



**Clackamas Fire District #1**

# **Work Session Briefing Packet**

**June 19, 2017**



*To safely protect and preserve life and property*

CLACKAMAS FIRE DISTRICT #1

**AGENDA  
BOARD OF DIRECTORS' WORK SESSION  
CLACKAMAS FIRE DISTRICT #1  
Mt. Scott Fire Station  
Monday, June 19, 2017**

**Work Session – 5:00 pm**

- 1. CALL TO ORDER PER ORS 192.610 TO 192.710**  
    **ORS 192.650 – The meeting is being recorded.**  
    **ORS 192.710 – Smoking is banned during the meeting.**
- 2. PRESENTATION – MUNIS AND OTHER DATA-RELATED PROGRAMS –**  
    **Management Analyst Shelby Hopkins**
- 3. Discussion of Annual Compliance Report (ACR) – Division Chief Doug Whiteley**
- 4. Discussion of Contract with Emerick Construction Company to Build the**  
    **Fleet/Logistics Building – Deputy Chief Ryan Hari**
- 5. Public Comment** *(The President will call for statements from citizens regarding District business, not to exceed three minutes per person.)*
- 6. Miscellaneous**
- 7. Adjournment**

## Clackamas Fire District #1

# Memo

**TO:** Board of Directors  
Fire Chief Charlton

**FROM:** Division Chief Whiteley

**CC:**

**DATE:** June 19, 2017

**RE:** 2017 Accreditation Annual Compliance Report Overview

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The 2017 Accreditation Annual Compliance Report will be submitted to the Commission on Fire Accreditation International (CFAI) prior to July 15, 2017. The submittal of the Annual Compliance Report is a requirement each of the four years between re-accreditation, which takes place every five years. Clackamas Fire received accredited status for the fourth time in August 2015. This submittal is the second Annual Compliance Report submitted for the five year accreditation timeline.

The intent of the Annual Compliance Report is to update CFAI on significant organizational changes, compliance with the 82 core competency performance indicators, continual self-improvement, performance tracking, and track progress on identified recommendations. The recommendations are separated into both strategic and specific recommendations. The strategic recommendations were identified through the onsite peer assessment visit and evaluation of the 82 core competencies. The specific recommendations were identified from the remaining 176 performance indicators that are beyond the core competencies.

Clackamas Fire received 18 recommendations during re-accreditation in 2015. There were 7 strategic and 11 specific recommendations. These recommendations were for varying areas in the organization. None of the recommendations were viewed as problematic or critical by the assessment team.

The majority of the recommendations were completed prior to the 2016 Annual Compliance Report submittal, but continued self-assessment and improvement is an expectation of all recommendations between accreditation timelines. Below are the competency/performance indicators, recommendations, 2017 updates, and status.

## Strategic Recommendations

<u>Core Competency/Performance Indicator</u>	<u>Recommendation with 2017 Update</u>	<u>Status</u>
2B.5: Agency baseline and benchmark total response time objectives for fire response conform to industry best practices as prescribed on pages 70-71 for first due and effective response force (ERF).	<p>It is recommended the district continue to monitor and improve turnout times and identify additional opportunities for improvement.</p> <p><b><u>2017 Update:</u> The Fire District has started the process of rewriting the Standards of Cover to meet the 6<sup>th</sup> edition standards. This project is estimated to be completed by January 2018. As part of the Standards of Cover update, staff will continue to evaluate response performance.</b></p>	On-Going
2D.1: The fire service agency has a published strategic plan.	<p>It is recommended that the district implement measures to solicit greater direct internal stakeholder feedback and participation in development and revisions of the published strategic plan.</p> <p><b><u>2017 Update:</u> The Fire District updates the Strategic Business Plan annually. These updates are identified through participation and feedback during the annual planning retreats with the Board of Directors, Fire District career staff, and Fire District volunteers. Additionally, the organizational goals and objectives are monitored throughout the year.</b></p>	Completed in 2016
5B.8: An appraisal is conducted, at least annually, to determine the effectiveness of the fire prevention program and its efforts in risk reduction.	<p>It is recommended that the fire prevention division document and report the work accomplished annually through the division's internal goals and incorporate that information as part of the annual appraisal review.</p> <p><b><u>2017 Update:</u> The Fire Prevention Division has incorporated divisional goals within the individual goal setting and the Fire District Strategic Business Plan. The division has started tracking additional measureable activities to better understand divisional accomplishments and needs.</b></p>	Completed in 2016

5C.7: An appraisal is conducted, at least annually, to determine the effectiveness of the public education program and its effect on reducing identified risks

It is recommended that the public education section work on developing a means to measure the effectiveness of its delivery and/or comprehension of the program by the audience.

Completed in 2016

**2017 Update: The pre and post-tests that were developed based on this recommendation are being used when feasible. Staff is finding that administering these tests reduces teaching time with many audiences, as there is often limited time allowed to present.**

5E.7: An appraisal is conducted, at least annually, to determine the effectiveness of the technical rescue program.

It is recommended that the district establish water rescue as a free standing program area separate from other technical rescue disciplines.

Completed in 2016

**2017 Update: All the technical rescue incidents will continue to be tracked separately through the records management system. These will also continue to be separated within the updated Standards of Cover for response and effective response force.**

5H.1: The agency publishes an all-hazards plan that defines roles and responsibilities of all participating departments and/or external agencies. An appropriate multi-agency organizational structure is identified and authorized to carry out the all-hazards plan predetermined functions and duties.

It is recommended that the district expand its participation in regularly scheduled reviews of all emergency operation plans (EOPs) within its coverage area.

Completed in 2016

**2017 Update: The Fire District annually participates in reviewing, updating, and training Clackamas County emergency operation plans with our public partners. These include dam failure, firefighting, hazmat, earthquake, and general disaster preparedness.**

6B.3: Physical facilities are adequate and properly distributed in accordance with stated service level objectives and standards of response coverage.

It is recommended that the district implement its facilities plan once financially feasible to help meet its strategic objectives.

Completed in 2016

**2017 Update: In 2016, the Capital Improvement Plan was approved by the Board of Directors. This document continues to be monitored based on project completion and adjusted timelines due to bond funded projects.**

## Specific Recommendations

<u>Core Competency/Performance Indicator</u>	<u>Recommendation with 2017 Update</u>	<u>Status</u>
4C.2: Plans exist for the payment of long-term liabilities and debts.	It is recommended the district's debt management plan be updated.  <b><u>2017 Update:</u> This was completed in 2015 between the site visit and re-accreditation. This document is reviewed annually by staff for necessary changes and updates.</b>	Completed in 2016
5D.7: The agency's information system allows for documentation and analysis of its public education program.	It is recommended that the fire district utilize the smoke detector replacement information collected and use that as another means to determine at risk or areas with high smoke detector replacement as consideration for education programs.  <b><u>2017 Update:</u> The Fire District policy for smoke alarm installation has been updated into draft language. This has been submitted for policy review and approval. The updated policy will gather more details about where Fire District or grant funded smoke alarms are being installed.</b>	<b>Completed in 2017</b>
5E.5: Minimum training and operational standards are established and met for all personnel who function in the technical rescue program.	It is recommended that the district analyze staffing trends of technician-level members to determine if a minimum staffing number is necessary.  <b><u>2017 Update:</u> This will continue to be monitored and will be reflected in the upcoming Standards of Cover update.</b>	Completed in 2016
5E.6: The agency's information system allows for documentation and analysis of the technical rescue program.	It is recommended that the district develop the means to analyze technical rescue data to help identify potential risks, training possibilities, and resource needs for technical rescue.  <b><u>2017 Update:</u> The Fire District's records management system tracks the technical rescue data. Risks, training, and needed resources are identified through post-incident discussion and data analysis.</b>	<b>Completed in 2017</b>

5F.5: Minimum training and operational standards are established and met for all personnel who function in the hazardous materials response program, including for the incidents involving weapons of mass destruction.

It is recommended that the fire district continue working towards the hazmat implementation plan.

Completed in 2016

**2017 Update: The Fire District's hazmat program was implemented in 2016. The on-duty personnel respond to hazmat incidents by dispatch or through incident command when conditions arise.**

5F.7: The agency periodically conducts operational tests of and evaluates the all-hazards plan and the domestic preparedness program

It is recommended that the district increase training across shifts that address major regional hazards.

Completed in 2016

**2017 Update: The Fire District continues to participate in regional training for varying hazards, when that training is available. This is typically done in cooperation with updated emergency operation plans. The Fire District's Training Division offers various training scenarios for consistency across shifts.**

6E.4: An inventory control and maintenance tracking system is in place and is current.

It is recommended that the district record information regarding self-contained breathing apparatus in a database that enables the compiling of summary reports and identifying potential trends.

Completed in 2017

**2017 Update: The new self-contained breathing apparatus (SCBAs) vendor was selected in 2016. The equipment has been purchased and delivered. Staff is going through all required training and the complete transition to the new SCBAs will should be done by August 2017. A database for tracking will be utilized once the new equipment is in use.**

7B.4: The agencies workforce composition is reflective of the service area demographics or the agency has a recruitment plan to achieve the desired workforce composition.

It is recommended the district develop a recruitment plan to better reflect the community the district serves.

Completed in 2016

**2017 Update: The Fire District continues to monitor and improve recruitment practices. Staff participates in numerous career fairs throughout the area. Entry level position descriptions and testing details are available on our website. Additionally, the Fire District advertises testing opportunities through national platforms.**

7B.4: The agencies workforce composition is reflective of the service area demographics or the agency has a recruitment plan to achieve the desired workforce composition.

It is recommended the district conduct an analysis on entry level and promotional processes to determine if there are any barriers that may be causing adverse impact on a diverse workforce.

**Complete  
in 2017**

**2017 Update: The Fire District has an established process of reviewing and updating minimum qualifications, job descriptions, and desired competencies for each position for accuracy, fairness, and consistency before conducting a test for entry level or promotional processes.**

9C.3: Technological resources and the information management system are appropriate to support the needs of the agency. Access is available to technical support personnel with expertise in the systems deployed by the agency.

It is recommended that the district explore upgrading, standardizing and integrating its computer hardware and software capabilities to enhance productivity.

**Completed  
in 2017**

**2017 Update: The Fire District will be implementing an ERP (Enterprise Resource Planning) on July 1, 2017. This program will streamline budgeting, purchasing, and procurement processes. There are other streamlined capacities this program offers that staff will be researching.**

9C.5: Organizational documents, forms, and manuals are maintained and current.

It is recommended that the district develop and implement policies to guide the regular review of standard operating procedures (SOPs), fire rescue protocols (FRPs), advisories and directives.

Completed  
in 2016

**2017 Update: The Fire District continues to review and update these annually and incorporating advisories and directives into policy. An electronic system has been established to better track and implement updates.**

10A.4: A conflict resolution process exists between the organization and external agencies with which it has a defined relationship.

It is recommended that the district work with its legal representatives to incorporate conflict resolution measures and any other fire district priorities and expectation into a template document for future agreements and contracts moving forward.

Completed  
in 2016

**2017 Update: Fire District legal counsel continues to provide input on all contracts and intergovernmental agreements (IGAs). All contracts and IGAs will be reviewed**

**annually for necessary updates or changes.**

# Memo

TO: Board of Directors and Chief Fred Charlton

FROM: Division Chief Mike Corless

CC: Deputy Chief Ryan Hari

DATE: June 19, 2017

RE: Fleet/Logistics Construction Contract

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## **Action Requested**

Authorize the Fire Chief to sign a construction contract with Emerick Construction to build the new Fleet/Logistics center at a maximum price of \$7,430,000.

## **Background**

The Fire District's Contract Review Board approved Resolution #17-02 that allowed Emerick Construction to be our sole construction provider for Stations 16, 19, Fleet/Logistics, and Administration building projects.

The Fire District has worked through the design process for Fleet/Logistics for over a year. There have been many challenges through this process, however we are ready to start construction. At the onset, the project scope called for an initial phase, which included the building and some site work with room for expansion in later phases. After much time spent on this project, staff is recommending the full build option for construction of the Fleet/Logistics Center, which equates to five bays and office space totaling approximately 20,000 square feet, and complete site work. The full build option will give the Fire District the ability to meet our rapidly growing fleet and logistics needs now and into the future. Additionally, by doing the full build out the Fire District will save money on construction costs. The increase of two bays and all the site work (these would have been options or phases) cost just over a \$1 million in today's dollars. In just three years, cost for these items would be over \$3 million for the same work, factoring in inflation, permitting, architectural services, and other costs, but does not include staff time and disruption for a second construction project. The total build gives us the ability to go right to work when the project is finished and will not slow down productivity when the need arises for additional space.

**Known Facts**

**Budget Implications**

This is a bond funded project. Emerick Construction is confident that the maximum price quoted is accurate. Since this project is projecting to cost more than anticipated, other projects may be re-scaled, and we will continue to seek savings through the construction process.

**Potential Issues**

Known issues include potential delays in getting permits from the City of Happy Valley and other jurisdictions. The further this project gets pushed into the late summer or early fall the more it could possibly cost to build.

**Recommendation and Why**

Authorize the Fire Chief to sign the contract with Emerick Construction to build Fleet/Logistics for a maximum price of \$7,430,000.

CLACKAMAS COUNTY FIRE DISTRICT NO. 1

CONSTRUCTION PROJECTS CONTRACT

This Contract is between CLACKAMAS COUNTY FIRE DISTRICT NO. 1 (Owner) and, EMERICK CONSTRUCTION CO. (Contractor).

**Purpose:** Construction of Fleet Maintenance/Logistics Facility

The parties agree as follows:

**Date of Commencement and Substantial Completion.** The date of commencement of the Work shall be July 5, 2017.

The Contract Time shall be measured from the date of commencement. The Contractor shall achieve Substantial Completion of the entire Work not later than July 5, 2018, weather permitting.

**Contractor's Agreement to Provide Services.** Contractor agrees to provide Owner the Services described in Exhibit 1.

**Statement of Work.** Contractor shall perform the work described in Exhibit 1.

**Payment for Work.** The Owner agrees to pay Contractor in accordance with Exhibit 1 and this Contract.

**Contract Documents.** The Contract Documents consist of the following documents, which are listed in descending order of precedence: this Contract; exhibits to this Contract, including Exhibit 1 (Statement of Work, Compensation, Payment and Renewal Terms); Exhibit 2 (Insurance Requirements); Exhibit 3 (Certification Statement for Corporation or Independent Contractor); Exhibit 4 (Workers' Compensation Exemption Certificate, applicable only if Contractor is claiming to be exempt from payment); Exhibit 5 (Hazardous Materials Requirements), and Exhibit 6 (Project Manual/General conditions).

A conflict in the Contract Documents shall be resolved in the priority listed above, with this Contract taking precedence over all other documents. The Contract Documents are the entire contract between the parties and shall supersede any prior representation, written or oral.

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STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract.
2. **Subcontracts.** Contractor shall not subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract without the prior written consent of the Owner, which may not be withheld without cause. In addition to any other provisions the Owner may require, Contractor shall require of any permitted Subcontractor under this Contract, that the Subcontractor be bound by all the same terms and conditions of this a Contract. Such subcontracts are solely between the Contractor and the Subcontractor and shall not have any binding effect on the Owner.
3. **Assignment.** This Contract is not assignable by the Contractor, either in whole or in part, unless Contractor has obtained the prior written consent of the Owner.
4. **Other Contractors.** The Owner may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with such other contractors and with any Owner employees concerned with such additional or related work, and shall coordinate its performance under this Contract with such additional or related work. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Owner employees.
5. **Independent Contractor Status.** Contractor shall certify status in accordance with Exhibit 3.
6. **No Third-Party Beneficiaries.** The Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
7. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
8. **Nonperformance.** In the event of nonperformance under this Contract, the Owner, after seven (7) days' written notice, shall have the right to obtain from other sources such services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor. For purposes of this section, nonperformance shall be defined as failure to appear and perform work as specified and scheduled.
9. **Escalation.** The Contractor shall submit any price or cost adjustments prior to the time in which such changes are to become effective and work is performed. The Owner reserves the right to reject any modifications of the Contract unacceptable to the Owner.

10. **Early Termination.** This Contract may be terminated as follows:
- a. **Termination by Mutual Agreement:** The Owner and Contractor, by mutual written agreement, may terminate this Contract at any time.
  - b. **Termination for Convenience:** The Owner, in its sole discretion, may terminate this Contract for any reason on 30 days' written notice to Contractor.
  - c. **Termination for Breach:** Either the Owner or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
  - d. **Termination for Failure to Maintain Qualifications:** Notwithstanding paragraph 10(c), the Owner may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.
  - e. **Payment on Early Termination:** Upon termination pursuant to paragraph 10, payment shall be made as follows:
    - i. If terminated under 10(a) or 10(b) for the convenience of the Owner, the Owner shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. The Owner shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim the Owner may have against Contractor.
    - ii. If terminated under 10(c) by the Contractor due to a breach by the Owner, then the Owner shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
    - iii. If terminated under 10(c) or 10(d) by the Owner due to a breach by the Contractor, then the Owner shall pay the Contractor for work performed prior to the termination date provided such work was performed in accordance with the Contract, less any setoff to which the Owner is entitled.
11. **Payment of Invoices.** Unless otherwise provided in Exhibit 1, the payment period shall be one calendar month. Payments are due and payable thirty (30) days from receipt of Contractor's complete invoice or fifteen (15) days after payment is approved by the Owner, whichever is earlier. The Owner may withhold 5% of each payment as retainage pursuant to ORS 279C.570.
12. **Changes in the Work.** The Owner reserves the right to adjust the scope of the work by written Change Order if required by unforeseen circumstances or changes in the budget. No Change Order will be effective unless approved in writing by the Owner and signed by Contractor. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.
13. **Inspection and Acceptance of Work.** Owner shall inspect Contractor's work and advise Contractor of any deficiencies, or if there are none, that the work has been accepted. Contractor shall perform all additional work necessary to correct any deficiencies without undue delay and without additional cost to Owner.
14. **Right to Withhold Payments.** Owner shall have the right to withhold from payments due Contractor such sums as necessary, in Owner's sole opinion, to protect Owner against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Contract or the failure of Contractor to make proper payment to any suppliers or subcontractors. If a liquidated damages provision is contained in the Scope of Work and if Contractor has violated that provision, Owner shall have the right to withhold from payments due Contractor such sums as are required to satisfy Owner's claims under that provision.
15. **Knowledge of Site Conditions.** The Contractor shall, as a condition precedent to commencement of the Work, (a) become familiar with the Project site and review all analyses, studies, and test data available to the Contractor concerning the conditions of the Project site, (b) inspect the location of the Work and satisfy itself as to the condition thereof, including all structural, surfaces and observed subsurface conditions, and (c) determine (i) that the Contract Sum is just and reasonable compensation for all the Work, including all foreseen and foreseeable construction risks, hazards, and difficulties in connection therewith, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the Work shall not result in any lateral or vertical movement of any adjacent structure. The Contractor will notify the Owner in writing in advance of commencement of the Work if it determines that it cannot satisfy these conditions.
- The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.
16. **Owner's Right to Stop the Work.**
- a. If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
  - b. If suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the quality of the Work if such Work were continued, the Owner may suspend the Work by giving written notice to the Contractor. In such event, the Contract Time shall be adjusted accordingly, and the Contract Sum shall be adjusted to the extent, if any, that additional costs are incurred by reason of such suspension.
  - c. Notwithstanding any other provision, the Owner's authorized representative may, in his or her complete discretion, stop all of the Work, or any portion of the Work, if the Work creates a safety hazard or if a life/safety threat exists to the facility or its occupants. Any cost to correct deficiencies in the Contractor's Work will be borne solely by the Contractor.
17. **Performance of the Work.** The Contractor shall supervise, coordinate, and perform the Work in accordance with the Contract Documents in a professional, safe, and workmanlike manner and in accordance with all laws, codes, and professional standards applicable to the industries and trades involved, including without limitation, compliance with all applicable federal, state, and local building codes, the Owner's construction and life safety policies and procedures, certification requirements applicable to the Work, and other policies or standards incorporated or referenced in the Contract Documents. Unless otherwise noted or directed, the Contractor will perform all Work in accordance with product manufacturers' recommendations or directions for best results. No preparatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of the Architect or the Owner's Representative. Conflicts between manufacturers' directions shall be resolved by the Architect.
18. **Remedies.** In the event of breach of this Contract, the parties shall have the following remedies:
- a. If terminated under 10(c) by the Owner due to a breach by the Contractor, the Owner may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the Owner the amount of the reasonable excess.
  - b. In addition to the remedies in paragraphs 10 and 14 for a breach by the Contractor, the Owner shall also be entitled to any other equitable and legal remedies that are available.
  - c. If the Owner breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments for which the

Contractor has completed the Work.

19. **Claims.**

- a. **Time Limits on Claims:** Contractor's claims must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. Owner claims must be made within the time set by then applicable statute of limitation. Claims must be made in writing to the Architect and the other party, and must identify the known bases for each Claim and the nature and amount of the relief sought.
- b. **Continuing Contract Performance:** Pending final resolution of a Claim except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- c. **Claims for Additional Costs:** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property. In an emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss and shall immediately notify the Owner.
- d. **Claims for Additional Time:** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of the cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- e. **Injury or Damage to Person or Property:** If any person suffers physical injury or property damage arising from the Work regardless of the cause, notice of such injury or damage, whether or not insured, shall be given immediately to the Owner's authorized representative and the Contractor's authorized representative. The notice shall provide sufficient detail to enable the Owner and any other party affected to investigate the matter.

20. **Compliance with Applicable Law.** Contractor shall comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including without limitation, the following requirements of the Oregon Public Contract Code:

- a. **ORS 279A.110 (Non-discrimination Certification):** Contractor certifies that it has not and will not discriminate against minorities, women or emerging small business enterprises in obtaining any required Subcontractors, or against a business enterprise that is owned or controlled by, or that employs a disabled veteran as defined in ORS 408.225.
- b. **ORS 279C.380 (Performance and Payment Bonds):** Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting work under this Contract, Contractor or its Subcontractor shall execute and deliver to Owner a good and sufficient performance bond, in a form acceptable to Owner, in a sum equal to 100% of the construction portion of the Contract Price, and Contractor or its Subcontractor shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, in a sum equal to 100% of the construction portion of the Contract Price, solely for the protection of claimants under ORS 279C.600.
- c. **ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing):** Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the Work provided for in such Contract; pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug testing program is in place.
- d. **ORS 279C.510 (Recycling/Composting):** If this Contract includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- e. **ORS 279C.515 (Failure to Pay Promptly):** If Contractor fails, neglects, or refuses to make prompt payment of any Claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Contract as such Claim becomes due, the Owner may 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 the Contractor by reason of this Contract. The payment of a Claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid Claims. If the Contracting Agency is unable to determine the validity of any claim for labor or material furnished, the Contracting Agency 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.

Unless the payment is subject to a good-faith dispute as defined in ORS 279C.580, if Contractor or any first-tier Subcontractor fails to pay any Claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid Claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good-faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed 30%. The amount of interest may not be waived.

- f. **ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime):** Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
  - i. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
  - ii. For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - iii. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may

be required to work.

- g. ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:
- i. Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
  - ii. State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
  - iii. Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.
  - iv. Tribal Governments.
- h. ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Contractor shall promptly, as due, make payments to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.
- All employers, including the Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.
- i. ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, providing the Contractor or Subcontractor has:
- i. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
  - ii. Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.
- j. ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Contractor shall include in each subcontract for property or services with a first-tier Subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Subcontractors to include a similar clause in each contract with a lower-tiered subcontractor or supplier.
- k. ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.
- l. ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):
- i. The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.
  - ii. The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The January 2017 Prevailing Wage Rates for Public Works Projects in Oregon, with April 1, 2017 amendments. Such publications can be reviewed electronically at <http://www.oregon.gov/boli/WHD/PWR/Pages/PWR-Rate-Publications-2017.aspx> and are hereby incorporated as part of the Contract Documents.
  - iii. Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
  - iv. The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
  - v. If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.
- m. ORS 279C.836 (Public Works Bond Required): The Contractor shall:
- i. File a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4) (7), (8) or (9); and
  - ii. Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

- n. ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):
- i. Contractor and every Subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or Subcontractor's surety that Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Contractor or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The Contracting Agency is not required to verify the truth of the contents of certified statements filed by the contractor under this section and ORS 279C.845.
  - ii. The certified statement shall be delivered or mailed by Contractor or Subcontractor to Owner. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner shall retain 25% of any amount earned by the Contractor until the Contractor has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within 14 days after the Contractor files the certified statements required by this Section.
  - iii. The contractor shall retain 25% of any amount earned by a first-tier subcontractor on this public works contract until the subcontractor has filed with the Contracting Agency certified statements as required by ORS 279C.845. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained. The contractor shall pay the first-tier subcontractor the amount retained within 14 days after the subcontractor files the certified statements as required by ORS 279C.845. Neither the Contracting Agency nor the contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor.
  - iv. Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.
- o. ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Contractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.026. Contractor shall further certify that all Subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above-noted statutes before they commence Work under this Contract. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify Owner immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.
- p. Applicable Federal Statutes: Contractor shall comply with the provisions of the Immigration Reform and Control Act of 1986 regarding the verification of employment eligibility. In addition, Contractor expressly agrees to comply with the following: Workers' Compensation Laws (ORS Chapter 656); Wages, Hours and Records Laws (ORS Chapter 652); Conditions of Employment Laws (ORS Chapter 653); Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657); all regulations and administrative rules established pursuant to the forgoing laws; and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations, including without limitation (a) Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin; (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (c) the Americans with Disabilities Act of 1990, as amended; (d) the Health Insurance Portability and Accountability Act of 1996; (e) the Age Discrimination in Employment Act of 1967, as amended and the Age Discrimination Act of 1975, as amended; (f) Discrimination against disabled persons (ORS) 659A.142, (g) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse; (h) the Comprehensive Alcohol and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.6160) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (i) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-34), as amended, relating to confidentiality of alcohol and drug abuse patient records; (j) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (k) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (l) the requirements of any other nondiscrimination statute(s) which may apply to the application. Contractor shall comply with the provisions of the Hatch Act (5 U.S. 1501-1508 and 7234-7328) which limit the political activities of employees whose principal employment activities are funded in whole or part with federal funds.
- q. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
21. **Quality of Goods and Services.** Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trade. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment from Owner, whichever is later. Contractor shall assign all manufacturers' warranties to Owner and all guarantees and warranties of goods supplied under this Contract shall be deemed to run to the benefit of Owner. Contractor shall provide Owner with all manufacturers' warranty documentation and operations and maintenance manuals.
22. **Errors.** The Contractor shall perform such additional work as may be necessary to correct errors in the Work required under this Contract without undue delays and without additional cost.
23. **Access to Records.** The Contractor agrees that the Owner and its authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts.
- Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that the Owner's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.
24. **Ownership of Work.** All work products created by the Contractor as part of Contractor's performance of this Contract, including background data, documentation, and staff work that is preliminary to final reports, shall be the exclusive property of the Owner. If any such work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants the Owner a perpetual, royalty-free, fully paid-up, non-exclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, re-use, in whole or in part, and to authorize others to do so, all such work products. The Owner shall have no rights in any pre-existing work product of Contractor provided to the Owner by Contractor in the performance of this Contract except to copy, use, and re-use any such work product for Owner use only. If this Contract is terminated by either party or by default, the Owner, in

addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver such partially completed work products, reports, or other documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.

**25. Warranty.**

- a. Contractor warrants and guarantees to the Owner that all work will be in accordance with the contract documents and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted. Contractor understands that Owner, its various departments, and agencies, must be consulted and be allowed to inspect the work and sign off in each particular area. At all times, Owner's representative and appropriate inspectors shall have access to the work for inspection and testing. Contractor shall provide proper and safe conditions for such access.
- b. Where any law, ordinance, rule, regulation, code, or other order of any public body having jurisdiction requires any work or part thereof to specifically inspected, tested or approved, Contractor shall assume full responsibility therefor and pay all costs in connection therewith and furnish the Owner representative the required certificates of inspection, testing or approval. If any work to be inspected, tested, or approved is covered without written concurrence of the Owner representative, it must be, if requested, uncovered for observation. Such uncovering shall be at the Contractor's expense.
- c. Neither observations by the Owner representative nor inspection tests or approvals by others shall relieve the Contractor from Contract's obligations to perform the work in accordance with the contract documents.
- d. If, within two (2) year(s) after the date of final completion and sign-off and payment of any retainage by the Owner to the Contractor, there is any defect in materials or workmanship, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective work or, if it has been rejected by the Owner, remove it from the site and replace it with non-defective work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where a delay would cause serious risk of loss or damage, Owner may have the defective work corrected or the rejected work removed and replaced, and all direct or indirect costs of such removal and replacement including compensation for additional professional services shall be paid by Contractor. Such additional professional services include the services of any attorney employed by the Owner to assist it in dealings with the Contractor. If the Contractor does not pay for such work, or does not see that such work is performed as required by this section, a claim may be made upon Contractor's bond for payment of such work. All notices sent to Contractor shall have copies sent to Contractor's surety.
- e. Contractor warrants and guarantees that title to all work, materials, and equipment covered by the application for payment, whether incorporated in the project or not, will pass to Owner at the time of payment, free and clear of all liens, claims, security interests and encumbrances of any party whomsoever.

**26. Security.** Any disclosure or removal of any matter and/or property not in conjunction with the specifications on the part of the Contractor or Contractor's employees shall be cause for immediate cancellation of the Contract. Any liability, including but not limited to, attorney fees, resulting from any action or suit brought against the Owner as a result of the Contractor's or Contractor's employees' willful or negligent release of information, documents, or property contained in or on Owner property shall be borne by the Contractor. All information, documents, and property contained within these facilities shall be considered privileged and confidential.

**27. Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 27.

**28. Insurance.** Prior to beginning the Work, the Contractor shall provide insurance in accordance with Exhibit 2.

**29. Waiver.** Waiver of any default under this Contract by the Owner shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

**30. Arbitration.**

- a. Any Claim arising out of or related to the Contract, except those waived as provided for in subparagraph 19, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. At any time, part(ies) may endeavor to resolve disputes by mediation.
- b. Claims shall be decided by arbitration, which, unless the parties mutually agree otherwise, shall be in accordance with the rules of Arbitration Service of Portland, Inc. The demand for arbitration shall be filed in writing with the other party to the Contract and with the Arbitration Service of Portland, Inc., and a copy shall be filed with the Architect. Exclusive venue for arbitration shall be in Clackamas County, Oregon.
- c. A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- d. Any award rendered by the arbitrator(s) will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Oregon law.

**31. Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and rules of the Owner, as they appear at the time of signing or any subsequent addenda. Any legal action involving any question arising under this Contract must be brought in Clackamas County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

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

**33. Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification, or change in the terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

**34. Anti-discrimination Clause.** Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, sexual orientation, marital status, familial status, national origin, age, mental or physical disability, or political affiliation in programs, activities, services, benefits, or employment.

**35. Attorney Fees.** If a suit or action is filed to rescind or enforce any of the terms of this Contract, including a request for arbitration under subparagraph 30 of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, or arbitrator may adjudge reasonable as attorney fees. In the event the prevailing party is represented by "in-house" counsel, the

prevailing party shall nevertheless be entitled to recover reasonable attorney fees based on the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon area for the type of legal services performed.

36. **Rule of Construction.** The rule of construction that a contract is construed against the drafter shall not apply to any dispute over the interpretation of application of the Contract.
37. **Removal of Debris.** Contractor shall remove all trash and debris from the site for disposal. Contractor shall clean the work area and remove all trash, debris, and tools at least daily prior to leaving the job site and as needed to maintain a safe work area.

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**CONTRACTOR DATA AND SIGNATURE**

Business Name: **Emerick Construction Co.**  
Business Address: **7855 SW Mohawk Street, Tualatin, OR 97062**  
Contractor Phone: **(503) 777-5531**  
Federal Tax ID# or Social Security #: **93-0451960**  
Is Contractor a nonresident alien?  Yes  No  
Business Designation (check one):  Sole Proprietorship  Partnership  
 Corporation-for profit  Corporation-non-profit  
 Other [describe here: \_\_\_\_\_]

Federal tax ID numbers or Social Security numbers are required pursuant to ORS 305.385 and will be used for the administration of state, federal, and local laws. Payment information will be reported to the Internal Revenue Service under the name and federal tax ID number or, if none, the Social Security number provided above.

**I have read this Contract including the attached Exhibits. I certify that I have the authority to sign and enter into this Contract. I understand the Contract and agree to be bound by its terms.**

\_\_\_\_\_  
Signature **PRESIDENT**  
Title  
  
**COREY M. LOHMAN**  
Name (please print) \_\_\_\_\_  
Date

NOTE: Contractor must also sign Exhibit 3 and (if applicable) Exhibit 4.

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**CLACKAMAS COUNTY FIRE DISTRICT NO. 1  
SIGNATURE**

(This Contract is not binding on the Owner until signed by the appropriate signing authority)

\_\_\_\_\_  
Signature \_\_\_\_\_  
Title \_\_\_\_\_  
Date  
  
\_\_\_\_\_  
Name (please print)

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EXHIBIT 1

CLACKAMAS COUNTY FIRE DISTRICT NO. 1

CONSTRUCTION PROJECTS CONTRACT

STATEMENT OF WORK, COMPENSATION,  
PAYMENT and RENEWAL TERMS

1. **Contractor shall perform the following work:**

As per the attached, scope of work and design requirements.

2. **The maximum total payment under this Contract, including expenses, is \$7,430,000.**

3. **The Owner shall pay Contractor on the following basis:** \$4,000,000.00 deposit in consideration of \$220,000 discount. Deposit Due 14-Days from execution of contract and discount shall be deducted from deposit payment. All other payments see Section 11 in the Contract.

Payments shall be made to the address below:

Payments are requested to be made by direct deposit,

Emerick Construction Co. (503) 777-5531  
7855 SW Mohawk Street  
Tualatin, OR 97062  
%KeyBank  
Routing Number:  
Account Number:

4. **Contractor will invoice the Owner for the Work as follows:**

Invoices shall be submitted to the address below:

Mike Corless II  
Division Chief  
11300 Se Fuller Rd  
Milwaukie, Oregon 97222

5. **Owner will pay expenses on the following terms and conditions:** Expenses are included in the above-noted Contract Price with the exception of any/all permits, SDC Fees or the like, which will be on a cost reimbursement basis if required by the owner.

6. **This Contract may be renewed on the following basis:** NOT RENEWABLE

EXHIBIT 2

CLACKAMAS COUNTY FIRE DISTRICT NO. 1

**CONSTRUCTION PROJECTS CONTRACT**

**INSURANCE REQUIREMENTS**

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below:

**Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all Subcontractors of Contractor with one or more employees must have this insurance unless exempt under **ORS 656.027** (See Exhibit 4). **THIS COVERAGE IS REQUIRED.** Attach Certificate of Insurance. If Contractor does not have coverage and claims to be exempt, attach Exhibit 4 in lieu of Certificate.

**Professional Liability / Errors & Omissions (E&O)** insurance with a combined single limit of not less than:  
 \$500,000,  \$1,000,000,  \$2,000,000 each claim, incident, or occurrence, with an annual aggregate limit of  
 \$500,000,  \$1,000,000,  \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. This coverage must be provided and remain in force for two years after the completion of the Contract.  
 Required by Owner  Not required by Owner

**Commercial General Liability** insurance, on an occurrence basis, with a limit of not less than:  
 \$500,000,  \$1,000,000,  \$2,000,000 each occurrence for Bodily/Personal Injury and Property Damage, with an annual aggregate limit of  \$500,000,  \$1,000,000,  \$2,000,000. This insurance must include contractual liability coverage.  
 Required by Owner  Not required by Owner

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent of not less than:  
 \$500,000,  \$1,000,000,  \$2,000,000 each occurrence for Bodily Injury/Personal Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles.  
 Required by Owner  Not required by Owner

**Builders All-Risk** insurance policy to cover the course of construction and all materials or equipment furnished or incorporated into the Work. The policy shall be equal to 100% of the contracted value of the Work, and cover all property of an insurable nature, which is either in place or intended to be used as part of the permanent structure. This insurance shall include the interest of Owner in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage, including without limitation and without duplication of coverage, for theft, vandalism, and malicious mischief. Losses up to the deductible amount shall be the responsibility of the Contractor.  
This insurance shall be primary and not contributory to any Owner-provided insurance. No Work shall be performed, nor shall Contractor's equipment or materials be stored on Owner's premises, until a certificate evidencing such insurance has been delivered to and approved by Owner.  
 Required by Owner  Not required by Owner

**Additional Requirements.** Coverage must be provided by an insurance company admitted to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insureds condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

**Within 10 days after the receipt of Notice of Award, the successful Offeror shall be prepared to execute the Contract provided by the Owner. At the same time, the successful Offeror shall furnish a separate Performance and Payment Bond in a form and with surety satisfactory to the Owner in an amount equal to the full Contract sum for the faithful performance of the Contract and all provisions thereof. Owner shall be named as the obligee on the Bond. In addition, for contracts exceeding \$100,000, the Performance and Payment Bond shall remain in force for one year after completion and acceptance by the Owner. Certificate(s) of Insurance Required.**

Contractor shall furnish a current Certificate(s) of Insurance to the Owner prior to Contract execution. The Certificate(s) shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days' written notice from the Contractor's insurer to the Owner. The Certificate(s) shall also state the deductible or retention level. For commercial general liability, the Certificate shall also provide that the Owner, its agents, officers, and employees are Additional Insureds with respect to Contractor's services to be provided under this Contract. An additional insured endorsement shall be attached to the certificate of insurance. No Work shall commence until the certificate and additional insured endorsement are received by the Owner. If requested, complete copies of insurance policies shall be provided to the Owner.

Reviewed by: \_\_\_\_\_

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

EXHIBIT 3

CLACKAMAS COUNTY FIRE DISTRICT NO. 1

CONSTRUCTION PROJECTS CONTRACT

CERTIFICATION STATEMENT FOR CORPORATION  
OR INDEPENDENT CONTRACTOR

**NOTE: Contractor Must Complete A or B below:**

**A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY, OR PARTNERSHIP.**

<b>I certify under penalty of perjury that Contractor is a [check one]:</b>		
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership authorized to do business in the State of Oregon.		
_____	<b>COREY M. LOHMAN, PRESIDENT</b>	_____
Signature	Title	Date

OR

**B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.**

<b>Contractor certifies under penalty of perjury that the following statements are true:</b>	
1. If Contractor is providing labor or services under this Contract for which registration is required under ORS Chapter 701, Contractor has registered as required by law, <b>and</b>	
2. If Contractor performed labor or services as an independent contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), <b>and</b>	
3. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business, <b>and</b>	
4. All of the statements checked below are true.	
<b>NOTE: Check all that apply. You must check at least four (4) to establish that you are an Independent Contractor.</b>	
<input type="checkbox"/> A.	The labor or services I perform are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence that is set aside as the location of the business.
<input type="checkbox"/> B.	I purchase commercial advertising or I have business cards for my business, or I am a member of a trade association.
<input type="checkbox"/> C.	My business telephone listing is separate from my personal residence telephone listing.
<input type="checkbox"/> D.	I perform labor or services only under written contracts.
<input type="checkbox"/> E.	Each year I perform labor or services for at least two different persons or entities.
<input type="checkbox"/> F.	I assume financial responsibility for defective workmanship or for service not provided by purchasing performance bonds, errors and omission insurance, or liability insurance, or providing warranties relating to the labor or services I provide.
_____	_____
Signature	Date

**CLACKAMAS COUNTY FIRE DISTRICT NO. 1**

**CONSTRUCTION PROJECTS CONTRACT**

**WORKERS' COMPENSATION EXEMPTION CERTIFICATE**

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate box*):

**SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor will not hire employees to perform this Contract.

**CORPORATION - FOR PROFIT**

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest\* in the corporation, and
- All work will be performed by the officers and directors; Contractor will not hire other employees to perform this Contract.

**CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor will not hire employees to perform this Contract.

**PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, and
- All work will be performed by the partners; Contractor will not hire employees to perform this Contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving, or demolition of an improvement to real property or appurtenances thereto.\*\*

**LIMITED LIABILITY COMPANY**

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work will be performed by the members; Contractor will not hire employees to perform this Contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving, or demolition of an improvement to real property or appurtenances thereto.\*\*

**\*NOTE:** Under OAR 436-50-050, a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

**\*\*NOTE:** Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated.

\_\_\_\_\_  
Contractor Printed Name

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Contractor Title

\_\_\_\_\_  
Date

## CLACKAMAS COUNTY FIRE DISTRICT NO. 1

## CONSTRUCTION PROJECTS CONTRACT

HAZARDOUS MATERIALS REQUIREMENTS

Hazardous Materials as that term is defined under Section G, below.

- A. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or be present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the Owner a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto the Owner's property, including the purpose for their use on the Project.
- B. In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project site, the Contractor shall **immediately** (1) stop the Work or the portion of the Work affected, (2) notify the Owner and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by contract for the existence, use, release, or discovery of Hazardous Materials.
- C. With respect to any Hazardous Materials or other material or substance reported to the Owner under Section B above that was not introduced to the Project site by the Contractor or its Subcontractors of any tier, the Owner shall obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time may, subject to agreement by the Owner and the Contractor, be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay, and start-up, which adjustments shall be accomplished as provided in the Contract.
- D. With respect to any Hazardous Materials or other material or substance reported to the Owner under Section B above that was introduced to the Project site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (1) proposing to the Owner and the Architect a qualified environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3) verifying that the material is rendered harmless, as otherwise set forth in Section C above. The Contractor will not be entitled to an increase in the Contract Sum as stated in the last sentence of Section C if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Owner. Generally, the Owner may at its option contract directly with environmental consultants, and remediation contractors, regardless of whether the work will be performed at the Contractor's expense.
- E. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Owner under this Section will be required to indemnify the Contractor, Subcontractors, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but will require indemnity to the extent of the fault of the Owner or its agents or representatives.
- F. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Owner's Representatives, and employees of any of them from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Contractor under this Section will be required to indemnify the Owner or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Owner's own negligence, but will require indemnity to the extent of the

fault of the Owner or its agents or representatives.

- G. Hazardous Materials are any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Exhibit 5, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.

Contractor Printed Name

Contractor Signature

\_\_\_\_\_

Contractor Title

\_\_\_\_\_

Date

**EXHIBIT 6**

**NOT APPLICABLE**

**CLACKAMAS COUNTY FIRE DISTRICT NO. 1**

**CONSTRUCTION PROJECTS CONTRACT**

**PROJECT MANUAL/GENERAL CONDITIONS**

\*\*\*\*CL NOTE: This should be complete list of 90% drawings, which established the estimate.