Sub Total</b>	\$	4,059	-	70
<b>Art Tech Sub Total</b>	\$	13,034	-	36
<b>Boeckman Well Parking Lot Sub Total</b>	\$	2,454	-	90
<b>Total</b>	\$	207,225	-	38

Total Amount Bid (Figures): \$207,225.38

Total Bid Written in Words:

Two hundred and seven thousand two hundred twenty-five dollars and thirty-eight cents Dollars AND Cents

Company Name

C.R. Contracting, LLC

Bidder's Signature



## BUY AMERICA CERTIFICATION

### Certification Requirement for the Procurement of Steel, Iron, or Manufactured Products

Municipal Parking Lots Slurry Seal

#### *CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS:*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 USC 5323(j), and the applicable regulations in 49 CFR Part 661.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### *CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS:*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 USC 5323(j), but it may qualify for an exception to the requirement pursuant to 49 USC 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## Office of the Secretary of Labor

## § 5.5

been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of “helper” will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A “helper” classification will be added to wage determinations pursuant to § 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term *wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vaca-

tion or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term *wage determination* includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20, 2000; 65 FR 80278, Dec. 20, 2000]

### §§ 5.3–5.4 [Reserved]

### § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and

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bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the



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first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any

further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the

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case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regu-

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lations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees*—(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when

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they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable

classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess

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of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of

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this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in



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paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any con-

tract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B) .....	1215-0140
(a)(1)(ii)(C) .....	1215-0140
(a)(1)(iv) .....	1215-0140
(a)(3)(i) .....	1215-0140, 1215-0017
(a)(3)(ii)(A) .....	1215-0149
(c) .....	1215-0140, 1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

EFFECTIVE DATE NOTE: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.