



OREGON

"Delivering Excellence Everyday"

MARION COUNTY BOARD OF COMMISSIONERS

Wednesday, November 5, 2025
Board Session 9:00 a.m.

Senator Hearing Room
555 Court Street NE, Salem

PROCLAMATION

BOARD OF COMMISSIONERS – Action

1. Consider approval of a proclamation honoring veterans and celebrating November 11, 2025, as Veterans Day in Marion County and declaring November 5, 2025, through November 12, 2025, as Green Light for Veterans Week. –Alvin Klausen

PUBLIC COMMENT

PRESENTATION

2. Strategic Economic Development Corporation (SEDCOR) of the Mid-Willamette Valley Quarterly Report. –Sarah Coutley; Erik Andersson and Kip Morris, SEDCOR

CONSENT

BOARD OF COMMISSIONERS

3. OLCC Application – Recommended Approval
Standard Liquor Company – Salem, Oregon

BUSINESS SERVICES

4. Approve the Public Improvement Agreement with GR Smith Construction Corporation in the amount of \$171,140 to provide construction services for the interior refurbishment of the Marion County Justice Courts located on Portland Road in Salem, Oregon through June 30, 2026.

5. Approve the Public Improvement Agreement with Ross Builders Northwest, LLC, in the amount of \$843,097 to provide construction services for tenant improvements to the first floor of the Marion County Health and Human Services Building located on Center Street in Salem, Oregon through June 30, 2026.

FINANCE

- 6.** Approve a quitclaim deed to transfer ownership of tax foreclosed property for tax account 588709 from Marion County to Slavic Kotsyubchuk, the land sale contract holder.
- 7.** Approve the incoming funds Franchise Agreement with Spectrum Pacific West, LLC, dba, Charter Communications to provide cable television services in Marion County through November 5, 2035, with the county receiving an annual franchise fee of five percent of the gross annual receipts received from all operations of the cable system within the county.
- 8.** Approve the incoming funds Cable Television Franchise Agreement with WaveDivision VII, LLC, to provide cable television services in Marion County through November 5, 2035, with the county receiving an annual franchise fee of five percent of the gross annual receipts received from all operations of the cable system within the county.

HEALTH AND HUMAN SERVICES

- 9.** Approve Amendment #3 to the incoming funds Intergovernmental Agreement with the Oregon Health Authority to add \$1,576,997.98 for Program Element (PE)51-01, LPHA Leadership, Governance, and Program Implementation and PE51-05, CDC PH Infrastructure Funding, for a new contract total of \$7,510,892.60 retroactive to September 1, 2025, through June 30, 2027.
- 10.** Approve Amendment #4 to the Contract for Services with Bridgeway Community Health to add \$141,843.98 for service element A&D 66, Detox, for a new not-to-exceed contract total of \$808,375.92 through December 31, 2025.
- 11.** Approve Amendment #15 to the incoming funds Intergovernmental Agreement (IGA) with the Oregon Health Authority to extend the term date to December 31, 2025, and add \$7,428,920.69 to be allocated to the following for a new IGA total of 32,075,591.08:
 - A&D 66, Community Behavioral And Substance Use Disorder Services;
 - MHS 01, System Management and Coordination;
 - MHS 04, Aid and Assist Client Services;
 - MHS 12, Rental Assistance Program Services;
 - MHS 17, Non-OHP Community and Residential Assistance; and
 - MHS 30, Monitoring, Security, and Supervision Services for Individuals under the Jurisdiction of the Adult and Juvenile Panels of the Psychiatric Security Review Board.

HUMAN RESOURCES

12. Approve the recommendation to update the classifications and uphold the pay grades for class codes #089, Mental Health and Evaluation Specialist; #108, Care Coordinator; #114, Policy Analyst; #141, Case Aide; #466, Groundskeeper; and #614, Policy Analyst, Senior; and update the classifications and adjust the pay grades upward for class codes #055, Training and Development Coordinator; #064, Human Resources Manager; #070, Peer Support Specialist; #529, Addiction Treatment Associate 1; #530, Addiction Treatment Associate 2; and #536, Addiction Recovery Mentor.

PUBLIC WORKS

13. Approve a resolution authorizing acquisition and eminent domain of certain real properties for the Ehlen Road NE at Butteville Road NE Roundabout project.

14. Approve the Master Subscription Agreement with AssetWorks Contracting Party in the not-to-exceed amount of \$516,454.71 for the FleetFocus, Asset, Inventory, and Maintenance Management Application that allows for enhanced management of Marion County's fleet assets with a term date of five years from execution.

ACTION

COMMUNITY SERVICES

15. Consider approval of a resolution to rename the Marion County Community Services Department to the Marion County Community and Economic Development Department and rename the department position title of Community Services Director to Community and Economic Development Director. –Kelli Weese

PUBLIC HEARINGS **Starting no earlier than 9:30 a.m.**

None.

Members of the public may submit written testimony by email to PublicHearings@co.marion.or.us For agenda items where in-person testimony is allowed, the public may sign up to provide testimony by telephone by emailing PublicHearings@co.marion.or.us at least 24 hours before the meeting. The email must specify the meeting date/time and agenda topic for which testimony is being submitted. For telephone testimony requests, the email must also include your name and the phone number that staff should use to call you at the appropriate time.

If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168 Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o culaquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168 Marion County is on the Internet at: www.co.marion.or.us



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 11/5/2025

Department: Board of Commissioners

Title: Veterans Day Proclamation

Management Update/Work Session Date: 10/21/25 Audio/Visual aids

Time Required: 15 Min Contact: Alvin Klausen Phone: 588-3563

Requested Action: To present a proclamation honoring veterans to the Marion County Board of Commissioners.

Issue, Description & Background: Each year, the Marion County Board of Commissioners honors the service and sacrifice of America's veterans through a Veterans Day proclamation. Veterans of the United States Armed Forces have defended our nation's freedom in times of war and peace, and their continued service strengthens our communities.
Through this proclamation, Marion County reaffirms its commitment to supporting veterans and their families, promoting awareness of veteran issues, and fostering partnerships with local organizations that serve those who have worn the uniform.

Financial Impacts: N/A

Impacts to Department & External Agencies: N/A

List of attachments: Veterans Day Proclamation

Presenter: Alvin Klausen

Department Head Signature:

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

IN THE MATTER OF HONORING VETERANS THROUGH OPERATION GREEN LIGHT

PROCLAMATION

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, November 5, 2025.

WHEREAS, Veterans Day is a time for our nation to honor and recognize the men and women who have served in the Armed Forces of the United States with courage, dedication, and sacrifice; and

WHEREAS, Marion County is home to thousands of veterans who have worn the uniform of our country with pride, defending freedom, protecting democracy, and safeguarding the values upon which our nation was founded; and

WHEREAS, we also honor the continuing service of Marion County employees who are veterans, whose commitment to public service extends beyond their military careers and enriches our community each and every day; and

WHEREAS, this year marks a significant moment in our nation’s history, as we reflect on the 250th anniversaries of the United States Army, the United States Navy, and the United States Marine Corps, institutions whose strength, perseverance, and devotion to duty have helped secure 250 years of American liberty, prosperity, and peace; and

WHEREAS, as our country prepares to celebrate 250 years of independence in 2026, we are reminded that this milestone is made possible by generations of American service members who stood guard over our freedoms, often at great personal cost; and

WHEREAS, Marion County proudly joins communities across the nation in showing support for those who have served by participating in “Operation: Green Light”, an initiative recognizing the contributions of America’s veterans. From November 5th through November 12th, Marion County buildings will be illuminated in green as a visible tribute of gratitude and unity with our veterans and their families; and

NOW, THEREFORE, the Marion County Board of Commissioners does hereby recognize November 11, 2025, as Veterans Day in Marion County, and encourages all residents to honor, thank, and support the veterans in our community and across the nation, not only on this day, but every day of the year.

DATED at Salem, Oregon, this 5th day of November 2025.

MARION COUNTY BOARD OF COMMISSIONERS

Chairperson _____

Commissioner _____

Commissioner _____





MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 5, 2025

Department: Community Services

Title: SEDCOR Quarterly Report

Management Update/Work Session Date: NA Audio/Visual aids [checkbox]

Time Required: 10 min Contact: Sarah Coutley Phone: 503-589-3276

Requested Action: At the November 5, 2025 Board Session, representatives from the Strategic Economic Development Corporation (SEDCOR) including Erik Andersson, SEDCOR President, and Business Retention & Expansion Manager, Kip Morris, will be providing a report on their activity for Marion County Business Retention & Expansion.

Issue, Description & Background: In 2023, Marion County approved an agreement with SEDCOR. SEDCOR is a local non-profit specializing in economic development and business outreach. The agreement with SEDCOR was for engagement of business recruitment, retention, and expansion efforts in Marion County in order to enhance the Economic Development Program's capacity toward realizing the economic development strategic plan goals. Within their agreement with Marion County, SEDCOR is required to provide a quarterly report that includes a summary of activities.

Financial Impacts: The agreement set in 2023 allocates \$160,000 each fiscal year for SEDCOR to perform business recruitment, retention, and expansion services. The current agreement was recently amended and is set to expire on June 30, 2026.

Impacts to Department & External Agencies: None

List of attachments:

Presenter: Sarah Coutley, Economic Development Specialist; Erik Andersson, SEDCOR President; Kip Morris, SEDCOR's Business Retention & Expansion Manager

Department Head Signature: Kelli Wuse

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MARION COUNTY, STATE OF OREGON

NO. 20165

In the Matter of the Application of

For a recommendation regarding the
application to the Oregon Liquor
Control Commission for

RECOMMENDATION

This matter coming before the Board of County Commissioners on the application of
Standard Liquor for a recommendation to the Oregon
Liquor Control Commission under the provisions of ORS 471.166; and the Board having referred
said application to the Sheriff of Marion County, Oregon, and having the report of said Sheriff that
the applicant has not been convicted of a crime involving a violation of the liquor control laws, or
the gambling laws, or of crimes involving moral turpitude, and that the applicant is of good moral
character, a citizen of the United States of America, and otherwise qualified to be licensed under
the Oregon Liquor Control Act;

IT IS, THEREFORE RECOMMENDED TO THE OREGON LIQUOR CONTROL COMMISSION
that the application of the above be refused _____ granted _____.

Dated at Salem, Marion County, Oregon this _____ day of _____, 20_____.

_____ County Commissioner
_____ County Commissioner
_____ County Commissioner

Approved by [Signature]
County Sheriff
10-20-25



Local Government Recommendation – Liquor License

Annual Liquor License Types	
Off-Premises Sales	Brewery-Public House
Limited On-Premises Sales	Brewery
Full On-Premises, Caterer	Distillery
Full On-Premises, Commercial	Grower Sales Privilege
Full On-Premises, For Profit Private Club	Winery
Full On-Premises, Non Profit Private Club	Wholesale Malt Beverage & Wine
Full On-Premises, Other Public Location	Warehouse
Full On-Premises, Public Passenger Carrier	

Section 1 – Submission – To be completed by Applicant:

Legal Entity/Individual Applicant Name(s): Candy Page

Proposed Trade Name: Standard Liquor Co

Premises Address: 7000 O'Brien Ave S Unit:

City: Salem County: marion Zip: 97307

Application Type: New License Application Change of Ownership Change of Location

License Type: full on-premises Caterer Additional Location for an Existing License

Contact Name: Candy Page Phone: [REDACTED]

Mailing Address: [REDACTED]

City: salem State: or Zip: 97304

Email Address: [REDACTED]

Please check all that apply to your proposed business operations at this location:

Manufacturing/Production

Retail Off-Premises Sales

Retail On-Premises Sales & Consumption

If there will be On-Premises Consumption at this location:

Indoor Consumption Outdoor Consumption

Proposing to Allow Minors

Section 1 continued on next page



Local Government Recommendation – Liquor License

Section 1 Continued – Submission - To be completed by Applicant:

Legal Entity/Individual Applicant Name(s): Candy Page

Proposed Trade Name: Standard Liquor Co

IMPORTANT: You MUST submit this form to the local government PRIOR to submitting to OLCC.
Section 2 must be completed **by the local government** for this form to be accepted with your CAMP application.

Section 2 – Acceptance - To be completed by Local Government:

Local Government Recommendation Proof of Acceptance

After accepting this form, please return a copy to the applicant with received and accepted information

City or County Name: Marion

Optional Date Received Stamp

Date Application Received: 10/13/25

Received by: Melissa Juan-Garcia

MARION COUNTY CLERK

25 OCT 13 4:34

RECEIVED

Section 3 – Recommendation - To be completed by Local Government:

- Recommend this license be granted
- Recommend this license be denied (Please include documentation that meets [OAR 845-005-0308](#))
- No Recommendation/Neutral

Name of Reviewing Official:

Title:

Date:

Signature:

After providing your recommendation and signature, please return this form to the applicant.



OREGON LIQUOR & CANNABIS COMMISSION
BUSINESS INFORMATION – LIQUOR LICENSE

Applicant Name	Vatican Limited Partnership Inc	Business Contact	Candy Page
Trade Name	Standard Liquor Co	Mailing Address	[REDACTED]
Premises Street Address	7000 O'Brien Ave S. Salem or. 97302	Phone Number	[REDACTED]
License Type		Email Address	[REDACTED]

Operating Hours

Day of Week	Open Time	Closed Time	Seasonal Variation	Explanation
11/22-25 11/23/2025	10:00 am	5:00 pm	Yes <input checked="" type="checkbox"/>	Christmas tree farm. We will close when its dark.
11/28/2025 11/29/2025	10:00 am	5:00 pm		
11/05/2025 12/06/2025	10:00 am	5:00 pm		
12/12/2025 12/13/25	10:00	5:00 pm	<input type="checkbox"/>	Not open to the public or by appointment only

Seating

Restaurant Seating: ni Outdoor Seating: yes Other Seating: yes

No On-Premises Consumption

ENTERTAINMENT

Check all that apply:

- | | |
|--|---|
| <input type="checkbox"/> Live Music | <input type="checkbox"/> Video Lottery Machines |
| <input type="checkbox"/> Recorded Music | <input type="checkbox"/> Nude Dancing |
| <input type="checkbox"/> DJ Music | <input type="checkbox"/> Live Entertainment |
| <input type="checkbox"/> Dancing | <input type="checkbox"/> Minor Entertainers |
| <input type="checkbox"/> Karaoke | <input type="checkbox"/> Minor Entertainers in an Area Prohibited to Minors
**Need prior OLCC approval |
| <input type="checkbox"/> Coin-operated Games | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Social Gaming | |
| <input type="checkbox"/> Pool Tables | |

MARION COUNTY
BILL BURGESS
MARION COUNTY CLERK

Receipt #: 73556

Receipt Date: 10/13/2025 04:29 PM

Station: 3

Cashier: MJG

Receipt Name: CANDY PAGE

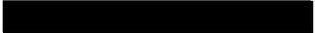
Comments: 7000 O'BRIEN AVE S SALEM OR 97307

Thank You
BILL BURGESS, MARION COUNTY CLERK

Please retain this receipt for your records.

Documents are recorded as submitted. The Marion County Clerk's Office
assumes no liability for sufficiency, validity, or accuracy.

Miscellaneous Fees		
LIQUOR LICENSE FEE	YES	\$25.00

Receipt Total		\$25.00
CREDIT CARD		\$25.00



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 5, 2025

Department: Business Services

Title: Justice Courts Interior Refurbishment Contract with GR Smith Construction

Management Update/Work Session Date: October 21, 2025 Audio/Visual aids []

Time Required: 10 min Contact: Tamra Goettsch Phone: x3200

Requested Action: Consider approval of the Public Improvement Agreement with GR Smith Construction Corporation for the Marion County Justice Courts remodel.

Issue, Description & Background: Interior refurbishment of the Justice Courts located at 4660 Portland Rd NE, Suite 107, Salem, 97305. Tenant improvements include remodeling the reception area to better suite the court's needs, in addition to painting walls, replacing the flooring, and installing new cubicles throughout.

Financial Impacts: Total cost 171,140.00 CIP 25-006

Impacts to Department & External Agencies: No other impact to other departments outside of the Marion County Justice Courts, project coordination to be managed by Business Services.

List of attachments: Public Improvement Agreement, Drawings

Presenter: Tamra Goettsch

Department Head Signature:

Contract Review Sheet

Public Improvement Agreements

BS-6858-25

Title: Justice Courts Interior Refurbishment

Contractor's Name: GR Smith Construction Corporation

Department: Business Services Department

Contact: Vanessa Keck

Analyst: Chalyce MacDonald

Phone #: (503) 566-3910

Term - Date From: Execution

Expires: June 30, 2026

Original Contract Amount: \$ 171,140.00

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 171,140.00 Amd% 0%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0255 Invitation to Bid

ITB# BS1681-25

Description of Services or Grant Award

Interior refurbishment of the Justice Courts located at 4660 Portland Rd NE, Suite 107, Salem, 97305. Tenant improvements include remodelling the reception area to better suite the court's needs, in addition to painting walls, replacing the flooring, and installing new cubicles throughout.

Desired BOC Session Date: 11/5/2025

Contract should be in DocuSign by: 10/15/2025

Agenda Planning Date: 10/23/2025

Printed packets due in Finance: 10/21/2025

Management Update: 10/21/2025

BOC upload / Board Session email: 10/22/2025

BOC Session Presenter(s) Tamra Goettsch

Code: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____

Contract Specialist _____ Date _____

Legal Counsel _____ Date _____

Chief Administrative Officer _____ Date _____

MARION COUNTY PUBLIC IMPROVEMENT AGREEMENT
for
Justice Courts Interior Refurbishment

This Agreement for the Justice Courts Interior Refurbishment (the "Agreement"), made by and between Marion County, a political subdivision of the state of Oregon, on behalf of Business Services Department, hereinafter called OWNER, and GR Smith Construction Corporation hereinafter called the CONTRACTOR (collectively the "Parties"), is effective on the date this Agreement has been signed by all the Parties and all required Marion County governmental approvals have been obtained. Unless otherwise defined in the Invitation to Bid or in this Agreement, the capitalized terms used herein are defined in Section A.1 of the Marion County General Conditions for Public Improvement Contracts.

WITNESSETH:

1. Contract Price, Contract Documents and Work.

The CONTRACTOR, in consideration of the sum of \$171,140.00 (the "Contract Price"), to be paid to the CONTRACTOR by OWNER in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Invitation to Bid, this Public Improvement Agreement and other Contract Documents, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents.

The Contract Price includes the following items: Contractor shall be responsible for furnishing all labor, materials, tools, and equipment necessary to complete the Work as described in Attachment 1.

2. Representatives.

Unless otherwise specified in the Contract Documents, the OWNER designates Tamra Goettsch as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to performance, payment, authorization, and to carry out the responsibilities of the OWNER. CONTRACTOR has named Gary Smith its Authorized Representative to act on its behalf.

County delegates to the individual listed below the authority and responsibility for issuing approvals, providing notices, receiving notices, issuing directives, authorizing change orders, and avoiding and resolving disputes: Geoff Bonney

3. Contract Dates.

PROJECT START DATE: December 01, 2025
SUBSTANTIAL COMPLETION: May 31, 2026
FINAL COMPLETION: June 30, 2026

4. RESERVED

5. Integration

The contract documents constitute the entire agreement between the parties. no waiver, consent, modification or change of terms of this contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. there are no other understandings, agreements, or

representations, oral or written, not specified herein regarding this contract. contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this contract, understands it, and agrees to be bound by its terms and conditions.

6. Authority to Execute

Contractor covenants, represents, and warrants to Owner that the person(s) executing this Contract on behalf of the Contractor have the actual authority to bind the Contractor to the terms of the Agreement.

In witness whereof, Marion County, a political subdivision of the state of Oregon, on behalf of Board of Commissioners, executes this Agreement and the CONTRACTOR does execute the same as of the day and year of this Agreement first above written.

In witness whereof, Marion County, a political subdivision of the state of Oregon, on behalf of Business Services Department, executes this Agreement and the CONTRACTOR does execute the same as of the day and year of this Agreement first above written.

7. CONTRACTOR DATA:

CONTRACTOR NAME: GR Smith Construction Corporation
CONTRACTOR ADDRESS: 580 17th St NE, PO Box 13102
CONTRACTOR ADDRESS: Salem, OR 97301
CONTRACTOR'S CCB # & Expiration Date: 230172 Expires 2/26/26

CONTRACTOR'S SIGNATURE: _____
Date

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

**MARION COUNTY
GENERAL CONDITIONS FOR
PUBLIC IMPROVEMENT CONTRACTS**

September 1, 2014 Edition, Revised February 14, 2022

Changes to the General Conditions (including any additions, deletions, or substitutions) should only be made by Supplemental General Conditions, unless the General Conditions are specifically modified in the Public Improvement Agreement (which has a higher order of precedence under Section A.3 of the General Conditions). The text of these General Conditions should not otherwise be altered.

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MARION COUNTY
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
("General Conditions")

SECTION A GENERAL PROVISIONS

A.1 DEFINITION OF TERMS

In the Contract Documents the following terms shall be as defined below:

ARCHITECT/ENGINEER means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

CHANGE ORDER means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

CLAIM means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

CONTRACT means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS means the Solicitation Document and addenda thereto, the Marion County Public Improvement Agreement Form, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments, and Change Orders.

CONTRACT PERIOD as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

CONTRACT TIME means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

CONTRACTOR means the Person awarded the Contract for the Work contemplated.

DAYS are calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

DIRECT COSTS means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

FINAL COMPLETION means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

FORCE MAJEURE means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

NOTICE TO PROCEED means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

OFFER means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

OFFEROR means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

OVERHEAD means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

OWNER means Marion County acting by and through the governmental entity identified in the Solicitation Document.

OWNER'S AUTHORIZED REPRESENTATIVE means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

PERSON means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

PLANS means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

PUNCHLIST means the list of Work yet to be completed or deficiencies which need to be corrected to achieve Final Completion of the Contract.

RECORD DOCUMENT means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer, and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

SOLICITATION DOCUMENT means an invitation to bid or request for proposal or request for quotes.

SPECIFICATION means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service, or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

SUBCONTRACTOR means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

SUBSTANTIAL COMPLETION means the date when the Owner accepts in writing the construction, alteration, or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

SUBSTITUTIONS means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

SUPPLEMENTAL GENERAL CONDITIONS means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

WORK means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

A.2 SCOPE OF WORK

The Work contemplated under this Contract includes all labor, materials, transportation, equipment, and services for, and incidental to, the completion of all construction work in connection with the project

described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

- A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:
- A.3.1.1 Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
 - A.3.1.2 The Supplemental General Conditions;
 - A.3.1.3 The Marion County Public Improvement Agreement Form;
 - A.3.1.4 The General Conditions
 - A.3.1.5 The Plans and Specifications
 - A.3.1.6 The Solicitation Document and any addenda thereto;
 - A.3.1.7 The accepted Offer.
- A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.
- A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).
- A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

- A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor resulting from the Contractor's failure to acquire full information in advance regarding all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules, and regulations.
- A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee, or agent of the Owner.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation, or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

- A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of the Marion County for purposes of performing Work under this Contract.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

B.2 CONTRACTOR'S MEANS AND METHODS; MITIGATION OF IMPACTS

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the

Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures.

- B.2.2 The Contractor is responsible to protect and maintain the Work during construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.
- B.2.4 Contractor agrees that it will commence performance of the Work in a timely manner and will achieve the Contract Times in the Contract Documents.

B.3 MATERIALS AND WORKMANSHIP

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 PERMITS

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The

Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, Marion County, and its departments, divisions, members, and employees.

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

- B.5.1 Contractor shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.
- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations; and
- B.5.2.1 Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.
- B.5.2.2 Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

B.6 SUPERINTENDENCE

Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

B.7 INSPECTION

- B.7.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.
- B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor, and promptly delivered to the Owner's Authorized Representative.
- B.7.4 As required by the Contract Documents, Work done, or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.
- B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.
- B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or near third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a

party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

B.8 SEVERABILITY

If any provision of this Contract is declared by a court 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 provision held to be invalid.

B.9 ACCESS TO RECORDS

B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.

B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers, and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written

approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

B.13 OWNER'S RIGHT TO DO WORK

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

B.14 OTHER CONTRACTS

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

B.15 GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the Marion County on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. **CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.**

B.17 ALLOWANCES

B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

- B.17.2.1 when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- B.17.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- B.17.2.3 whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect
 - (a) the difference between actual costs and the allowances under Section B.17.2.1 and
 - (b) changes in Contractor's costs under Section B.17.2.2.
- B.17.2.4 Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:
 - B.18.1.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier, or distributor to illustrate some portion of the Work.
 - B.18.1.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
 - B.18.1.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- B.18.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which

the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

- B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.
- B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.
- B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar by the Architect/Engineer's review or approval thereof.
- B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

B.19 SUBSTITUTIONS

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only if price or time change must be made through a Change Order, all other substitutions may be communicated through email. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications, and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

B.21 FUNDS AVAILABLE AND AUTHORIZED

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that in the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding the cost of this contract, the CONTRACTOR agrees to abide by any such decision, including termination of this agreement.

B.22 NO THIRD-PARTY BENEFICIARIES

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, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

SECTION C WAGES AND LABOR

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS

- C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor's or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a

worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

- C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
- C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.
- C.2.4 In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

- C.3.1 Pursuant to ORS 279C.505 and as a condition to Owner's performance hereunder, the Contractor shall:
 - C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
 - C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
 - C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.
 - C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:
 - (a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:
 - (1) A written employee drug testing policy,

- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a “Qualifying Employee Drug Testing Program.” For the purposes of this section, an employee is a “Subject Employee” only if that employee will be working on the project job site.

- (b) Contractor shall require each Subcontractor providing labor for the project to:
 - (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor’s Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
 - (2) Require that the Subcontractor’s Subject Employees participate in the Contractor’s Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3.2 Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, Contractor agrees:

C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person’s claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(4) and that end 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 is nine percent per annum. The amount of interest may not be waived.

C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- C.3.3.1 A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts the Owner pays to the Contractor under the Contract;
- C.3.3.2 A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;
- C.3.3.3 A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:
- (a) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
 - (b) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
- C.3.3.4 An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under Section C.3.3.1 of this subsection. Contractor or first-tier Subcontractor is not 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 Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).
- C.3.3.5 A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs C.3.3.1 through C.3.3.4 above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.
- C.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the Marion County 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.

C.4 PAYMENT FOR MEDICAL CARE

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

C.5 HOURS OF LABOR

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

Pursuant to ORS 279C.520 and as a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- C.5.1 For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- C.5.2 For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- C.5.3 For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This section C.5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

- D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.
- D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:
 - D.1.2.1 Modification of specifications and design.
 - D.1.2.2 Increases or decreases in quantities.
 - D.1.2.3 Increases or decreases to the amount of Work.
 - D.1.2.4 Addition or elimination of any Work item.

- D.1.2.5 Change in the duration of the project.
- D.1.2.6 Acceleration or delay in performance of Work.
- D.1.2.7 Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner’s Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

- D.1.3.1 Unit pricing may be utilized at the Owner’s option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
- D.1.3.2 If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3.3 shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- D.1.3.3 In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor’s or Subcontractor’s own forces:

- On Labor..... 15%
- On Equipment..... 10%
- On Materials..... 10%

When Change Order Work under D.1.3.3 is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order.

Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor,

including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3.3, which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

- D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.
- D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the Marion County, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

D.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be

inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed, but not more than fourteen (14) days after the condition has been encountered. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
 - (1) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
 - (2) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

D.2.2 Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

D.2.3.1 Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).

D.2.3.2 Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2 (c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay.

If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, Contractor's Claim shall be barred.

D.3 CLAIMS REVIEW PROCESS

- D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.
- D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.
- D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part

and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

- D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner, through its Chief Administrative Officer (CAO), shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.
- D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision.
- D.3.6 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- D.3.7 The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

- D.3.8 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to maintain the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality to the extent allowed by law. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

D.3.9 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest 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 thirty (30) Days after receipt of the application for payment from the Contract or fifteen (15) Days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper. Owner makes this election; the Contractor will be required to arrange to receive EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: _____”

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

E.2.3.1 The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.

E.2.3.2 The Contractor shall submit applications for payment showing the quantity and cost of the material stored.

E.2.3.3 The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

E.2.3.4 The Contractor shall name the Owner as co- insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.

E.2.3.5 Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.

E.2.3.6 Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.

E.2.3.7 Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

E.2.3.8 All required documentation must be submitted with the respective application for payment.

- E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:
- E.2.4.1 Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
 - E.2.4.2 third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
 - E.2.4.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
 - E.2.4.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 - E.2.4.5 damage to the Owner or another contractor;
 - E.2.4.6 reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - E.2.4.7 failure to carry out the Work in accordance with the Contract Documents; or
 - E.2.4.8 assessment of liquidated damages when withholding is made for offset purposes.
- E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- E.2.5.1 Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;
 - E.2.5.2 Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
 - E.2.5.3 Subtract the aggregate of previous payments made by the Owner; and
 - E.2.5.4 Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

- E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
- E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- E.2.8 If Contractor disputes any determination by Owner's Authorized Representative regarding any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

E.4 DUAL PAYMENT SOURCES

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

- E.5.1.1 Owner reserves the right in its sole discretion to not withhold retainage from progress payments or to begin withholding retainage at any time. If Owner withholds retainage from progress payments the amount to be retained will not exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.
- E.5.1.2 If retainage is withheld, unless the Contractor requests and the Owner accepts a form of retainage described in options (a) or (b) below, the Owner will deposit that retainage in an interest-bearing account, established through the Owner, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor as required by ORS 279C.560. In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless the Owner finds in writing that accepting bonds, securities or other instruments described in option (a) below or a security bond described in option (b)

below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by the Chief Administrative Officer, including but not limited to:
 - (1) Bills, certificates, notes or bonds of the United States.
 - (2) Other obligations of the United States or agencies of the United States.
 - (3) Obligations of a corporation wholly owned by the federal government.
 - (4) Indebtedness of the Federal National Mortgage Association.
 - (5) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
 - (6) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008; or
- (b) that the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of option (a) or (b) above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond under option (b), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

- (c) For a contract over \$500,000, if the Contractor requests that the Owner deposit the retainage in an interest-bearing escrow account under ORS 279C.570(2), the Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization.

- (d) For a contract of \$500,000 or less, the Owner shall deposit the retainage in an interest-bearing account under ORS 279C.560(5). The Owner will use an interest-bearing account in a bank, savings bank, trust company or savings association as provided under ORS 279C.560(5).

E.5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.

E.5.1.4 In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraph (a) of subsection E.5.1.2, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

E.5.1.5 Contractor agrees that if Contractor elects to reserve retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and the Contractor shall comply with all applicable legal requirements.

E.5.1.6 The Contractor shall comply with all applicable legal requirements for withholding and releasing retainage and for prompt payments, including but not limited to those in ORS Chapters 279C and 701, and 49 CFR 26.29.

E.5.2 As provided in subsections C.2.2 and C.2.3, additional withholding in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by section C.2.1.

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other

indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

- F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

- F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.

F.3 CUTTING AND PATCHING

- F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

From time to time as may be ordered by the Owner the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

F.5 ENVIRONMENTAL CONTAMINATION

- F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages

required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages

- F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.
- F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:
 - (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
 - (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
 - (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.
- F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:
 - F.5.2.1 Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
 - F.5.2.2 Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
 - F.5.2.3 Exact time and location of release, including a description of the area involved.
 - F.5.2.4 Containment procedures initiated.
 - F.5.2.5 Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
 - F.5.2.6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
 - F.5.2.7 Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

- F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or wellbeing of Contractor's or any Subcontractor's work force.
- F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

- G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.
- G.1.2 Contractor agrees to indemnify, defend (with counsel approved by Owners), reimburse and hold harmless Owners, their partners, owners, board members, officers, employees, agents and volunteers (the "Indemnified Parties") for, from and against any and all threatened, alleged or actual all claims, suits, allegations, damages, liabilities, costs, expenses, losses and judgments, including, but not limited to, those which relate to personal or real property damage (including to the Project itself or otherwise), personal injury or death, attorney and expert/consultant fees and costs, and both economic and non-economic losses, to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other act or omission of Contractor, its employees, Agents and Subcontractors, or anyone for whose acts Contractor is responsible (the Indemnitor). If claims are asserted against any of the Indemnified Parties by an employee of the Indemnitor, the Contractor's indemnification obligation and other obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to the employee by or for the Indemnitor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND

- G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.
- G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.
- G.2.3 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.3 INSURANCE

- G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self- insurance, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.
- G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.
- G.3.3 Builder's Risk Insurance:
- G.3.3.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.
- G.3.3.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the

Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace) and shall be issued on an occurrence basis. Contractor shall provide proof of insurance of not less than combined single limit, or the equivalent, of not less than: \$200,000; \$500,000; \$1,000,000; \$2,000,000 each occurrence for Bodily Injury and Property Damage. The policy, or an endorsement or amendment to the policy, must provide that the County and its agents, board members, officers, employees, and volunteers are "additional insureds", but only with respect to the Contractor's Services to be provided under this Contract.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the amounts Minimum amounts required by the Oregon Financial Responsibility Law (ORS 806.060 and 806.070); \$200,000; \$500,000; or \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. The policy, or an endorsement or amendment to the policy, must provide that the County and its board members, officers, agents, employees, and volunteers are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract.

G.3.4.3 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. This will be a condition of the final acceptance of Work or services and related warranty (if any).

- G.3.5 Excess/Umbrella Insurance: A combination of primary and excess/umbrella insurance is acceptable to meet the minimum coverage requirements for Commercial General Liability and Automobile Liability Insurance. In such case, the insurance certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is “The Excess/Umbrella policy is excess over primary Commercial General Liability and primary Automobile Liability Insurance.”
- G.3.6 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of this Contract shall include the Marion County, its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

If Contractor cannot obtain an insurer to name the Marion County, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the Marion County, its departments, divisions, officers and employees as Named Insureds with not less than a \$1,500,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Contract.

- G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self- insurance included hereunder. Any deductible, self- insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior execution of the Contract and is subject to Owner's approval. The Contractor shall immediately notify the Owner’s Authorized Representative in writing of any change in insurance coverage.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

- H.1.1 Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.
- H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2.6 and shall be subject to the Change Order process of Section D.1.

H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

H.2 SCHEDULE

Contractor shall provide, by or before the pre- construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner

shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

I.2 WARRANTY WORK

- I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.
- I.2.2 The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractor's obligations.
- I.2.3 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.
- I.2.4 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.
- I.2.5 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- I.2.6 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I.2.7 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

SECTION J SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 OWNER'S RIGHT TO SUSPEND THE WORK

- J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:
 - J.1.1.1 Failure of the Contractor to correct unsafe conditions;
 - J.1.1.2 Failure of the Contractor to carry out any provision of the Contract;
 - J.1.1.3 Failure of the Contractor to carry out orders;
 - J.1.1.4 Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
 - J.1.1.5 Time required to investigate differing site conditions;
 - J.1.1.6 Any reason considered to be in the public interest.
- J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

J.2 CONTRACTOR'S RESPONSIBILITIES

- J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

- J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:

- J.4.1.1 If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
 - J.4.1.2 If Contractor should make a general assignment for the benefit of Contractor's creditors;
 - J.4.1.3 If a receiver should be appointed on account of Contractor's insolvency;
 - J.4.1.4 If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
 - J.4.1.5 If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
 - J.4.1.6 If Contractor is otherwise in material breach of any part of the Contract.
- J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

J.5 TERMINATION FOR CONVENIENCE

- J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.
- J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

J.6 ACTION UPON TERMINATION

- J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- J.6.2 As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, one hard copy set and one electronic set of Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") and one (1) digital copy for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets and one (1) digital copy of O & M Manuals to the Owner's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

K.4 COMPLETION NOTICES

- K.4.1 Contractor shall provide Owner's Authorized Representative notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

- K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The

Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least four weeks in advance of the date of training to allow Owner personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

K.6 EXTRA MATERIALS

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

K.7 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

The Contractor shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

K.9 OTHER CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

K.10 SURVIVAL

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract

SECTION L LEGAL RELATIONS & RESPONSIBILITIES

L.1 LAWS TO BE OBSERVED

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state, and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to

environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

L.2 FEDERAL AGENCIES

Agriculture, Department of
Forest Service
Soil Conservation Service
Coast Guard
Defense, Department of
Army Corps of Engineers
Energy, Department of
Federal Energy Regulatory Commission
Environmental Protection Agency
Health and Human Services
Department of Housing and Urban Development
Department of Solar Energy and Energy Conservation Bank
Interior, Department of
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
Labor, Department of
Mine Safety and Health Administration
Occupation Safety and Health Administration
Transportation, Department of
Federal Highway Administration
Water Resources Council

L.3 STATE AGENCIES

Administrative Services, Department of
Agriculture, Department of
Soil and Water Conservation Commission
Columbia River Gorge Commission
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, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
State Lands, Division of
Water Resources Department of

L.4 LOCAL AGENCIES

City Councils

County Courts

County Commissioner, Board of

Design Commissions

Historical Preservation Commission

Planning Commissions



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 5, 2025

Department: Business Services

Title: Health & Human Services 1st Floor at 3180 Center St

Management Update/Work Session Date: October 21, 2025 Audio/Visual aids

Time Required: 10 min Contact: Tamra Goettsch Phone: x3200

Requested Action:

Consider approval of the Public Improvement Agreement with Ross Builders Northwest, LLC for the 1st floor remodel of the Health & Human Services Building.

Issue, Description & Background:

Tenant improvements to the first floor of the existing Health & Human Services Building located at 3180 Center St NE, Salem, OR 97301, which will house all staff currently housed in the leased Beverly Buildings.

Financial Impacts:

Total cost \$843,097.00 CIP 24-012

Impacts to Department & External Agencies:

No other impact to other departments outside of the Marion County Health & Human Services, project coordination to be managed by Business Services.

List of attachments:

Public Improvement Agreement, Project Manual, Drawings, Addenda

Presenter:

Tamra Goettsch

Department Head Signature:

Signed by:
Tamra Goettsch
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Contract Review Sheet

Public Improvement Agreements

BS-6856-25

Title: Health & Human Services 1st Floor at 3180 Center St

Contractor's Name: Ross Builders Northwest, LLC

Department: Business Services Department

Contact: Vanessa Keck

Analyst: Chalyce MacDonald

Phone #: (503) 566-3910

Term - Date From: Execution

Expires: June 30, 2026

Original Contract Amount: \$ 843,097.00 Previous Amendments Amount: \$ -

Current Amendment: \$ - New Contract Total: \$ 843,097.00 Amd% 0%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0255 Invitation to Bid ITB# BS1689-25

Description of Services or Grant Award

Construction of 1st Floor at 3180 Center St, Salem, OR 97301.

Desired BOC Session Date: 11/5/2025 Contract should be in DocuSign by: 10/15/2025

Agenda Planning Date: 10/23/2025 Printed packets due in Finance: 10/21/2025

Management Update: 10/21/2025 BOC upload / Board Session email: 10/22/2025

BOC Session Presenter(s) Tamra Goettsch Code: Y

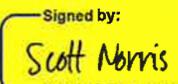
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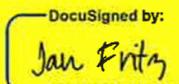
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Date

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10/14/2025
Date

Legal Counsel

Chief Administrative Officer

Date

MARION COUNTY PUBLIC IMPROVEMENT AGREEMENT
for
Health & Human Services 1st Floor at 3180 Center St

This Agreement for the Health & Human Services 1st Floor at 3180 Center St (the "Agreement"), made by and between Marion County, a political subdivision of the state of Oregon, on behalf of Business Services Department, hereinafter called OWNER, and Ross Builders Northwest, LLC hereinafter called the CONTRACTOR (collectively the "Parties"), is effective on the date this Agreement has been signed by all the Parties and all required Marion County governmental approvals have been obtained. Unless otherwise defined in the Invitation to Bid or in this Agreement, the capitalized terms used herein are defined in Section A.1 of the Marion County General Conditions for Public Improvement Contracts.

WITNESSETH:

1. Contract Price, Contract Documents and Work.

The CONTRACTOR, in consideration of the sum of \$843,097.00 (the "Contract Price"), to be paid to the CONTRACTOR by OWNER in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Invitation to Bid, this Public Improvement Agreement and other Contract Documents, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents.

The Contract Price includes the following items: Contractor shall be responsible for furnishing all labor, materials, tools, and equipment necessary to complete the Work as described in Attachments 1 through 3.

2. Representatives.

Unless otherwise specified in the Contract Documents, the OWNER designates Tamra Goettsch as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to performance, payment, authorization, and to carry out the responsibilities of the OWNER. CONTRACTOR has named Eric Ross its Authorized Representative to act on its behalf.

County delegates to the individual listed below the authority and responsibility for issuing approvals, providing notices, receiving notices, issuing directives, authorizing change orders, and avoiding and resolving disputes: Wesley Miller

3. Contract Dates.

PROJECT START DATE: November 17, 2025
SUBSTANTIAL COMPLETION: May 31, 2026
FINAL COMPLETION: June 30, 2026

4. RESERVED

5. Integration

The contract documents constitute the entire agreement between the parties. no waiver, consent, modification or change of terms of this contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. there are no other understandings, agreements, or

representations, oral or written, not specified herein regarding this contract. contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this contract, understands it, and agrees to be bound by its terms and conditions.

6. Authority to Execute

Contractor covenants, represents, and warrants to Owner that the person(s) executing this Contract on behalf of the Contractor have the actual authority to bind the Contractor to the terms of the Agreement.

In witness whereof, Marion County, a political subdivision of the state of Oregon, on behalf of Board of Commissioners, executes this Agreement and the CONTRACTOR does execute the same as of the day and year of this Agreement first above written.

In witness whereof, Marion County, a political subdivision of the state of Oregon, on behalf of Business Services Department, executes this Agreement and the CONTRACTOR does execute the same as of the day and year of this Agreement first above written.

7. CONTRACTOR DATA:

CONTRACTOR NAME: Ross Builders Northwest, LLC
CONTRACTOR ADDRESS: 3155 SE Century Blvd Suite B
CONTRACTOR ADDRESS: Hillsboro, OR 97123
CONTRACTOR'S CCB # & Expiration Date: 205841 Expires 3/19/2027

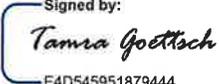
CONTRACTOR'S SIGNATURE: _____
Date

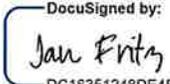
**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

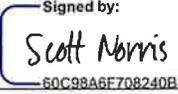
Chair Date

Commissioner Date

Commissioner Date

Authorized Signature:  Signed by: Tamra Goettlich
E4D545951879444... 10/7/2025
Department Director or designee Date

Authorized Signature:  DocuSigned by: Jan Fritz
DC16351248DE4EC... 10/14/2025
Chief Administrative Officer Date

Reviewed by Signature:  Signed by: Scott Norris 10/13/2025
60C98A6F708240B
Marion County Legal Counsel Date

Reviewed by Signature:  DocuSigned by: [Signature] 10/7/2025
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Marion County Contracts & Procurement Date

**MARION COUNTY
GENERAL CONDITIONS FOR
PUBLIC IMPROVEMENT CONTRACTS**

September 1, 2014 Edition, Revised February 14, 2022

Changes to the General Conditions (including any additions, deletions, or substitutions) should only be made by Supplemental General Conditions, unless the General Conditions are specifically modified in the Public Improvement Agreement (which has a higher order of precedence under Section A.3 of the General Conditions). The text of these General Conditions should not otherwise be altered.

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**MARION COUNTY
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
("General Conditions")**

SECTION A GENERAL PROVISIONS

A.1 DEFINITION OF TERMS

In the Contract Documents the following terms shall be as defined below:

ARCHITECT/ENGINEER means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

CHANGE ORDER means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

CLAIM means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

CONTRACT means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS means the Solicitation Document and addenda thereto, the Marion County Public Improvement Agreement Form, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments, and Change Orders.

CONTRACT PERIOD as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

CONTRACT TIME means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

CONTRACTOR means the Person awarded the Contract for the Work contemplated.

DAYS are calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

DIRECT COSTS means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

FINAL COMPLETION means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

FORCE MAJEURE means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

NOTICE TO PROCEED means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

OFFER means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

OFFEROR means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

OVERHEAD means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

OWNER means Marion County acting by and through the governmental entity identified in the Solicitation Document.

OWNER'S AUTHORIZED REPRESENTATIVE means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

PERSON means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

PLANS means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

PUNCHLIST means the list of Work yet to be completed or deficiencies which need to be corrected to achieve Final Completion of the Contract.

RECORD DOCUMENT means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer, and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

SOLICITATION DOCUMENT means an invitation to bid or request for proposal or request for quotes.

SPECIFICATION means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service, or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

SUBCONTRACTOR means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

SUBSTANTIAL COMPLETION means the date when the Owner accepts in writing the construction, alteration, or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

SUBSTITUTIONS means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

SUPPLEMENTAL GENERAL CONDITIONS means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

WORK means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

A.2 SCOPE OF WORK

The Work contemplated under this Contract includes all labor, materials, transportation, equipment, and services for, and incidental to, the completion of all construction work in connection with the project

described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

- A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:
 - A.3.1.1 Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
 - A.3.1.2 The Supplemental General Conditions;
 - A.3.1.3 The Marion County Public Improvement Agreement Form;
 - A.3.1.4 The General Conditions
 - A.3.1.5 The Plans and Specifications
 - A.3.1.6 The Solicitation Document and any addenda thereto;
 - A.3.1.7 The accepted Offer.
- A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.
- A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).
- A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

- A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor resulting from the Contractor's failure to acquire full information in advance regarding all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules, and regulations.
- A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee, or agent of the Owner.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation, or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

- A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of the Marion County for purposes of performing Work under this Contract.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

B.2 CONTRACTOR'S MEANS AND METHODS; MITIGATION OF IMPACTS

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the

Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures.

- B.2.2 The Contractor is responsible to protect and maintain the Work during construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.
- B.2.4 Contractor agrees that it will commence performance of the Work in a timely manner and will achieve the Contract Times in the Contract Documents.

B.3 MATERIALS AND WORKMANSHIP

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 PERMITS

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The

Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, Marion County, and its departments, divisions, members, and employees.

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

- B.5.1 Contractor shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.
- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations; and
- B.5.2.1 Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.
- B.5.2.2 Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

B.6 SUPERINTENDENCE

Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

B.7 INSPECTION

B.7.1 Owner's Authorized Representative shall have access to the Work at all times.

B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.

B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor, and promptly delivered to the Owner's Authorized Representative.

B.7.4 As required by the Contract Documents, Work done, or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.

B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.

B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or near third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a

party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

B.8 SEVERABILITY

If any provision of this Contract is declared by a court 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 provision held to be invalid.

B.9 ACCESS TO RECORDS

B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.

B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers, and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written

approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

B.13 OWNER'S RIGHT TO DO WORK

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

B.14 OTHER CONTRACTS

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

B.15 GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the Marion County on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

- B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.
- B.17.2 Unless otherwise provided in the Contract Documents:

- B.17.2.1 when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- B.17.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- B.17.2.3 whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect
 - (a) the difference between actual costs and the allowances under Section B.17.2.1 and
 - (b) changes in Contractor's costs under Section B.17.2.2.
- B.17.2.4 Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:
 - B.18.1.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier, or distributor to illustrate some portion of the Work.
 - B.18.1.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
 - B.18.1.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- B.18.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which

the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

- B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.
- B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.
- B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar by the Architect/Engineer's review or approval thereof.
- B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

B.19 SUBSTITUTIONS

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only if price or time change must be made through a Change Order, all other substitutions may be communicated through email. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications, and related Contract Documents furnished to Contractor by Owner or Owner’s Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

B.21 FUNDS AVAILABLE AND AUTHORIZED

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that in the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding the cost of this contract, the CONTRACTOR agrees to abide by any such decision, including termination of this agreement.

B.22 NO THIRD-PARTY BENEFICIARIES

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, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

SECTION C WAGES AND LABOR

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS

C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor’s or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a

worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

- C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
- C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.
- C.2.4 In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

- C.3.1 Pursuant to ORS 279C.505 and as a condition to Owner’s performance hereunder, the Contractor shall:
 - C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
 - C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
 - C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.
 - C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:
 - (a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:
 - (1) A written employee drug testing policy,

- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a “Qualifying Employee Drug Testing Program.” For the purposes of this section, an employee is a “Subject Employee” only if that employee will be working on the project job site.

- (b) Contractor shall require each Subcontractor providing labor for the project to:
 - (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor’s Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
 - (2) Require that the Subcontractor’s Subject Employees participate in the Contractor’s Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3.2 Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, Contractor agrees:

C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person’s claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(4) and that end 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 is nine percent per annum. The amount of interest may not be waived.

C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- C.3.3.1 A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts the Owner pays to the Contractor under the Contract;
 - C.3.3.2 A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;
 - C.3.3.3 A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:
 - (a) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
 - (b) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
 - C.3.3.4 An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under Section C.3.3.1 of this subsection. Contractor or first-tier Subcontractor is not 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 Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).
 - C.3.3.5 A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first- tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs C.3.3.1 through C.3.3.4 above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.
- C.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the Marion County 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.

C.4 PAYMENT FOR MEDICAL CARE

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

C.5 HOURS OF LABOR

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

Pursuant to ORS 279C.520 and as a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- C.5.1 For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- C.5.2 For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- C.5.3 For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This section C.5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

- D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.
- D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:
 - D.1.2.1 Modification of specifications and design.
 - D.1.2.2 Increases or decreases in quantities.
 - D.1.2.3 Increases or decreases to the amount of Work.
 - D.1.2.4 Addition or elimination of any Work item.

D.1.2.5 Change in the duration of the project.

D.1.2.6 Acceleration or delay in performance of Work.

D.1.2.7 Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner’s Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

D.1.3.1 Unit pricing may be utilized at the Owner’s option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.

D.1.3.2 If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3.3 shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.

D.1.3.3 In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor’s or Subcontractor’s own forces:

- On Labor..... 15%
- On Equipment..... 10%
- On Materials..... 10%

When Change Order Work under D.1.3.3 is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order.

Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor,

including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3.3, which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

- D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.
- D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the Marion County, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner’s Authorized Representative denies the Contractor’s request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

- D.1.6 No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.
- D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

- D.2.1 Delays in construction include “Avoidable Delays”, which are defined in Section D.2.1.1, and “Unavoidable Delays”, which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.
 - D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:
 - (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
 - (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
 - (c) Do not impact activities on the accepted critical path schedule.
 - (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.
 - D.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:
 - (a) Caused by any actions of the Owner, Owner’s Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
 - (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be

inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed, but not more than fourteen (14) days after the condition has been encountered. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
 - (1) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
 - (2) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

- D.2.2 Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.
- D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:
 - D.2.3.1 Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).
 - D.2.3.2 Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2 (c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay.

If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, Contractor's Claim shall be barred.

D.3 CLAIMS REVIEW PROCESS

- D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.
- D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.
- D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part

and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

- D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner, through its Chief Administrative Officer (CAO), shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.
- D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision.
- D.3.6 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- D.3.7 The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

- D.3.8 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to maintain the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality to the extent allowed by law. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

D.3.9 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner’s Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner’s Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner’s Authorized Representative.

E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice (“application for payment”) from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest 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 thirty (30) Days after receipt of the application for payment from the Contract or fifteen (15) Days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper. Owner makes this election; the Contractor will be required to arrange to receive EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: _____”

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

E.2.3.1 The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.

E.2.3.2 The Contractor shall submit applications for payment showing the quantity and cost of the material stored.

E.2.3.3 The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

E.2.3.4 The Contractor shall name the Owner as co- insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.

E.2.3.5 Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.

E.2.3.6 Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.

E.2.3.7 Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

E.2.3.8 All required documentation must be submitted with the respective application for payment.

E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner’s opinion to protect the Owner from loss because of:

E.2.4.1 Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,

E.2.4.2 third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;

E.2.4.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);

E.2.4.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

E.2.4.5 damage to the Owner or another contractor;

E.2.4.6 reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

E.2.4.7 failure to carry out the Work in accordance with the Contract Documents; or

E.2.4.8 assessment of liquidated damages when withholding is made for offset purposes.

E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

E.2.5.1 Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;

E.2.5.2 Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;

E.2.5.3 Subtract the aggregate of previous payments made by the Owner; and

E.2.5.4 Subtract any amounts for which the Owner’s Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

- E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
- E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- E.2.8 If Contractor disputes any determination by Owner's Authorized Representative regarding any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

E.4 DUAL PAYMENT SOURCES

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

- E.5.1.1 Owner reserves the right in its sole discretion to not withhold retainage from progress payments or to begin withholding retainage at any time. If Owner withholds retainage from progress payments the amount to be retained will not exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.
- E.5.1.2 If retainage is withheld, unless the Contractor requests and the Owner accepts a form of retainage described in options (a) or (b) below, the Owner will deposit that retainage in an interest-bearing account, established through the Owner, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor as required by ORS 279C.560. In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless the Owner finds in writing that accepting bonds, securities or other instruments described in option (a) below or a security bond described in option (b)

below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by the Chief Administrative Officer, including but not limited to:
 - (1) Bills, certificates, notes or bonds of the United States.
 - (2) Other obligations of the United States or agencies of the United States.
 - (3) Obligations of a corporation wholly owned by the federal government.
 - (4) Indebtedness of the Federal National Mortgage Association.
 - (5) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
 - (6) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008; or
- (b) that the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of option (a) or (b) above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond under option (b), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

- (c) For a contract over \$500,000, if the Contractor requests that the Owner deposit the retainage in an interest-bearing escrow account under ORS 279C.570(2), the Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization.

- (d) For a contract of \$500,000 or less, the Owner shall deposit the retainage in an interest-bearing account under ORS 279C.560(5). The Owner will use an interest-bearing account in a bank, savings bank, trust company or savings association as provided under ORS 279C.560(5).

- E.5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.
- E.5.1.4 In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraph (a) of subsection E.5.1.2, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.
- E.5.1.5 Contractor agrees that if Contractor elects to reserve retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and the Contractor shall comply with all applicable legal requirements.
- E.5.1.6 The Contractor shall comply with all applicable legal requirements for withholding and releasing retainage and for prompt payments, including but not limited to those in ORS Chapters 279C and 701, and 49 CFR 26.29.
- E.5.2 As provided in subsections C.2.2 and C.2.3, additional withholding in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by section C.2.1.

E.6 FINAL PAYMENT

- E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.
- E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other

indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

- F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

- F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.

F.3 CUTTING AND PATCHING

- F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

From time to time as may be ordered by the Owner the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

F.5 ENVIRONMENTAL CONTAMINATION

- F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages

required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages

- F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.
- F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:
 - (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
 - (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
 - (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.
- F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:
 - F.5.2.1 Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
 - F.5.2.2 Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
 - F.5.2.3 Exact time and location of release, including a description of the area involved.
 - F.5.2.4 Containment procedures initiated.
 - F.5.2.5 Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
 - F.5.2.6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
 - F.5.2.7 Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

- F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or wellbeing of Contractor's or any Subcontractor's work force.

- F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

- G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

- G.1.2 Contractor agrees to indemnify, defend (with counsel approved by Owners), reimburse and hold harmless Owners, their partners, owners, board members, officers, employees, agents and volunteers (the "Indemnified Parties") for, from and against any and all threatened, alleged or actual all claims, suits, allegations, damages, liabilities, costs, expenses, losses and judgments, including, but not limited to, those which relate to personal or real property damage (including to the Project itself or otherwise), personal injury or death, attorney and expert/consultant fees and costs, and both economic and non-economic losses, to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other act or omission of Contractor, its employees, Agents and Subcontractors, or anyone for whose acts Contractor is responsible (the Indemnitor). If claims are asserted against any of the Indemnified Parties by an employee of the Indemnitor, the Contractor's indemnification obligation and other obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to the employee by or for the Indemnitor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND

- G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.
- G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.
- G.2.3 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.3 INSURANCE

- G.3.1 **Primary Coverage:** Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self- insurance, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.
- G.3.2 **Workers' Compensation:** All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.
- G.3.3 **Builder's Risk Insurance:**
- G.3.3.1 **Builder's Risk:** During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.
- G.3.3.2 **Builder's Risk Installation Floater:** For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the

Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace) and shall be issued on an occurrence basis. Contractor shall provide proof of insurance of not less than combined single limit, or the equivalent, of not less than: \$200,000; \$500,000; \$1,000,000; \$2,000,000 each occurrence for Bodily Injury and Property Damage. The policy, or an endorsement or amendment to the policy, must provide that the County and its agents, board members, officers, employees, and volunteers are "additional insureds", but only with respect to the Contractor's Services to be provided under this Contract.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the amounts Minimum amounts required by the Oregon Financial Responsibility Law (ORS 806.060 and 806.070); \$200,000; \$500,000; or \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. The policy, or an endorsement or amendment to the policy, must provide that the County and its board members, officers, agents, employees, and volunteers are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract.

G.3.4.3 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. This will be a condition of the final acceptance of Work or services and related warranty (if any).

G.3.5 Excess/Umbrella Insurance: A combination of primary and excess/umbrella insurance is acceptable to meet the minimum coverage requirements for Commercial General Liability and Automobile Liability Insurance. In such case, the insurance certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is “The Excess/Umbrella policy is excess over primary Commercial General Liability and primary Automobile Liability Insurance.”

G.3.6 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of this Contract shall include the Marion County, its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

If Contractor cannot obtain an insurer to name the Marion County, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the Marion County, its departments, divisions, officers and employees as Named Insureds with not less than a \$1,500,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Contract.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self- insurance included hereunder. Any deductible, self- insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior execution of the Contract and is subject to Owner's approval. The Contractor shall immediately notify the Owner’s Authorized Representative in writing of any change in insurance coverage.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

H.1.1 Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2.6 and shall be subject to the Change Order process of Section D.1.

H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

H.2 SCHEDULE

Contractor shall provide, by or before the pre- construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner

shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

I.2 WARRANTY WORK

- I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.
- I.2.2 The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractor's obligations.
- I.2.3 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.
- I.2.4 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.
- I.2.5 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- I.2.6 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I.2.7 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

SECTION J SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 OWNER'S RIGHT TO SUSPEND THE WORK

J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:

J.1.1.1 Failure of the Contractor to correct unsafe conditions;

J.1.1.2 Failure of the Contractor to carry out any provision of the Contract;

J.1.1.3 Failure of the Contractor to carry out orders;

J.1.1.4 Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;

J.1.1.5 Time required to investigate differing site conditions;

J.1.1.6 Any reason considered to be in the public interest.

J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

J.2 CONTRACTOR'S RESPONSIBILITIES

J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:

- J.4.1.1 If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
 - J.4.1.2 If Contractor should make a general assignment for the benefit of Contractor's creditors;
 - J.4.1.3 If a receiver should be appointed on account of Contractor's insolvency;
 - J.4.1.4 If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
 - J.4.1.5 If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
 - J.4.1.6 If Contractor is otherwise in material breach of any part of the Contract.
- J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

J.5 TERMINATION FOR CONVENIENCE

- J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.
- J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

J.6 ACTION UPON TERMINATION

- J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- J.6.2 As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, one hard copy set and one electronic set of Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") and one (1) digital copy for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets and one (1) digital copy of O & M Manuals to the Owner's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

K.4 COMPLETION NOTICES

- K.4.1 Contractor shall provide Owner's Authorized Representative notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.
- K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The

Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least four weeks in advance of the date of training to allow Owner personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

K.6 EXTRA MATERIALS

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

K.7 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

The Contractor shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

K.9 OTHER CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

K.10 SURVIVAL

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract

SECTION L LEGAL RELATIONS & RESPONSIBILITIES

L.1 LAWS TO BE OBSERVED

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state, and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to

environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

L.2 FEDERAL AGENCIES

Agriculture, Department of
Forest Service
Soil Conservation Service
Coast Guard
Defense, Department of
Army Corps of Engineers
Energy, Department of
Federal Energy Regulatory Commission
Environmental Protection Agency
Health and Human Services
Department of Housing and Urban Development
Department of Solar Energy and Energy Conservation Bank
Interior, Department of
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
Labor, Department of
Mine Safety and Health Administration
Occupation Safety and Health Administration
Transportation, Department of
Federal Highway Administration
Water Resources Council

L.3 STATE AGENCIES

Administrative Services, Department of
Agriculture, Department of
Soil and Water Conservation Commission
Columbia River Gorge Commission
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, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
State Lands, Division of
Water Resources Department of

L.4 LOCAL AGENCIES

City Councils

County Courts

County Commissioner, Board of

Design Commissions

Historical Preservation Commission

Planning Commissions



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 5, 2025

Department: Finance

Title: Final payment and quitclaim deed for tax account 588709

Management Update/Work Session Date: October 21, 2025 Audio/Visual aids []

Time Required: 5 min Contact: John Carlson Phone: 503-373-4364

Requested Action: Consider approving the quitclaim deed, transferring ownership of tax accounts 588709 to the land sale contract holder, Slavic Kotsyubchuk.

Issue, Description & Background: Tax account 588709 (4657 DUCHESS CT NE SALEM OR 97301) foreclosed and transferred to Marion County in January, 2021 due to nonpayment of property taxes. This tax account was later sold in August, 2021 at public auction to Slavic Kotsyubchuk via land sale contract for \$187,000.00. In October, 2025, the grantee fulfilled the contractual obligations with a certified check for the remaining balance due for this land sale contract. The quitclaim deed transferring this tax account from Marion County to Slavic Kotsyubchuk is before the Board of Commissioners for consideration.

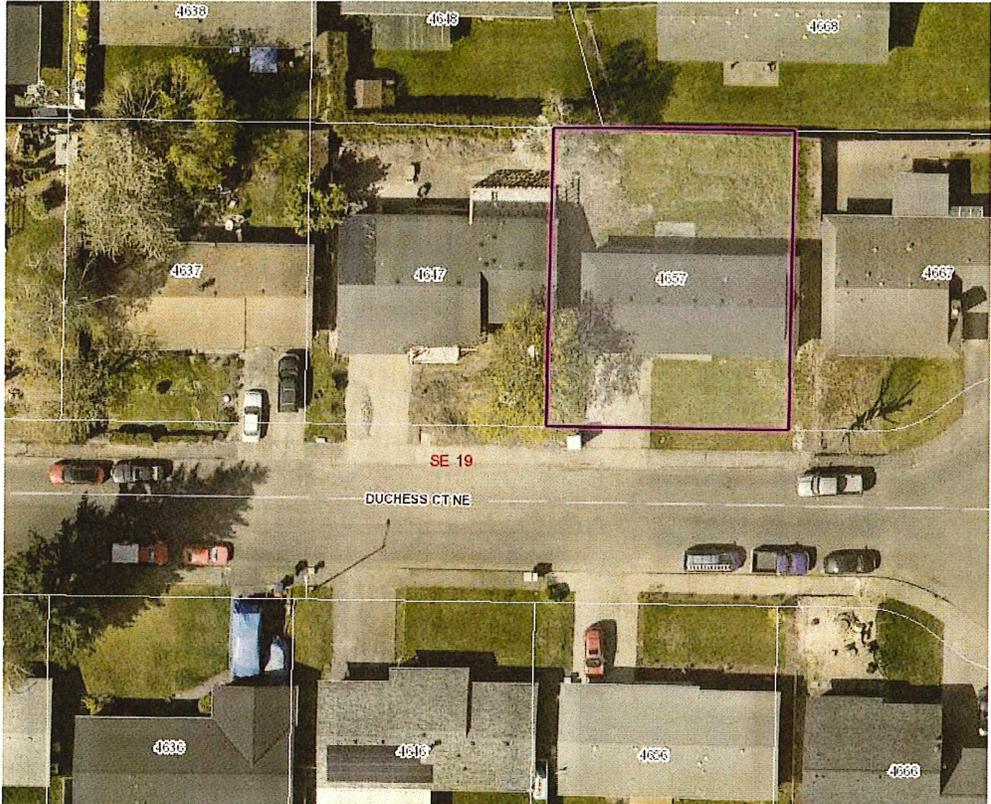
Financial Impacts: Marion County will no longer have to assume any financial liability for this property.

Impacts to Department & External Agencies: Marion County will not be responsible for any future liability or costs related to these tax accounts.

List of attachments: Property one slide description, copy of final payment and quitclaim deed

Presenter: John Carlson

Department Head Signature: [Handwritten Signature]



Tax Lot #: 588709

Tax Account #:
072W19DD00300

Acres: .14

Location:
4657 DUCHESS CT NE
SALEM OR 97301

Other Information:

Sold at auction in August, 2021
Via Land Sale Contract.

Sold 8.25.2021



THIS CHECK IS VOID WITHOUT A PURPLE & BLUE BORDER AND BACKGROUND PLUS A SECURE WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW



TICOR TITLE COMPANY OF OREGON

Oregon Ticor Salem Trust Account-TSAL-1820
315 Commercial St SE, Ste 150
Salem, OR 97301 Escrow No: 471825139459
(503)585-1881

US Bank
535 Westminster Mall
Westminster, CA 92683

October 10, 2025

Ref#: Final Payment Tax Account
588709

24-22
1230

--Ninety-Five Thousand Forty-Six and 08/100

Dollars

AMOUNT
\$ **95,046.08

PAY
TO THE
ORDER
OF
MEMO

Marion County France
c/o Property Coordinator
PO Box 14500
Salem, OR 97309

CUSTODIAL ESCROW ACCOUNT
VOID AFTER 90 DAYS, TWO SIGNATURES REQUIRED

VOID

MP
MP

518 441 414 114 2024 SECUREVOIDING



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 5, 2025

Department: Finance

Title: Franchise Agreement with Charter Communications for Cable Television Services

Management Update/Work Session Date: October 21, 2025 Audio/Visual aids

Time Required: 5 min Contact: Jeff White Phone: (503) 373-4433

Requested Action: Approval of new Franchise Agreement with Charter Communications for Cable Television Services in Marion County through October 2035.

Issue, Description & Background: The Marion County cable communications franchise ordinance [Ord. 977 § 2, 1994] grants nonexclusive agreements for cable television systems within the County. The 1998 Franchise Agreement with Charter Communications expired in December 2024, but the franchise has remained in effect (continuing on a month to month basis since expiration, as provided for in the Cable Act), and the parties have continued to operate under its terms and conditions while an updated agreement has been approved.

Financial Impacts: Marion County collects five percent (5%) of Charter Communications' Gross Annual Receipts received from all operations of the cable system in the county.

Impacts to Department & External Agencies: N/A

List of attachments: Franchise Agreement

Presenter: Jeff White

Department Head Signature: 
DocuSigned by: D1FCCAACCDB14CB...

FRANCHISE AGREEMENT

This Franchise Agreement (“Franchise”) is between the County of Marion, Oregon, hereinafter referred to as the “Grantor” and Spectrum Pacific West, LLC, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

The Grantor hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

1. Definitions:

- a. “Cable Act” means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521 Supp., as it may be amended or superseded.
- b. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- c. “Franchise” means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the Service Area.
- d. “Gross Revenues” means all revenues, as determined in accordance with generally accepted accounting principles, actually received by Grantee from Subscribers residing within the Service Area for Cable Services purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, franchise fee, or sales or utility taxes; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; and (4) any exclusion available under applicable state law.
- e. “Service Area” shall mean the geographic boundaries of the Grantor.
- f. “Streets” means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter, and the public grounds, places or water within the geographic boundaries of Grantor.
- g. “Subscriber” means any person lawfully receiving any Cable Service from the Grantee.

2. Granting of Franchise. The Grantor hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets now in existence and as may be created or

established during its terms; any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

3. **Term.** The Franchise shall be for a term *of ten (10) years*, commencing on the Effective Date of this Franchise as set forth in Section 16. This Franchise will be automatically extended for an additional term of *five (5) years*, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

4. **Use of the Streets and Dedicated Easements.**

a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Cable System, including the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall utilize the facilities of utilities when available on reasonable terms and conditions.

b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the Grantor.

5. **Maintenance of the System.**

a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor

b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

c. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as they may, from time to time, be amended.

6. Service.

- a. The Grantee shall continue to provide Cable Service to all residences within the Service Area where Grantee currently provides Cable Service. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Service Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access on reasonable terms and conditions to any such Subscriber’s dwelling unit or other units wherein such Cable Service is provided.

- b. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days’ written notice from the Grantor, subject to the conditions set forth below and subsection (a) above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by electronic or certified mail, return receipt requested to the addresses set forth in Section 13 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

7. Insurance/Indemnity.

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers’ Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non owned hired autos	\$1,000,000 per occurrence Combined Single Limit
Umbrella Liability	\$1,000,000 per occurrence

- b. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the negligent actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

8. Revocation.

- a. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If Grantee has not cured the breach within such sixty (60) day time period or if the Grantor has not otherwise received a satisfactory response from Grantee, the Grantor may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- b. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.
- c. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

9. Equal Protection. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other state or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the

obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 9 shall be deemed a waiver of any remedies available to Franchisee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545

10. **Compliance with Laws.** Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.
11. **Change in Law.** Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.
12. **Confidentiality.** If Grantee provides any books, records or maps to the Grantor, the Grantor agrees to treat as confidential such books, records or maps that constitute proprietary or confidential information. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books, records or maps marked confidential to any person.
13. **Notices, Miscellaneous.**
 - a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. In accordance with applicable law, Grantee shall provide notice of any changes in rates, programming services or channel positions using any reasonable written

means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: County of Marion
Attn: Jeff White
555 Court St NE Suite 4247
PO Box 14500
Salem, OR 97301
Email: PO_Contracts@co.marion.or.us

Grantee: Director, Government Affairs
Charter Communications
222 NE Park Plaza Drive, Suite 231
Vancouver, WA 98684
Email: chris.madden@charter.com

Copy to: Charter Communications
Attn: Vice President, Government Affairs
601 Massachusetts Ave NW, Suite 400W
Washington, DC 20001

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
- c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
- d. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.

14. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee’s Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15. **Franchise Fee.**

- a. Grantee shall pay to the Grantor annually an amount equal to five percent (5%) of the Gross Revenues for such calendar year, transmitted by electronic funds transfer to a bank account designated by Grantor. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

- b. The amount of franchise fee and the method of calculation shall be competitively neutral when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a Franchise Fee under this Section 15 shall be reduced by an equivalent amount.
 - c. Each year during which the Franchise is in force, Grantee shall pay Grantor no later than ninety (90) days after the end of each calendar year the franchise fees required by this section. The Grantor shall have the right to review the previous year's books of the Grantee to the extent necessary to ensure proper payment of the fees payable hereunder.
16. **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise.
17. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Considered and approved this 5th day of November, 2025,

Marion County, Oregon
Board of Commissioners:

Chair

Commissioner

Commissioner

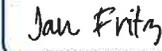


D1FCCAACCD814CB

10/16/2025

Department Director or designee

Date



DC16351248DE4EC

10/16/2025

Chief of Administrative Officer

Date



60C98A6F70B240B

10/16/2025

Marion County Legal Counsel

Date



2A951B5758514CF

10/16/2025

Marion County Contracts & Procurement

Date

Accepted this ____ day of _____, 2025, subject to applicable federal and state law.

Spectrum Pacific West, LLC

Signature: _____

Name/Title: _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 5, 2025

Department: Finance

Title: Franchise Agreement with WaveDivision for Cable Television Services

Management Update/Work Session Date: October 21, 2025 Audio/Visual aids

Time Required: 5 min Contact: Jeff White Phone: (503) 373-4433

Requested Action: Approval of new Franchise Agreement with WaveDivision VII, LLC for Cable Television Services in Marion County through October 2035.

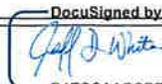
Issue, Description & Background: The Marion County cable communications franchise ordinance [Ord. 977 § 2, 1994] grants nonexclusive agreements for cable television systems within the County. The 2003 Franchise Agreement renewal with WaveDivision VII, LLC expired in December 2022, but the franchise has remained in effect (continuing on a month to month basis since expiration, as provided for in the Cable Act), and the parties have continued to operate under its terms and conditions while an updated agreement has been approved.

Financial Impacts: Marion County collects five percent (5%) of WaveDivision's Gross Annual Receipts received from all operations of the cable system in the county.

Impacts to Department & External Agencies: N/A

List of attachments: Franchise Agreement

Presenter: Jeff White

Department Head Signature:  D1FCCAACDB14CB...

Contract Review Sheet

Franchise Agreement

FI-6525-25

Title: Cable Television Services

Contractor's Name: Wave Broadband

Department: Finance Department

Contact: Jeff White

Analyst: Chalyce MacDonald

Phone #: (503) 373-4433

Term - Date From: November 5, 2025

Expires: November 5, 2035

Original Contract Amount: \$ - Previous Amendments Amount: \$ -

Current Amendment: \$ - New Contract Total: \$ - Amd% 0%

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 50-0010 General Exemptions (IGAs Grants QRFs)

Description of Services or Grant Award

Franchise agreement with WaveDivision for cable television services in Marion County. This agreement replaces the previous contract from 6/30/1995, which was renewed from 1/6/2003 through 12/31/2022.

There is no Not-to-Exceed total, but the Contractor shall pay to County an annual franchise fee of five percent (5%) of their Gross Annual Receipts received from all operations of the cable system in Marion County.

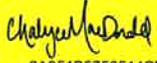
Desired BOC Session Date: 11/5/2025 Contract should be in DocuSign by: 10/15/2025

Agenda Planning Date 10/23/2025 Printed packets due in Finance: 10/21/2025

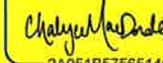
Management Update 10/21/2025 BOC upload / Board Session email: 10/22/2025

BOC Session Presenter(s) Jeff White Code: Y

REQUIRED APPROVALS

DocuSigned by:

 2A951B5756514CF
10/16/2025
 Date

Finance - Contracts

DocuSigned by:

 2A951B5756514CF...
10/17/2025
 Date

Contract Specialist

Signed by:

 6DC98A6F708240B
10/16/2025
 Date

Legal Counsel

DocuSigned by:

 DC18351248DF4FC
10/16/2025
 Date

Chief Administrative Officer

**CABLE TELEVISION
FRANCHISE AGREEMENT**

Between

MARION COUNTY

AND

WAVEDIVISION VII, LLC

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SECTION 1. DEFINITIONS

For the purposes of this Agreement and all attachments included hereto, the following terms, phrases, words and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 **Affiliate** when used in connection with Grantee means any corporation, Person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- 1.2 **Basic Service** means any service tier which includes the retransmission of local television broadcast Signals, or as such service tier may be further defined by federal law.
- 1.3 **Cable Act** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.
- 1.4 **Cable Operator** means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- 1.5 **Cable Service** means the one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.6 **Cable System** means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television Signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- 1.7 **Capacity** means the maximum ability to carry Signals or other information within a specified format.
- 1.8 **Capital or Capital Cost** means the expenditure of funds for resources whose useful life can be expected to exceed a period of one (1) year or longer as consistent with Generally Accepted Accounting Principles ("GAAP").

- 1.9 **Channel** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.
- 1.10 **Downstream** means the transport of Signals from the Headend to Subscribers or to Interconnection points served by the Cable System.
- 1.11 **Effective Date** means the date defined in Section 2.4 herein.
- 1.12 **FCC** means the Federal Communications Commission.
- 1.13 **Fiber** means a transmission medium of optical strands of cable capable of carrying Signals by means of lightwave impulses.
- 1.14 **Franchise** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.
- 1.15 **Franchise Area** means the unincorporated area of Marion County.
- 1.16 **Grantee** means WaveDivision VII, LLC, or its permitted successors, transferees or assignees.
- 1.17 **Grantor** means Marion County, Oregon.
- 1.18 **Gross Revenue** means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:
- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
 - Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
 - Fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
 - Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
 - Payments for pre-paid Cable Services and/or equipment;
 - Advertising Revenues as defined herein;
 - Fees including, but not limited to: (1) late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; (2) Franchise fees; and (3) the FCC user fee;
 - Revenues from program guides; and

- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.
 - Gross Revenues shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. Gross Revenues, however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Agreement. Gross Revenues shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. Gross Revenues shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, Gross Revenues shall not include bad debt.
- (A) "Advertising Revenues" shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising Interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Ampersand or similarly affiliated advertising representation firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.
- (B) "Gross Revenues" shall **not** include:
- Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
 - Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee and the FCC user fee shall not be regarded as such a tax or fee;
 - Launch fees and marketing co-op fees; and,

- Unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above.

(C) To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Revenues from Late Fees shall be allocated in the same manner as described above. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than fifty percent (50%) of the price of the bundled service total.

- (D) Grantee reserves the right to change the allocation methodologies set forth in paragraph (C) above to meet standards mandated by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with GAAP where applicable; however, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item.
- (E) Grantor agrees and acknowledges that Grantee shall maintain its books and Records in accordance with GAAP.

1.19 **Headend** means Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the Interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.

1.20 **Interconnect or Interconnection** means the provision by Grantee of technical, engineering, physical, financial and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System with any other designated Cable System or any separate communications network, so that services of technically adequate quality may be sent to, and received from, such other systems to the extent required by this Agreement.

- 1.21 **Leased Access Channel** means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.
- 1.22 **Parent Corporation** means WaveDivision Holdings, LLC or successors and assigns and includes any other existing or future entities with greater than fifty percent (50%) ownership or control over Grantee.
- 1.23 **Person** means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization, and includes any natural person.
- 1.24 **Programming** means television programs, audio, video or other patterns of Signals to be transmitted on the Cable System, and includes all programs or patterns of Signals transmitted, or capable of being transmitted, on the Cable System.
- 1.25 **Public Rights of Way** include, but are not limited to, Streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such Streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. §541(a)(2).
- 1.26 **Record** means written or graphic materials, however produced or reproduced, or any other tangible permanent record, to the extent related to the enforcement or administration of this Agreement.
- 1.27 **Quarterly or Quarter** means the standard calendar periods of January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, unless otherwise specified in this Agreement.
- 1.28 **School** means any accredited educational institution, public or private, including, but not limited to, primary and secondary Schools.
- 1.29 **Section** means a provision of this Agreement, unless specified as part of another document.
- 1.30 **Signal** means any electrical or light impulses carried on the Cable System, whether one-way or bi-directional.
- 1.31 **Streets** means the surface of any public Street, road, alley or highway, within the Grantor, used or intended to be used by the general public for general transportation purposes to the extent the Grantor has the right to allow the Grantee to use them, and the space above and below.
- 1.32 **Subscriber** means any Person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of, or in connection with, the Cable System.
- 1.33 **Upstream** means the transport of Signals to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

- (A) Grantor hereby grants to Grantee in the public interest a nonexclusive and revocable authorization to make lawful use of the Public Rights of Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services subject to the terms and conditions set forth in this Agreement.
- (B) This Agreement is intended to convey limited rights and interests only as to those Public Rights of Way, in which the Grantor has an actual interest. It is not a warranty of title or interest in any Public Rights of Way, it does not provide the Grantee any interest in any particular location within the Public Rights of Way, and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights, or privileges it now has, or may acquire in the future, to use, perform work on, or regulate the use and control of the Grantor's Public Rights of Way covered by this Agreement, including without limitation, the right to perform work on its Streets, or appurtenant public works facilities, including constructing, altering, paving, widening, grading, or excavating thereof.
- (C) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6) as amended. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions including additional compensation conditions for use of the Public Rights of Way should Grantee provide service other than Cable Service. Nothing herein shall be interpreted to prevent Grantee from challenging the lawfulness or enforceability of any provisions of applicable law. The use of Rights of Way by Grantee for the provision of services other than Cable Service is not regulated, authorized, or prohibited by this agreement, and any such use may be governed by a separate authorization as consistent with applicable law. While Grantee currently utilizes the Public Rights of Way for the provision of services other than Cable Service, Grantee agrees that such utilization does not constitute a waiver, or otherwise limit, Grantor's exercise of its rights, or its ability to seek any legal or equitable remedies against Grantee.
- (D) Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any agent, Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

2.2 Use of Public Rights of Way

Subject to Grantor's supervision and control and the terms of this Agreement, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights of Way within the Franchise Area, such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws,

ordinances, regulations and procedures now in effect or enacted hereafter, and must obtain any and all necessary permits from the appropriate agencies of Grantor prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's Public Rights of Way within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement subject to federal law.

2.3 **Duration**

The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be ten (10) years from the Effective Date of this Agreement, unless extended or terminated sooner as hereinafter provided.

2.4 **Effective Date**

The Effective Date of this Agreement shall be November 5, 2025 unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by Section 5.4. Grantee shall accept this Agreement within forty-five (45) days of the Effective Date, unless the time for acceptance is extended by Grantor. In the event acceptance does not take place or the security is not posted as required hereunder by Section 5.4, this Agreement shall be voidable at the reasonable discretion of Grantor, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under the express terms of this Agreement shall be of no force or effect.

2.5 **Franchise Nonexclusive**

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any Street, Public Rights of Way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may, at any time, grant authorization to use the Public Rights of Way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate subject to Section 2.6 below.

2.6 **Grant of Other Franchises**

- (A) The Grantor reserves the right to grant additional Franchises or similar authorizations to provide video programming services via Cable Systems or similar wireline systems located in the Public Rights of Way. Grantor intends to treat wireline competitors in a nondiscriminatory manner in keeping with federal law. If the Grantor grants such an additional Franchise or authorization to use the Public Rights of Way to provide such services and Grantee believes the Grantor has done so on terms materially more favorable than the obligations under this Agreement, then the provisions of this Section 2.6 will apply. If the Grantor or other government agencies or affiliates provides comparable video services, it may be considered a competitor under this Section.
- (B) As part of this Agreement, the Grantor and Grantee have mutually agreed that the following material Franchise terms may be used to compare Grantee's Franchise

to a wireline competitor: a 5% (five percent) Franchise fee, customer service obligations, and complimentary services (hereinafter "Material Obligations"). Grantor and Grantee agree that these Material Obligations bear no relationship to the technology employed by the Grantee or a wireline competitor and as such can reasonably be expected to be applied fairly across all wireline competitors.

- (C) Within one (1) year of the adoption of a wireline competitor's Franchise or similar authorization, Grantee must notify the Grantor in writing of the Material Obligations in this Agreement that exceed the Material Obligations of the wireline competitor's Franchise or similar authorization. The Grantor shall have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the wireline competitor, or dispute that the Material Obligations are different. In the event the Grantor disputes the Material Obligations are different, Grantee may bring an action in federal or state court for a determination as to whether the Material Obligations are different and as to what Franchise amendments would be necessary to remedy the disparity. Alternatively, Grantee may notify the Grantor that it elects to immediately commence the renewal process under 47 USC § 546 and to have the remaining term of this Franchise shortened to not more than thirty (30) months.
- (D) Nothing in this Section 2.6 is intended to alter the rights or obligations of either party under applicable federal or state law, and it shall only apply to the extent permitted under applicable law and FCC orders. In no event will the Grantor be required to refund or to offset against future amounts due the value of benefits already received.
- (E) This provision does not apply if the Grantor is ordered or required to issue a Franchise on different terms and conditions, or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. Should the new Cable Operator fail to continuously provide service for a period of six (6) months, the Grantor has the right to implement this Agreement with its original terms upon one hundred eighty (180) days' notice to Grantee.
- (F) This Section does not apply to open video systems, nor does it apply to common carrier systems exempted from Franchise requirements pursuant to 47 U.S.C. Section 571; or to systems that serve less than five percent (5%) of the geographic area of the Grantor in which Grantee is providing Cable Service to Subscribers on the date of the adoption of the wireline competitor's Franchise or similar authorization; or to systems that only provide video services via the public Internet.

2.7 **Police Powers**

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the general public. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor. Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. Nothing in this Section shall be deemed a waiver by Grantee or the Grantor of the rights of Grantee or the Grantor under applicable law. In the event there is a conflict between this

agreement and Grantor's cable ordinance, the ordinance shall prevail, unless conflicts are a result of changes made to the cable ordinance after the effective date of this agreement and the Grantor has not found an emergency exists constituting a danger to health, safety, property, or general welfare, or such exercise is mandated by law. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or law.

2.8 Relations to Other Provisions of Law

This Agreement and all rights and privileges granted under it are subject to, and the Grantee must exercise all rights in accordance with, applicable law as amended over the Franchise term. This Agreement is a contract, subject to the Grantor's exercise of its police and other regulatory powers and such applicable law. This Agreement does not confer rights or immunities upon the Grantee other than as expressly provided herein. In cases of conflict between this Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee reserves all rights it may have to challenge the lawfulness of any Grantor ordinance, whether arising in contract or at law. The Grantor reserves all of its rights and defenses to such challenges, whether arising in contract or at law. The Franchise issued, and the Franchise fee paid hereunder, are not in lieu of any other required permit, authorization, fee, charge, or tax, unless expressly stated herein.

2.9 Effect of Acceptance

By accepting the Franchise the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening or other participation in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fees

- (A) As compensation for the benefits and privileges granted under this Agreement, and in consideration of permission to use Public Rights of Way, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise fees shall commence as of the Effective Date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state, or local law to the extent not inconsistent with applicable law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.
- (B) In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

3.2 **Payments**

Grantee's Franchise fee payments to Grantor shall be computed monthly. Each monthly payment shall be due and delivered to Grantor no later than forty-five (45) days after the last day of the preceding month.

3.3 **Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 **Monthly Franchise Fee Reports**

Each payment shall be accompanied by a written report to Grantor, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 **Annual Franchise Fee Reports**

Grantee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor a statement verified by an authorized representative of the Grantee, stating the total amount of Gross Revenues and all payments, deductions, and computations for the period covered by the payments.

3.6 **Audit/Reviews**

No more frequently than every twenty-four (24) months, upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent audit or review of Grantee's Records reasonably related to the administration or enforcement of this Agreement. The Grantor may hire an independent third party to audit or review the Grantee's financial Records, in which case the Grantee shall provide all necessary Records to the third party. All such Records shall be made available in the local offices of the Grantee, or provided in electronic format fully compatible with Grantor's software. If the audit or review shows that Franchise fees have been underpaid by four percent (4%) or more, Grantee shall reimburse Grantor the reasonable cost of the audit or review up to fifteen thousand dollars (\$15,000) within thirty (30) days of the Grantor's written demand for same. Records for audit/review purposes shall include without limitation:

- (A) Source documents, which demonstrate the original or beginning amount, and the final amount shown on any report related to and/or included in the determination of Franchise fees, revenues or expenses related thereto.
- (B) Source documents that completely explain any and all calculations related to any allocation of any amounts involving Franchise fees, revenues, or expenses related thereto.
- (C) Any and all accounting schedules, statements, and any other form of representation, which relate to, account for, and/or support and/or correlate to any accounts involving Franchise fees, revenues or expenses related thereto.

3.7 **Interest on Late Payments**

Payments not received within forty-five (45) days from the month ending date or are underpaid shall be assessed interest from the due date at a rate equal to the legal interest rate on judgments in the State of Oregon.

3.8 **Additional Commitments Not Franchise Fees**

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees related to Cable Services to Grantor in accordance with applicable law. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under federal law, to the extent not inconsistent with applicable federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

3.9 **Costs of Publication**

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor or applicable law.

3.10 **Tax Liability**

Payment of the Franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

3.11 **Payment on Termination**

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a performance bond or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 **Authority**

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

4.2 **Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card). Grantee shall apply its rates in accordance with governing law, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military status, or

physical or mental disability, or geographic location in the Franchise Area to the extent required by applicable law.

4.3 Filing of Rates and Charges

Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement.

4.4 Time Limits Strictly Construed

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of a force majeure occurrence, as defined in Section 4.6, Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees, or duly authorized agents.

4.5 Mid-Term Performance Evaluation Session

- (A) Grantor may hold a single performance evaluation session during the term of this Agreement. Grantor shall conduct such evaluation session.
- (B) Evaluation session shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.
- (C) Evaluation session shall deal with the Grantee's performance of the terms and conditions of this Agreement and compliance with state and federal laws and regulations.
- (D) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey, report, or map, in a format mutually acceptable to Grantor and Grantee, which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles and location of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- (E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation subject to Section 7.2.

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4.6 **Force Majeure**

For the purposes of interpreting the requirements in this Agreement, Force Majeure shall mean: an event or events reasonably beyond the ability of Grantee to anticipate and control. This includes, but is not limited to, severe weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, acts of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the control of Grantee to foresee or control.

4.7 **Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 **Insurance Requirements**

- (A) **General Requirement.** Grantee must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its duly authorized agents, representatives, contractors, subcontractors and their employees.
- (B) **Initial Insurance Limits.** Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor. The Grantee shall obtain policies for the following initial minimum insurance limits:
 - (1) **Commercial General Liability:** Four million dollar (\$4,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a four million dollar (\$4,000,000) aggregate limit; one million dollar (\$1,000,000) limit for broadcasters liability;
 - (2) **Automobile Liability:** Two million dollar (\$2,000,000) combined single limit per accident for bodily injury and property damage;
 - (3) **Employer's Liability:** Two million dollar (\$2,000,000) limit; and
 - (4) **Worker's compensation coverage** as required by law.
 - (5) **Property Loss:** Fire insurance with coverage for extended perils on the franchise property used by Grantee in the conduct of franchise operations in an amount adequate to enable Grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

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5.2 Deductibles and Self-Insured Retentions

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

- (a) The Grantor, its officers, officials, employees, and duly authorized agents are to be named as additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;
- (b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, and duly authorized agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, and duly authorized agents shall be in excess of the Grantee's insurance and shall not contribute to it;
- (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability; and
- (d) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been given to the Grantor.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with an A.M. Best's rating of no less than "A-".

(C) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting the insurance requirements of this agreement. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement and Grantor's ordinances and laws.

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5.3 **Indemnification**

- (A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, duly authorized agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief, to the extent such liability arises out of or through the acts or omissions of the Grantee and its officers, employees, or duly authorized agents, and Grantee's contractors and their subcontractors, arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement, provided, however, the Grantee will not be obligated to indemnify Grantor should Grantor intervene in any proceeding regarding the act of the Grantor in granting the franchise; and provided further Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the negligence or willful negligence of Grantor. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, duly authorized agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:
- (1) To persons or property, to the extent such liability arises out of or through the acts or omissions of the Grantee, its contractors, subcontractors, and their officers, employees, or duly authorized agents, or to which the Grantee's negligence or fault shall in any way contribute;
 - (2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, to the extent such liability arises out of or through the acts or omissions of the Grantee;
 - (3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies, to the extent such liability arises out of or through the acts or omissions of the Grantee; and
 - (4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, to the extent such liability arises out of or through the acts or omissions of the Grantee, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.
- (B) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity obligation in this Section. In the event

any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall accept or decline the tender within thirty (30) days. Grantee shall reimburse reasonable attorney fees and costs incurred by the Grantor during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorney fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

5.4 Performance Bond

- (A) In addition to any other generally applicable bond or security fund obligations required by local ordinance, upon the Effective Date of this Agreement, the Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, with good and sufficient surety approved by the Grantor, in the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Agreement. Such bond shall be issued by a bonding company licensed to do business in the state of Oregon and shall be maintained by the Grantee throughout the term of this Agreement.
- (B) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to the Grantor. The bond shall be subject to the approval of the Grantor as to its adequacy under the requirements of this Section. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor.

SECTION 6. CUSTOMER SERVICE

6.1 Customer service obligations are set forth below:

A. Grantee shall maintain a local office or offices and provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal operating conditions:

1. Sufficient toll-free telephone line capacity during normal business hours to assure that a minimum of ninety percent (90%) of all calls received, measured Quarterly, will not be required to wait more than thirty (30) seconds before being connected to a service representative. For the avoidance of doubt, Grantee may utilize interactive voice response or similar technology to fulfill its obligations hereunder; however, callers must be able to opt out of the interactive voice response system and access a service representative within thirty (30) seconds of opting out.

2. Emergency telephone line capacity on a 24-hour basis, including weekends and holidays.

3. A local customer service center and bill payment location open during normal business hours at least eight hours daily, and at least four hours weekly on evenings or weekends, and adequately staffed to accept Subscriber payments and respond to service requests and complaints. Upon the fifth anniversary of this agreement, or any subsequent anniversary of this agreement, if Grantee has demonstrated to Grantor's satisfaction that for a three (3) month period, the customer use of the service center has gone down to a level fifty percent (50%) or less from the average customer use over the full calendar year immediately preceding the effective date of this Agreement, Grantee shall have the option to substitute the local customer service center requirements by providing for pick-up or drop-off of equipment free of charge, for example: (a) by having a Grantee representative go to the customers' residences, or (b) by using a prepaid mailer. Grantee also has the option to provide payment drop-off locations within the Franchise Area. Grantee shall provide Grantor and Subscribers with at least sixty (60) days' notice of election to discontinue the customer service center.

4. A system maintenance and repair staff, who shall respond to and repair major Cable System malfunctions on a 24-hour-per-day basis.

5. An installation staff, who shall install service to any Subscriber within seven days after receipt of a request, in all areas where trunk and feeder cable have been activated and within 125 feet of the existing distribution system. For those service extensions exceeding 125 feet, installation shall be in accordance with Grantee's regular and nondiscriminatory construction and billing practices, wherein the Subscriber shall be responsible for an incremental cost of the installation.

6. At the Subscriber's request, Grantee shall schedule, within a specified four-hour time period, all appointments with Subscribers for installation of service.

"Normal operating conditions" mean those service conditions that are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, major power outages, major telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

For purposes of this Agreement, "normal business hours" mean those hours during which most similar businesses in the franchise area are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

B. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible and safe, shall be preceded by notice and shall occur during a period of minimum use of the Cable System, preferably between midnight and 6:00 a.m.

C. The Grantee shall maintain a repair force of technicians normally capable of responding to Subscriber requests for service within the following time frames:

1. For a system outage: within two hours, including weekends, of receiving Subscriber calls or requests for service which by number identify a system outage of sound or picture of one or more Channels, affecting at least 10 percent of the Subscribers of the Cable System.
2. For an isolated outage: within 24 hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more Channels that affects three or more Subscribers. On weekends, an outage affecting fewer than three Subscribers shall result in a service call no later than the following Monday morning.
3. For inferior signal quality: within 48 hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

In accordance with FCC rules, an operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

Grantee shall not charge for the repair or replacement of defective equipment provided by Grantee to Subscribers. In the event Grantee determines that the Subscriber has damaged the equipment, Grantee shall be entitled to charge the rate permitted by the FCC.

D. Unless excused, Grantee shall determine the nature of the problem within 48 hours of beginning work and resolve all Cable System related problems within five business days unless technically infeasible.

E. Upon request from affected Subscribers, Grantee shall provide appropriate credits to Subscribers whose service has been interrupted for four or more hours.

F. Upon five calendar days' notice from Grantor, Grantee shall verify its compliance with any or all of the standards set forth in this section. Grantee shall provide sufficient documentation to permit Grantor to verify the compliance.

G. A repeated and verifiable pattern of non-compliance with the consumer protection standards of this section is a material breach of the Agreement, provided, however, that Grantee shall receive written notice and an opportunity to cure consistent with the procedures for remedying violations in section 12.1 of this Agreement prior to Grantor imposing any remedy or other sanction against Grantee.

H. Grantor shall have the right to review Grantee's response to Subscriber complaints and that require a service call in order to determine Grantee's compliance with the Agreement requirements, subject to the Subscribers' right to privacy. Grantee shall provide the requested records to the Grantor within 72 hours of transmittal of the request by the Grantor where the Subscriber complaint is pending, and within ten (10) business days where the complaint(s) in question has been resolved.

I. A verified and continuing pattern of noncompliance of the service standards and standards governing consumer protection established by law, ordinance, and this Agreement is a material breach of the Agreement; provided, that Grantee shall receive written notification and an opportunity to cure for a period not to exceed thirty (30) days, prior to any sanction being imposed, consistent with the procedures for remedying violations in section 12.1 of this Agreement.

- 6.2 **Emergency Broadcast.** Grantee will comply with the Emergency Alert System (EAS) as provided under applicable FCC Regulations, the Oregon State EAS Plan and the local EAS plan, if any, that applies to Grantor.
- 6.3 **ADA Accessible Equipment.** Grantee shall comply with the Americans with Disabilities Act ("ADA"), any amendments thereto and any other applicable federal, state or local laws or regulations. Grantee shall notify Subscribers of the availability of ADA equipment and services and shall provide such equipment and services in accordance with federal and state laws.
- 6.4 **Discriminatory Practices.** Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of race, color, religion, age, sex, national origin, sexual orientation or physical or mental disability. Grantee shall comply at all times with all other applicable federal, state or local laws, rules and regulations relating to non-discrimination.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

- (A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and Records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and Records of Grantee, its Parent Corporations and Affiliates that are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's Records on the basis that Grantee's Records are under the control of any Parent Corporation, Affiliate or a third party. Grantor may, in writing, request copies of any such Records or books and for those books and Records not related to pending Subscriber complaints, Grantee shall provide such copies within ten (10) business days of the transmittal of such request. For those books and Records associated with an audit, Grantee shall provide said books and Records within thirty (30) calendar days of the transmittal of such request. One copy of all books and Records required under this Section shall be furnished to Grantor at sole expense of Grantee. If the requested books and Records not related to Subscriber complaints are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within seven (7) business days, that Grantor inspect them at one of Grantee's local area offices. If any books or Records of Grantee are not kept in a local office and are not made available to Grantor upon written request as set forth above, and if Grantor determines that an examination of such books and records is necessary or appropriate to the performance of any of Grantor's duties under this agreement, then all reasonable travel expenses incurred by Grantor in making such examination shall be paid by Grantee. Grantor and Grantee may mutually agree in writing to waive or modify the schedule in individual cases where

compliance with the schedule is infeasible due to circumstances beyond the control of Grantee.

- (B) Grantee shall at all times maintain a full and complete set of plans, Records and "as built" maps showing the location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium consistent with Grantee's regular business practices. Grantee shall allow Grantor access and the right to view these plans, Records and maps within 5 business days of receiving notice from Grantor.

7.2 Confidentiality of Books and Records

Grantee acknowledges that information submitted to the Grantor is open to public inspection under the Oregon Public Records Law, ORS 192.410 through 192.505. Grantee is responsible for becoming familiar with, and understanding the provisions of the Oregon Public Records Law. Grantee may identify certain information in its books and Records as confidential or proprietary. Grantee shall clearly and conspicuously stamp the word "Confidential" on each page of its books and Records that Grantee determines contains confidential or proprietary information prior to submitting such information to the Grantor. Grantee shall also provide a brief written explanation as to why such information is confidential under state or federal law. Grantor shall treat any information so identified as confidential until Grantor receives a request for disclosure of such information and Grantor makes a determination that such information is disclosable in accordance with applicable laws. Grantor will make reasonable efforts to provide Grantee with not less than five (5) days' advance notice of any request for information identified as confidential. If Grantor believes it must release any such confidential books and Records in the course of enforcing this Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and Records marked confidential as set forth above to any Person. Grantor shall retain sole discretion to determine whether to release any information identified as confidential by Grantee, in accordance with applicable laws.

7.3 Copies of Federal and State Documents

Upon thirty (30) days of a request by Grantor, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its Parent Corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to

the operations of Grantee's Cable System within the Franchise Area. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by Grantor and its duly authorized agents and shall not be made available for public inspection.

7.4 **Complaint File and Reports**

- (A) Grantee shall keep an accurate and comprehensive Record of any and all complaints regarding the operation and performance of the Cable System within the Franchise Area, and that require a service call, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those Records shall be retained for three (3) years, and remain available to Grantor during normal business hours.
- (B) Upon written request, Grantee shall provide an executive summary report Quarterly (within forty-five (45) days of the end of the preceding Quarter) to Grantor, which shall include the following information:
- (1) Nature and type of customer complaints.
 - (2) Number, duration, general location and customer impact of unplanned service interruptions.
 - (3) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System.
 - (4) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee commonly prepares such reports, including Total Subscribers, Equivalent Billing Unit ("EBU") Reporting Number, Basic Service Subscribers, and "Pay" Subscribers.
 - (5) Total disconnections and major reasons for those disconnections.
 - (6) Total number of service calls.
 - (7) Video programming changes (additions/deletions).
 - (8) A Telephone Response activity report provided in a manner consistent with the requirements of Section 6 showing Total Calls Answered within thirty (30) seconds, Average Hold Time, Percent of Calls Answered within thirty (30) Seconds, Percent of Abandoned Calls, and the Percent of Lines Available. A sample of an acceptable report pursuant to this Section is attached to this Agreement as Attachment A
 - (9) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.
- (C) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards, as referenced in Section 6. Such information shall be provided to Grantor in such format as Grantee customarily prepares reports.

Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance.

7.5 Inspection of Facilities

Grantor may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least twenty-four (24) hours' notice, or, in case of an emergency, upon demand without prior notice.

7.6 False Statements

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise. Grantor shall have the right to determine the severity of the violation based upon the report in question.

7.7 Report Expense

All reports and Records required under this or any other Section shall be furnished, without cost, to Grantor.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

- (A) Grantee's Cable System shall provide the widest diversity of Programming possible. Grantee shall provide at least the following broad categories of Programming to the extent such categories are reasonably available:
 - (1) Educational Programming.
 - (2) Sports.
 - (3) General entertainment (including movies).
 - (4) Children/family-oriented.
 - (5) Arts, culture and performing arts.
 - (6) Foreign language.
 - (7) Science/documentary.
 - (8) Weather information.
 - (9) Programming addressed to diverse ethnic and minority interests in the Franchise Area; and
 - (10) National, state, and local government affairs.
- (B) Grantee shall not delete any broad category of Programming within its control.

8.2 Parental Control Devices

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 Leased Access Channels

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

8.4 Continuity of Service

- (A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the force majeure provisions of Section 4.6 of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.
- (B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

SECTION 9. GENERAL STREET USE AND CONSTRUCTION

9.1 Construction

- (A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Agreement, Grantee may perform all construction and maintenance necessary for the operation of its Cable System to provide Cable Services. All construction and maintenance of any and all facilities within the Public Rights of Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Except as permitted in Section 9.1(D), prior to performing any construction or maintenance in the Public Rights of Way, Grantee shall apply for, and obtain, all necessary permits. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits and give appropriate notices to any other Cable Operators, licensees or permittees of the Grantor, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.
- (B) All construction shall be performed in compliance with this Agreement, all applicable Grantor ordinances and codes, and any permit issued by the Grantor. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, Cable Operators, and permittees so as to reduce as far as possible the number of Street cuts.

- (C) Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area as it shall find necessary to ensure compliance with the terms of this Agreement, other pertinent provisions of law, and any permit issued by the Grantor.
- (D) In the event that emergency repairs are necessary, Grantee shall immediately notify the Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits as soon as reasonably practicable but in no event later than forty-eight (48) hours after discovery of the emergency. Grantee shall comply with all applicable Grantor regulations relating to such excavations or construction, including the payment of permit or license fees.
- (E) Whenever possible, to avoid additional wear and tear on the Public Rights of Way, Grantee shall utilize existing poles and conduit. Grantee may charge for use of the conduit consistent with all applicable laws. Notwithstanding the foregoing, this Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Grantor or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Grantor upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

9.2 Location of Facilities

Grantee shall comply with the requirements of Oregon Utility Notification Center ORS 757.542-757.562 and ORS 757.993 (penalty for violation of utility excavation notification provisions), and applicable rules and regulations promulgated thereunder in OAR Chapter 952 relating to Oregon Utility Notification Center.

9.3 Relocation

- (A) Relocation for Grantor.
 - (1) Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Public Rights of Way when the public convenience requires such change, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Public Rights of Way, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights of Way.
 - (2) If public funds, other than the funds of Grantor, including passed-through funds, are available to any Person using such Public Rights of Way for the purpose of defraying the cost of any of the relocation of facilities as

provided under this Section, Grantee shall be afforded equal treatment subject to applicable law and regulations.

- (B) Relocation by Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the Public Right of Way or on any other property of the Grantor in the case of fire, disaster, or other emergency, and no charge shall be made by the Grantee against the Grantor for restoration and repair. Grantor shall be responsible for any damage to Grantee's facilities as a result of Grantor's negligence or gross negligence in performing work under this Section. The Grantor shall attempt to provide notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action.
- (C) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action regarding the necessary changes requested by the responsible entity. Grantee and such other Franchise holder shall determine how costs associated with the removal or relocation required herein shall be allocated.
- (D) Movement for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require the permit holder to pay the full amount in advance.

9.4 **Restoration of Public Rights of Way**

Whenever Grantee excavates, damages, or disturbs the surface of any Public Right of Way for any purpose, including but not limited to relocation or undergrounding as required in this Section, Grantee shall promptly restore the Public Right of Way to the satisfaction of the Grantor in accordance with applicable Grantor ordinances and codes and any permit issued by the Grantor. In the event there is no applicable ordinance, code or permit, Grantee shall promptly restore the Public Right of Way to at least its prior condition. Unless otherwise provided in any permit issued by Grantor, when any opening is made by Grantee in a hard surface pavement in any Public Right of Way, Grantee shall refill within twenty-four (24) hours. Grantee shall be responsible for restoration and maintenance of the Public Right of Way and its surface affected by the excavation in accordance with applicable regulations of the Grantor. Grantor may, after providing notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, refill or repave any opening made by Grantee in the Public Rights of Way, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove and/or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. All excavations made by Grantee in the Public Rights of Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor.

9.5 **Maintenance and Workmanship**

- (A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Public Rights of Way by, or under, Grantor's authority.
- (B) Grantee shall maintain and use any equipment necessary to control and carry Grantee's cable television Signals so as to prevent injury to Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

9.6 **Reservation of Grantor Public Rights of Way**

Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Public Right of Way; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Public Right of Way or public improvement, including construction, repair or removal of a sewer or water main or any other public work, Grantee's Cable System shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

9.7 **Use of Conduits by Grantor**

Grantor may install or affix and maintain wires and equipment owned by Grantor for governmental purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights of Way and other public places without charge to Grantor if such installation by Grantor results in no additional cost to Grantee, and to the extent space therein or thereon is reasonably available and feasible without compromising the integrity of the Cable System or facility, and pursuant to all applicable ordinances and codes. For the purposes of this Section 9.7, "governmental purposes" includes, but is not limited to, the use of the structures and installations by Grantor for fire, police, traffic, water, telephone, or signal systems, but not for Cable System purposes or provision of services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise fees payable to Grantor except as otherwise may be authorized by federal law.

9.8 **Public Rights of Way Vacation**

If any Public Right of Way or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Public Right of Way, Grantee shall, without delay or expense to Grantor, remove its facilities from such Public Right of Way, and restore, repair or reconstruct the

Public Right of Way where such removal has occurred, and place the Public Right of Way in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Public Right of Way, Grantor may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by Grantor, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

9.9 **Discontinuing Use of Facilities**

Whenever Grantee intends to discontinue using any facility within the Public Rights of Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Public Rights of Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Rights of Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

9.10 **Hazardous Substances**

- (A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights of Way.
- (B) Grantee shall maintain and inspect its Cable System located in the Public Rights of Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights of Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.
- (C) Grantee agrees to forever indemnify the Grantor, its officers, boards, commissions, duly authorized agents, and employees, from and against any claims, costs and expenses of any kind, pursuant to and in accordance with applicable State or federal laws, rules and regulations, for the removal or remediation of any leaks, spills, contamination or residues of hazardous substances attributable to Grantee's Cable System in the Public Rights of Way.

9.11 **Undergrounding of Cable**

- (A) Where all utility lines are installed underground at the time of Cable System construction, or when such lines are subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other utility lines at no additional expense to the

Grantor or Subscribers, to the extent permitted by law and applicable safety codes. Cable must be installed underground where: (1) all existing utility lines are placed underground, (2) statute, ordinance, policy, or other regulation of the Grantor requires utility lines to be placed underground, or (3) all overhead utility lines are placed underground.

- (B) Related Cable System equipment such as pedestals must be placed in accordance with applicable code requirements and underground utility rules; provided, however, nothing in this Agreement shall be construed to require Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, pedestals, power supplies, or other related equipment. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the reasonable additional cost in excess of aerial installation.
- (C) For purposes of this Section 9.11, "utility lines" and "utility wiring" does not include high voltage electric lines.

9.12 **Tree Trimming**

Subject to acquiring prior written permission of the Grantor, including any required permit, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

9.13 **Construction, Building and Zoning Codes**

Grantee shall strictly adhere to all applicable construction, building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables, and other appurtenances, at Grantee's cost, from the property in question.

9.14 **Standards**

- (A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with applicable provisions of the National Electrical Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.
- (B) Grantee shall ensure that individual Cable System drops are consistent, in all respects, with applicable provisions of the National Electrical Code and the National Electrical Safety Code.

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SECTION 10. SYSTEM DESIGN AND STANDARDS

10.1 Subscriber Network

- (A) As of the Effective Date of this Agreement, the Cable System utilizes a Fiber to the node architecture serving no more than fifteen hundred (1,500) Subscribers per node. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture as demand requires.
- (B) Grantee's Subscriber network shall, at all times, meet or exceed the minimum system design and performance specifications required by the FCC.

10.2 Test and Compliance Procedures

- (A) Upon request, Grantee shall advise Grantor of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Representatives of Grantor may witness tests, and written test reports may be made available to Grantor upon request.
- (B) To the extent required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.

10.3 Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, to the node, rated for at least two (2) hours duration. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

SECTION 11. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

11.1 Equivalent Service

Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area.

11.2 Service Availability

- (A) **Service to New Subdivisions.** Grantee shall provide Cable Service in new subdivisions upon the earlier of either of the following occurrences: 1) Within sixty (60) days of the time when foundations have been installed in fifty (50) percent of the dwelling units in any individual subdivision; or 2) Within thirty (30) days following receipt of a request from a resident. For purposes of this Section, a request from a resident shall be deemed to be received upon the signing of a service agreement, receipt of funds by the Grantee, receipt by Grantee of a written

request for Cable Service, or receipt by Grantee of a verified verbal request for Cable Service.

- (B) Grantee shall provide such service:
 - (1) With no line extension charge except as specifically authorized elsewhere in this Agreement.
 - (2) At a nondiscriminatory installation charge for a standard installation, consisting of a drop no longer than one hundred twenty five (125) feet, with additional charges for non-standard installations computed according to a nondiscriminatory methodology for such installations, adopted by Grantee and provided in writing to Grantor upon written request; and at nondiscriminatory monthly rates for residential Subscribers, subject to federal law.
- (C) Required Extensions of Service. Whenever the Grantee receives a request for service from at least ten (10) residences within one thousand three hundred twenty (1,320) cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such potential Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers, within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation of the Cable System.
- (D) Customer Charges for Extensions of Service. No potential Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a potential Subscriber's request to locate a cable drop underground, existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to such Subscriber, or a density of less than ten (10) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and potential Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of its trunks or distribution cable and whose denominator equals ten (10) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscriber be paid in advance.
- (E) Enforcement. Failure to meet these standards shall subject Grantee to enforcement actions on a per Subscriber basis in Section 12.

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11.3 Connection of Public Facilities

Grantee shall, at no cost to Grantor, provide one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming to each and every public use building, as designated by the Grantor, and all libraries and Schools. Those portions of buildings housing prison/jail populations shall be excluded from this requirement. In addition, Grantee agrees to provide, at no cost, one (1) outlet of basic and digital economy tier (or its functional equivalent) Programming and one (1) DTA box to all such future public buildings if the drop line to such building does not exceed one hundred and twenty-five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one hundred twenty-five (125) feet, including the cost of such excess labor and materials. Outlets of basic and digital economy tier (or its functional equivalent) Programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Cost for any additional outlets shall be the responsibility of Grantor.

With the exception of outlets provided to schools and libraries, fire stations, emergency response locations (e.g., police stations, emergency operations centers (EOC), 9-1-1 dispatch center, etc.), and all other outlets provided to Grantor on the effective date of this Agreement, Grantee does not waive any rights it may have regarding complimentary service under Federal law or regulation for any outlets as provided for in this section. Subject to the applicable law, should Grantee elect to offset governmental complimentary services for any outlets, not included in this Section, against franchise fees, Grantee shall first provide the Grantor with ninety (90) days' prior notice.

SECTION 12. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

12.1 Procedure for Remedying Franchise Violations

- (A) If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation and Grantor's preferred remedy.
- (B) Grantor must provide written notice of a violation of this Agreement to Grantee. Upon receipt of the notice, Grantee will have a period of thirty (30) calendar days to do one of the following:
 - (1) Contest, in writing, Grantor's assertion that a violation has occurred, and request a hearing before Grantor's hearings officer in accordance with subsection (E) below;
 - (2) Cure the violation;
 - (3) Notify Grantor, in writing, that Grantee cannot cure the violation within thirty (30) calendar days, and set forth all steps Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure. At Grantor's sole discretion, Grantor may allow Grantee up to an additional 60 calendar days to cure the violation or Grantor may set a hearing before its hearing officer in accordance with subsection (C) below. If Grantor allows for an additional period of time for Grantee to cure the violation and Grantee does not cure the violation within the extended period of time,

Grantor shall set a hearing before its Hearings Officer as in accordance with subsection (C) below; or,

- (4) Notify Grantor, in writing that Grantee concurs with Grantor's assertion that a violation has occurred but contesting Grantor's preferred remedy, and request a hearing before Grantor's hearings officer in accordance with subsection (E) below.
- (C) If, pursuant to the provisions of subsection(B)(3), a hearing is to be set before the Grantor's hearings officer, the hearing shall be conducted as set forth in subsection (M) below. At the hearing, the hearings officer shall determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are determined by the hearings officer to be reasonable, the plan and completion date may be approved by the hearings officer, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection 12.2(B) below. If the hearings officer determines the Grantee's proposed plan and completion date are not reasonable, the hearings officer shall impose remedies as set forth in subsection (F) below.
 - (D) In the event that the Grantee fails to cure the violation within any cure period approved by Grantor's hearings officer pursuant to subsection (C), Grantor shall set a hearing before its hearings officer. If the hearings officer determines that Grantee has not cured the violation within the cure period previously approved by the hearings officer, the hearings officer shall impose remedies as set forth in subsection (F) below; however, the hearings officer shall not allow Grantee additional time to remedy the violation without the agreement of Grantor. The hearing shall be conducted as set forth in subsection (M) below.
 - (E) In the event that the Grantee contests the Grantor's assertion that a violation has occurred, or concurs that a violation has occurred but contests Grantor's preferred remedy, and requests a hearing in accordance with subsection (B)(1) or (B)(4) above, Grantor shall set a hearing before its hearings officer. The hearing shall be conducted as set forth in subsection (M) below. If Grantee is contesting whether a violation has occurred, the hearings officer shall determine whether the violation has occurred. If the hearings officer determines that a violation has occurred or Grantee concurs that a violation has occurred and is only contesting Grantor's preferred remedy, the hearings officer shall impose remedies as set forth in subsection (F) below.
 - (F) If, after the hearing, a remedy is to be imposed in accordance with subsections (C), (D) or (E), unless otherwise provided, the hearings officer may impose any one or more of the following remedies:
 - (1) Order Grantee to correct or remedy the violation within a reasonable time frame as the hearings officer shall determine;
 - (2) Impose penalties as set forth in Section 12.2, taking into consideration the criteria provided for in subsection (B) of Section 12.2;

- (3) Recommend revocation of this Agreement, and/or;
- (4) Impose any other legal or equitable remedy available under this Agreement or any applicable law.
- (5) Penalties in excess of fifty thousand dollars\$45,000 shall not be imposed within any consecutive twelve (12) month period.
- (G) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of Grantor or its hearings officer, provided that any such final determination or order shall be subject to review by a court of competent jurisdiction under applicable law.
- (H) Grantor may institute any appropriate suit or legal action in a court of competent jurisdiction to enforce the decision or order of the hearings officer, and, notwithstanding any determination by the hearings officer, may pursue any legal or equitable remedy available under this Agreement or any applicable law.
- (I) Grantor's failure to pursue a remedy under this section for Grantee's violation of this Agreement shall not constitute consent to any subsequent breach of the Agreement or a waiver of Grantor's ability to seek a remedy for any violation of this agreement, or a waiver of Grantee's obligation to pay Grantor's expenses for Grantee's failure to perform as set forth in this Agreement.
- (J) Grantor's exercise of right granted in this Agreement (including by way of illustration but not by way of limitation, Grantor's right to refill or repave an opening in the Public Rights of Way and bill Grantee for Grantor's expenses therefor under section 9.4 of this Agreement) is not itself a remedy subject to this section. Grantor's exercise of rights granted in the Agreement does not waive Grantor's right to a remedy pursuant to this section. Grantor's right to a remedy under this section is in addition to Grantor's exercise of rights granted elsewhere in this agreement.
- (K) Nothing in this section shall be interpreted as limiting the ability of Grantor and Grantee to agree that a violation of this Agreement has occurred and to the appropriated remedy.
- (L) Nothing in this section shall be construed as limiting Grantor's ability to seek, in a court of competent jurisdiction, injunctive relief or any remedy which would be impacted by allowing the cure period set out in section 12.1(B) or any other procedure in this section.
- (M) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard, examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.

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12.2 Penalties

- (A) Failure to comply with provisions of this Agreement may result in injury to Grantor. Grantor and Grantee recognize it will be difficult to accurately estimate the extent of such injury. Therefore, the financial penalty provisions of this Agreement are intended as a reasonable forecast of compensation to the Grantor for the harm caused by violation of this Agreement, including but not limited to administrative expense, legal fees, publication of notices, and holding of a hearing or hearings as provided herein.
- (1) For violating aggregate performance telephone answering standards for a Quarterly measurement period:
- (a) \$5,000 for the first such violation, or any subsequent violation that has been cured;
 - (b) \$10,000 for the second such violation, unless the violation has been cured;
 - (c) \$15,000 for any and all subsequent violations, unless the violation has been cured;
- A cure is defined as meeting the Subscriber telephone answering standards for two (2) consecutive Quarterly measurement periods immediately following the quarter in which the violation occurred;
- (2) For violation of applicable Subscriber service standards where violations are not measured in terms of aggregate performance standards: \$250 per violation, per day;
- (3) For all other violations of this Agreement, except as otherwise provided herein, (for example, but not limited to, Record submissions under Section 7): \$250/day for each violation for each day the violation continues.
- (B) The penalties set forth in Section 12.2(A) may be reduced by Grantor's hearings officer, taking into consideration the nature, circumstances, extent and gravity of violation as reflected by one or more of the following factors:
- (a) whether the violation was unintentional;
 - (b) the nature of the harm which resulted;
 - (c) whether there is a history of prior violations of the same or other requirements;
 - (d) whether there is a history of overall compliance, and/or;
 - (e) whether the violation was voluntarily disclosed, admitted or cured.
- (C) Collection of Penalties. The collection of penalties by the Grantor shall in no respect affect:

- (1) Compensation owed to Subscribers; or
- (2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or
- (3) Other remedies available to the Grantor provided, however, that collection of penalties shall be the exclusive remedy for the Grantor for the particular incident or for the particular time period for which it is imposed other than reasonable attorney fees and costs, if applicable. If the violation continues beyond the particular time period, Grantor shall have the right to pursue other remedies under this Agreement.

12.3 **Revocation**

- (A) Should Grantor seek to revoke the Franchise after following the procedures set forth in Section 12.1, Grantor shall give written notice to Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- (B) At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.
- (C) Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Grantee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor according to applicable law.
- (D) Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Agreement in lieu of revocation of the Franchise.

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12.4 **Relationship of Remedies**

- (A) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity for the breach for which they are imposed except as otherwise provided in Section 12.2. By way of example and not limitation, the collection of penalties by Grantor shall in no respect affect:
 - (1) Refunds or credits owed to Subscribers; or
 - (2) Grantee's obligation to comply with the provisions of this Agreement or applicable law.

- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Grantee's performance bond, or the recovery of amounts under the insurance, indemnity or penalty provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Grantee under the Agreement for penalties or otherwise, except as provided in Section 12.2; or an excuse of faithful performance by Grantee.

12.5 **Removal**

- (A) In the event of termination, expiration or revocation of this Agreement, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Rights of Way use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights of Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment. However, Grantee shall not be required to remove the facility if the facility is used to provide non Cable services not regulated under this Agreement and Grantee has appropriate authority from Grantor.

- (B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs and Grantor may recover the costs through the Performance Bond provided by Grantee.

12.6 **Receivership and Foreclosure** Grantor and Grantee acknowledge that the following paragraphs may not be applicable or are subject to the jurisdiction of the bankruptcy court.

- (A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

- (1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment, or;
 - (2) The receiver(s) or trustee(s) have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.
- (B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:
- (1) Grantor has approved the transfer of this Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and
 - (2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

12.7 **No Recourse Against Grantor**

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any rights or immunities the Grantor may enjoy under federal, state or local law. However, under federal law, Grantee does have the right to seek injunctive and declaratory relief.

12.8 **Nonenforcement By Grantor**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

SECTION 13. ABANDONMENT

13.1 **Effect of Abandonment**

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the

Grantee restores service under conditions acceptable to the Grantor or until this Agreement is revoked and a new grantee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

13.2 **What Constitutes Abandonment**

- (A) The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:
 - (1) The Grantee fails to provide Cable Service in accordance with this Agreement to the Franchise Area for ninety-six (96) consecutive hours, unless the Grantor authorizes a longer interruption of service, except if such failure to provide service is due to a force majeure occurrence, as described in Section 4.6; or
 - (2) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 **Renewal**

- (A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of the Cable Act (47 USC § 546), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.
- (B) Grantee and Grantor agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of the Cable Act.

14.2 **Transfer of Ownership or Control**

- (A) The Cable System, a portion thereof, and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.
- (B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by

any Person or group of Persons of more than fifty percent (50%) of the control in the Grantee, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a fifty-one percent (51%) interest of the control in the Grantee. Every change, transfer or acquisition of control of the Grantee shall make this Agreement subject to revocation unless and until the Grantor shall have consented thereto.

- (C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.
- (D) The Grantor shall render a final written decision on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.
- (E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.
- (F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.
- (G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Agreement.
- (H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

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SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term, or provision of this Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term, or provision directly involved in the controversy in which such holding shall have been rendered, and shall not in any way affect the validity of any other Section, subsection, paragraph, term, or provision hereof. Under such a circumstance the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to this Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within sixty (60) days, either party may (1) seek appropriate legal remedies to amend this Agreement, or (2) shorten this Agreement to thirty-six (36) months, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

16.2 Dispute Resolution

- (A) The Grantor and Grantee agree that should a dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such event, the Grantor and Grantee agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator.
- (B) If the parties are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice to the other. After written notice has been received by the other party, either party may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

16.3 Notices

- (A) Throughout the term of this Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such

address and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such addresses shall be:

Astound Broadband
c/o WaveDivision Holdings
Attn: David von Moritz
3700 Monte Villa Pkwy
Bothell, WA 98021

- (B) All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the Effective Date of this Agreement, such address shall be:

Cable Officer
Marion County
PO Box 14500
Salem, OR 97309
Fax: 503-373-4379

with copy to:

Chief Administrative Officer
Marion County Board of Commissioners
PO Box 14500
Salem, OR 97309

16.4 **Binding Effect**

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

16.5 **Authority to Amend**

This Agreement may be amended at any time by written agreement between the parties.

16.6 **Governing Law**

This Agreement shall be governed in all respects by the laws of the State of Oregon.

16.7 **Captions**

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

16.8 **Entire Agreement**

This Agreement, together with all appendices and attachments, contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

////

////

16.9 Construction of Agreement

The provisions of this Agreement shall be liberally construed to promote the public interest.

Agreed to this 5th day of November, 2025

WAVEDIVISION VII, LLC
dba Wave Broadband

MARION COUNTY, OREGON

By: _____

By: _____
Chair

Title: _____

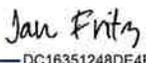
By: _____
Commissioner

By: _____
Commissioner

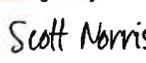
DocuSigned by:

D1FCCAACCDB14CB 10/16/2025

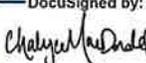
County Cable Officer

DocuSigned by:

DC16351248DE4EC 10/16/2025

Chief Administrative Officer

Signed by:

60C98A6E708240B 10/16/2025

County Legal Counsel

DocuSigned by:

2A951B5758514CE 10/16/2025

County Contracts & Procurement

ATTACHMENT A

TELEPHONE RESPONSE ACTIVITY REPORT (Sample)

LFA - Franchise	Oct-16	Nov-16	Dec-16	4th QTR
% of Calls Answered within 30 seconds with IVR	94%	95%	97%	95%
Number of IVR Calls	18,113	18,358	18,000	55,497
Number of Calls Offered	31,130	28,132	26,114	85,379
Number of Calls Handled	28,133	27,846	25,925	84,564
Number of Calls Answered within 30 seconds	28,199	25,665	24,616	78,480
Average Speed of Answer (Seconds)	21	13	9	15
Average Handle Time (Seconds)	616	606	591	605
Number of Abandon Calls	340	287	189	815



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 11/05/25

Department: Health & Human Services

Title: Amendment 3 to Public Health OHA IGA No.185823

Management Update/Work Session Date: 10/21/25 Audio/Visual aids []

Time Required: 10 min Contact: Kristina Ballow Phone: 503-588-5409

Requested Action: Seeking Approval of the contract with OHA for the Public Health OHA IGA#185823

Issue, Description & Background: Intergovernmental Agreement: Oregon Health Authority Biennium 2025-2027 IGA #185823 and Marion County Health and Human Services to provide and operate contracts for Public Health Services. Previous amendments have added or decreased funding for programs. Amendment 3 adds a federal award information datasheet and funds of \$1,576,997.98 to PE51-01 LPHA Leadership, Governance and Program Implementation and PE51-05 CDC PH Infrastructure Funding.

Financial Impacts: Total contract amount \$7,510,892.60

Impacts to Department & External Agencies: Health and Human Services anticipates no financial impact to other departments.

List of attachments: Original, Amendments 1-3

Presenter: Ryan Matthews

Department Head Signature: Ryan Matthews (DocuSigned by: 7D28A787656F458...)

Contract Review Sheet

Intergovernmental Agreement

HE-6717-25 - Am3

Title: Public Health OHA IGA#185823

Contractor's Name: Oregon Health Authority

Department: Health and Human Services

Contact: Kristina Ballow

Analyst: Chalyce MacDonald

Phone #: (503) 588-5409

Term - Date From: July 1, 2025

Expires: June 30, 2027

Original Contract Amount: \$ 5,865,402.80

Previous Amendments Amount: \$ 68,491.82

Current Amendment: \$ 1,576,997.98

New Contract Total: \$ 7,510,892.60

Amd% 28%

Incoming Funds

- Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: ORS190 Intergovernmental Agreement

Description of Services or Grant Award

Intergovernmental Agreement: Oregon Health Authority Biennium 2025-2027 IGA #185823 and Marion County Health and Human Services to provide and operate contracts for Public Health Services.

Amdt 1 added \$104,840.82.

Amdt 2 updated exhibits and decreased program PE12-01 funds by \$36,349.00.

Amdt 3 adds federal award information datasheet and funds of \$1,576,997.98 to PE51-01 LPHA Leadership, Governance and Program Implementation and PE51-05 CDC PH Infrastructure Funding.

Desired BOC Session Date: 11/5/2025

Contract should be in DocuSign by: 10/15/2025

Agenda Planning Date: 10/23/2025

Printed packets due in Finance: 10/21/2025

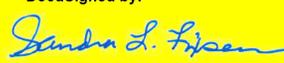
Management Update: 10/21/2025

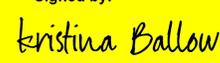
BOC upload / Board Session email: 10/22/2025

BOC Session Presenter(s) Ryan Matthews

Code: Y

REQUIRED APPROVALS

DocuSigned by:

C5E72231E6F54E3 10/8/2025
Finance - Contracts Date

Signed by:

A38C58E8078E42B 10/16/2025
Contract Specialist Date

Signed by:

60C98A6E708240B 10/8/2025
Legal Counsel Date

DocuSigned by:

DC16351248DF4EC 10/14/2025
Chief Administrative Officer Date

OHA - 2025-2027 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

Agreement #185823

**AMENDMENT TO OREGON HEALTH AUTHORITY
2025-2027 INTERGOVERNMENTAL AGREEMENT FOR THE
FINANCING OF PUBLIC HEALTH SERVICES**

This Third Amendment to Oregon Health Authority 2025-2027 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2025, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Marion County, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Marion County. OHA and LPHA are each a “Party” and together the “Parties” to the Agreement.

RECITALS

WHEREAS, OHA and LPHA wish to modify the Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200 as set forth in Exhibit J of the Agreement;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. This Amendment is effective on **September 1, 2025**, regardless of the date this amendment has been fully executed with signatures by every Party and when required, approved by the Department of Justice. However, payments may not be disbursed until the Amendment is fully executed.
2. The Agreement is hereby amended as follows:
 - a. Exhibit A “Definitions”, Section 18 “Program Element” is amended to replace the line items for PE03 as follows:

<u>PE NUMBER</u> AND TITLE • SUB-ELEMENT(S)	FUND TYPE	FEDERAL AGENCY/ GRANT TITLE	CFDA#	HIPAA RELATED (Y/N)	SUB-RECIPIENT (Y/N)
---	------------------	--	--------------	--------------------------------	--------------------------------

PE03 Tuberculosis Services

<u>PE 03</u> Tuberculosis Case Management	GF	N/A	N/A	N	N
	FF	Tuberculosis Control & Elimination with Laboratory Services for the state of Oregon	93.116	N	N
<u>PE 03-02</u> Tuberculosis Case Management	FF	Tuberculosis Control & Elimination	93.116	N	Y

- b. Exhibit C, Section 1 of the Agreement, entitled “Financial Assistance Award” is hereby superseded and replaced in its entirety by Attachment A, entitled “Financial Assistance Award”,

OHA - 2025-2027 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES

attached hereto and incorporated herein by this reference. Attachment A must be read in conjunction with Section 2 of Exhibit C.

c. Exhibit J of the Agreement entitled “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” is amended to add to the federal award information datasheet as set forth in Attachment B, attached hereto and incorporated herein by this reference.

3. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.

4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.

5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.

6. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

7. Signatures.

STATE OF OREGON, ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY

Approved by: _____

Name: /for/ Nadia A. Davidson

Title: Director of Finance

Date: _____

MARION COUNTY LOCAL PUBLIC HEALTH AUTHORITY

Approved by: See County Signature Page

Printed Name: Ryan Matthews

Title: Administrator

Date: 10/1/25

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Agreement form group-approved by Devon Thorson, Senior Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on August 11, 2025, copy of email approval in Agreement file.

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

Reviewed by: _____

Name: Rolonda Widenmeyer (or designee)

Title: Program Support Manager

Date: _____

**SIGNATURE PAGE FOR
PUBLIC HEALTH OHA IGA#185823 - HE-6717-25
between
MARION COUNTY and OREGON HEALTH AUTHORITY**

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair	Date
-------	------

Commissioner	Date
--------------	------

Commissioner	Date
--------------	------

Authorized Signature:	<div style="border: 1px solid black; padding: 2px;"><small>DocuSigned by:</small> <i>Ryan Matthews</i> <small>7D28A787656E458</small></div>	10/8/2025
	Department Director or designee	Date

Authorized Signature:	<div style="border: 1px solid black; padding: 2px;"><small>DocuSigned by:</small> <i>Jan Fritz</i> <small>DC16351248DE4EC</small></div>	10/14/2025
	Chief Administrative Officer	Date

Reviewed by Signature:	<div style="border: 1px solid black; padding: 2px;"><small>Signed by:</small> <i>Scott Norris</i> <small>60C98A6F708240B</small></div>	10/8/2025
	Marion County Legal Counsel	Date

Reviewed by Signature:	<div style="border: 1px solid black; padding: 2px;"><small>DocuSigned by:</small> <i>Sandra L. Rippen</i> <small>C5E72231E6E54E3</small></div>	10/8/2025
	Marion County Contracts & Procurement	Date

**Attachment A
Exhibit C - Financial Assistance Award**

State of Oregon Oregon Health Authority Public Health Division		
1) Grantee Name: Marion County Street: 3180 Center St. NE, Suite 2100 City: Salem State: OR Zip: 97301-4532	2) Issue Date Monday, September 1, 2025	This Action Amendment
	3) Award Period From July 1, 2025 through June 30, 2026	

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE01-01	State Support for Public Health	\$103,614.00	\$0.00	\$103,614.00
PE01-12	ACDP Infection Prevention Training	\$1,517.82	\$0.00	\$1,517.82
PE03	Tuberculosis Case Management	\$45,600.00	\$0.00	\$45,600.00
PE12-01	Public Health Emergency Preparedness and Response (PHEP)	\$93,467.00	\$0.00	\$93,467.00
PE13	Tobacco Prevention and Education Program (TPEP)	\$425,000.00	\$0.00	\$425,000.00
PE36	Alcohol & Drug Prevention Education Program (ADPEP)	\$292,382.00	\$0.00	\$292,382.00
PE36-01	OSPTR Board Primary Prevention Funding	\$447,046.00	\$0.00	\$447,046.00
PE40-01	WIC NSA: July - September	\$321,380.00	\$0.00	\$321,380.00
PE40-02	WIC NSA: October - June	\$964,139.00	\$0.00	\$964,139.00
PE40-05	Farmer's Market	\$7,301.00	\$0.00	\$7,301.00
PE42-03	MCAH Perinatal General Funds & Title XIX	\$33,678.00	\$0.00	\$33,678.00
PE42-04	MCAH Babies First! General Funds	\$37,436.00	\$0.00	\$37,436.00
PE42-11	MCAH Title V	\$126,159.00	\$0.00	\$126,159.00
PE42-12	MCAH Oregon Mothers Care Title V	\$3,156.00	\$0.00	\$3,156.00
PE43-01	Public Health Practice (PHP) - Immunization Services	\$103,323.00	\$0.00	\$103,323.00

OHA - 2025-2027 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES

4) OHA Public Health Funds Approved				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE50	Safe Drinking Water (SDW) Program (Vendors)	\$156,487.80	\$0.00	\$156,487.80
PE51-01	LPHA Leadership, Governance and Program Implementation	\$1,997,162.00	\$16,187.00	\$2,013,349.00
PE51-05	CDC PH Infrastructure Funding	\$0.00	\$1,560,810.98	\$1,560,810.98
PE81-01	HIV/STI Statewide Services (HSSS) Federal Funds	\$132,533.00	\$0.00	\$132,533.00
PE81-02	HIV/STI Statewide Services (HSSS) Program Income	\$642,513.00	\$0.00	\$642,513.00
		\$5,933,894.62	\$1,576,997.98	\$7,510,892.60

5) Foot Notes:	
PE01-01	07/2025: funding available 7/1/25-9/30/25 only.
PE40-01	07/2025: funds available 7/1/25-9/30/2025 only
PE40-02	07/2025: funds available 10/1/25-6/30/26 only
PE42-11	07/2025: Indirect rate caps at 10%.
PE42-12	07/2025: Indirect rate caps at 10%.

6) Comments:	
PE36	08/2025: Prior comment null and void 07/2025: \$73,095.50 available 7/1/25 - 9/30/25 only.
PE36-01	07/2025: rollover unspent SFY25 funds of \$447,046
PE51-05	09/2025: Rollover unspent SFY25 funds of \$1,560,810.98.
PE81-01	07/2025: \$121,489 available 7/1/25-5/31/26 only; \$11,044 available 6/1/26-6/30/26 only

7) Capital outlay Requested in this action:				
Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.				
Program	Item Description	Cost	PROG APPROV	

Attachment B

Exhibit J - Information required by CFR Subtitle B with guidance at 2 CFR Part 200

PE03 Tuberculosis Case Management

Federal Award Identification Number:	NU52PS910280	NU52PS910280
Federal Award Date:	08/18/25	
Budget Performance Period:	01/01/2025-12/31/2025	01/01/2026-12/31/2026
Awarding Agency:	CDC	CDC
CFDA Number:	93.116	93.116
CFDA Name:	Tuberculosis Control & Elimination	Tuberculosis Control & Elimination
Total Federal Award:	543624	TBD
Project Description:	Tuberculosis Control & Elimination with Laboratory Services for the state of Oregon	Tuberculosis Control & Elimination with Laboratory Services for the state of Oregon
Awarding Official:	Mr. Shameer Poonja	Mr. Shameer Poonja
Indirect Cost Rate:	16.96%	TBD
Research and Development (T/F):	FALSE	FALSE
HIPPA	No	No

Agency	UEI	Amount	Amount	Grand Total:
Marion	DECEM6WK8J17	\$22,800.00	\$22,800.00	\$45,600.00

PE51-05 CDC PH Infrastructure Funding

Federal Award Identification Number:	NE11OE000080	NE11OE000080
Federal Award Date:		11/24/24
Budget Performance Period:	12/1/2025-11/30/2026	12/1/24-11/30/25
Awarding Agency:	CDC	CDC
CFDA Number:	93.967	93.967
CFDA Name:	CDC's Collaboration with Academia to Strengthen Public Health	CDC's Collaboration with Academia to Strengthen Public Health
Total Federal Award:	\$30,054,888	2339080
Project Description:	Oregon Health Authority, Public Health Division's application for Strengthening U.S. Public Health Infrastructure, Workforce, and Data Systems (CDC-RFA-OE22-2203)	OHA, PHD's application for Strengthening U.S. Public Health Infrastructure, Workforce, and Data Systems
Awarding Official:	Lauren Bartell Billick	Lauren Bartell Billick
Indirect Cost Rate:	4%	4%
Research and Development (T/F):	FALSE	FALSE
HIPPA	No	No

Agency	UEI	Amount	Amount	Grand Total:
Marion	DECEM6WK8J17	\$910,473.07	\$650,337.91	\$1,560,810.98



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: October 29, 2025

Department: Health & Human Services

Title: Bridgeway, Addiction, Treatment, & Recovery Svcs HE-5713-24

Management Update/Work Session Date: October 14, 2025 Audio/Visual aids

Time Required: 10 Minutes Contact: Diana Lee Adams Hill Phone: 503-576-4652

Requested Action: Approval of amendment 4 to contract with Bridgeway Community Health, adding \$141,843.98.

Issue, Description & Background: Provision of Community Behavioral & Substance Use Disorder Services (A&D 66) delivered to youth & adults w/Substance Use Disorders or youth & adults w/co-occurring substance use & mental health disorders who are not eligible for Oregon Health Plan (OHP) or who otherwise do not have benefits that covers the A&D 66 Services under agreement w/OHA or Local Mental Health Authority #026019-0. Amd 1 adds \$541,531.94 & extends the term to June 30, 2025. Amd 2 adds \$25,000.00 to include Adult Substance Use Disorder Residential Treatment Services (A&D 61). Amd 3 - Reinstatement of Contract. Extend the term to December 31, 2025. Amd 4 - adds \$141,843.98 for Detox A&D 66, which equals a total of \$808,375.92.

Financial Impacts: The total financial impact is \$808,375.92.

Impacts to Department & External Agencies: None other than Health

List of attachments: Contract, Amendments 1, 2, 3, 4

Presenter: Carol Heard

Department Head Signature: Ryan Matthews
DocuSigned by: 7D28A787656F458...

Contract Review Sheet

Contract for Services

HE-5713-24 - Am4

Title: Addiction, Treatment, and Recovery Services

Contractor's Name: Bridgeway Community Health

Department: Health and Human Services

Contact: Diana Lee Adams Hill

Analyst: Chalyce MacDonald

Phone #: (503) 576-4652

Term - Date From: January 1, 2024

Expires: December 31, 2025

Original Contract Amount: \$ 100,000.00

Previous Amendments Amount: \$ 566,531.94

Current Amendment: \$ 141,843.98

New Contract Total: \$ 808,375.92

Amd% 708%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 50-0160 Health Provider Contracts

Description of Services or Grant Award

Provision of Community Behavioral and Substance Use Disorder Services (A&D 66) delivered to youth and adults with Substance Use Disorders or youth and adults with co-occurring substance use and mental health disorders who are not eligible for Oregon Health Plan (OHP) or who otherwise do not have benefits that covers the A&D 66 Services under agreement with OHA or Local Mental Health Authority #026019-0.

Amendment 1 adds funds in the amount of \$541,531.94 and extends the term to June 30, 2025.

Amendment 2 adds funds in the amount of \$25,000.00 to include Adult Substance Use Disorder Residential Treatment Services (A&D 61).

Amendment 3 - Reinstatement of Contract. Extend the term to December 31, 2025.

Amendment 4 - adds funds in the amount of \$141,843.98 for Detox A&D 66, which equals a total of \$808,375.92.

Desired BOC Session Date: 10/29/2025

Contract should be in DocuSign by: 10/8/2025

Agenda Planning Date: 10/16/2025

Printed packets due in Finance: 10/14/2025

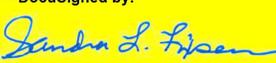
Management Update: 10/14/2025

BOC upload / Board Session email: 10/15/2025

BOC Session Presenter(s) Carol Heard

Code: Y

REQUIRED APPROVALS

DocuSigned by:

 C5F72231E6F54E3... 10/10/2025
 Finance - Contracts Date

DocuSigned by:

 321AE7275637456... 10/16/2025
 Contract Specialist Date

Signed by:

 60C98A6F708240B... 10/13/2025
 Legal Counsel Date

DocuSigned by:

 DC16351248DF4EC... 10/16/2025
 Chief Administrative Officer Date



**AMENDMENT 4 to HE-5713-24
the CONTRACT FOR SERVICES
between**

MARION COUNTY and BRIDGEWAY COMMUNITY HEALTH

This is Amendment 4 to the Contract for Services (as amended from time to time, the “Contract”), dated January 01, 2024 between Marion County, a political subdivision of the State of Oregon, hereinafter called County, and Bridgeway Community Health, hereafter called Contractor.

The Contract is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by ~~striketrough~~):

2. CONSIDERATION

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$808,375.92. ~~\$666,531.94.~~

**EXHIBIT A
STATEMENT OF WORK**

2. COMPENSATION

The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is \$808,375.92. ~~\$666,531.94.~~

A. METHOD OF PAYMENT FOR SERVICES: County shall pay Contractor the approved Plan of Care monthly Service Payment rate, but not in excess of ~~\$641,531.94~~ total approved compensation. for completing all Services and delivering all Goods required under this Contract.

B. BASIS OF PAYMENT FOR SERVICES.

County shall pay as follows:

Service Element 66: Contractor will submit to County billing for services funded by the A&D 66 and A&D 61 monthly. County will submit reimbursement to Contractor upon approval of invoices.

- i. Service Element 66 – Detox
 - a. \$141,843.98 January 1 – June 30, 2024
 - b. \$283,687.96 July 1, 2024 – June 30, 2025
 - c. \$141,843.98 through December 31, 2025
- ii. Service Element 66 – Outpatient
 - a. \$72,000.00 January 1 – June 30, 2024
 - b. \$144,000.00 July 1, 2024 – June 30, 2025
- iii. Service Element 61
 - a. \$25,000 through June 30, 2025

Except as expressly amended above, all other terms and conditions of the original Contract and any previously executed amendments are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

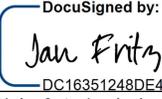
Chair _____ Date _____

Commissioner _____ Date _____

Commissioner _____ Date _____

Authorized Signature:  DocuSigned by: Ryan Matthews
7D28A787656F458
10/10/2025

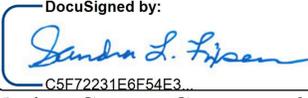
Department Director or designee _____ Date _____

Authorized Signature:  DocuSigned by: Jan Fritz
DC16351248DE4EC...
10/16/2025

Chief Administrative Officer _____ Date _____

Reviewed by Signature:  Signed by: Scott Norris
60C98A6F708240B...
10/13/2025

Marion County Legal Counsel _____ Date _____

Reviewed by Signature:  DocuSigned by: Sandra L. Fipson
C5F72231E6F54E3...
10/10/2025

Marion County Contracts & Procurement _____ Date _____

BRIDGEWAY COMMUNITY HEALTH SIGNATURE

Authorized Signature: _____ Date _____

Title: _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 11/5/25

Department: Health & Human Services

Title: Amendment 15 to OHA Mental Health IGA

Management Update/Work Session Date: 9/23/25 Audio/Visual aids []

Time Required: 10 min Contact: Kristina Ballow Phone: 503-588-5409

Requested Action: Seeking Approval of Amendment 15 to the IGA # PO-44300-00026019 with Oregon Health Authority.

Issue, Description & Background: #PO-44300-00026019: 2024-2025 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services. Amendment 15 -Add funds of \$7,428,920.69 and extend expiration date to 12/31/25 [6/31/25].

Financial Impacts: Total contract amount \$32,075,591.08

Impacts to Department & External Agencies: Health and Human Services anticipates no financial impact to other departments.

List of attachments: Amendment 1-15, Original

Presenter: Ryan Matthews

Department Head Signature: Ryan Matthews (DocuSigned by: 7D28A787656F458...)

Contract Review Sheet

Intergovernmental Agreement

HE-5997-24 - Amd 15

Title: Mental Health IGA# PO-44300-00026019

Contractor's Name: Oregon Health Authority

Department: Health and Human Services

Contact: Kristina Ballow

Analyst: Chalyce MacDonald

Phone #: (503) 588-5409

Term - Date From: January 1, 2024

Expires: December 31, 2025

Original Contract Amount: \$ 20,231,766.16

Previous Amendments Amount: \$ 4,414,904.23

Current Amendment: \$ 7,428,920.69

New Contract Total: \$ 32,075,591.08

Amd% 59%

Incoming Funds

- Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: ORS190 Intergovernmental Agreement

Description of Services or Grant Award

#PO-44300-00026019: 2024-2025 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services.

Previous amendments have adjusted program funding.

Amendment 15 -Add funds of \$7,428,920.69 (\$749,561.32 for A0216 + \$6,679,359.37 for M1182) and extend expiration date to 12/31/25 [6/31/25].

Desired BOC Session Date: 11/5/2025

Contract should be in DocuSign by: 10/15/2025

Agenda Planning Date: 10/23/2025

Printed packets due in Finance: 10/21/2025

Management Update: 9/23/2025

BOC upload / Board Session email: 10/22/2025

BOC Session Presenter(s) Ryan Matthews

Code: Y

REQUIRED APPROVALS

DocuSigned by:

2A951B5756514CF...
10/16/2025

Finance - Contracts

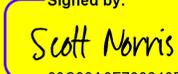
Date

Signed by:

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10/21/2025

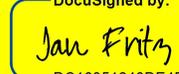
Contract Specialist

Date

Signed by:

60C98A6F708240B...
10/17/2025

Legal Counsel

Date

DocuSigned by:

DC16351248DE4EC...
10/20/2025

Chief Administrative Officer

Date

**REQUEST FOR AUTHORIZATION OF CONTRACT
HE-5997-24**

Date: October 16, 2025
To: Chief Administrative Officer
Cc: Contract File
From: Kristina Ballow

I. Subject: Reinstatement

Marion County Health and Human Services is requesting approval to reinstate a contract as described in Section 10-0570 of the Marion County Public Contracting Rules. The contract is with Oregon Health Authority for Mental Health IGA# PO-44300-00026019 with a value of \$32,075,591.08 and upon approval will be reinstated and in full force and effect, as if it had not expired with a new expiration date of 12/31/2025.

A. BACKGROUND

These are incoming funds provided through an Intergovernmental Agreement (IGA #44300-00026019) from the Oregon Health Authority (OHA) to Marion County Health and Human Services (MCHHS). The funds support the financing of community mental health services, addiction treatment, recovery and prevention programs, and problem gambling services. The agreement became effective on January 1, 2024, and has been amended 14 times previously for adjustments to program funding.

B. As required by MCPCR, a concise written statement must be submitted meeting the requirements of 10-0570(1).

Marion County Health and Human Services (MCHHS) received Amendment 15 from the Oregon Health Authority (OHA) on July 14, 2025, after the June 30, 2025 expiration date. Upon receipt, MCHHS promptly submitted the necessary documents for compliance review. However, discussions between OHA and County leadership led to several revisions and delayed processing until now.

Signatures on following page

Submitted by:

Signed by:

A38C58F8078F42B

Kristina Ballow
Health and Human Services

Reviewed by:

DocuSigned by:

2A951B5756514CF

Contracts & Procurement

Acknowledged by:

DocuSigned by:

7D28A787656E458

Department Head

Acknowledged by:

DocuSigned by:

DC16351248DE4EC

Jan Fritz, CAO



]/

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications, and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@odhsoha.oregon.gov or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

AGREEMENT # PO-44300-00026019

**FIFTEENTH AMENDMENT TO
OREGON HEALTH AUTHORITY
2024-2025 INTERGOVERNMENTAL AGREEMENT
FOR THE FINANCING OF COMMUNITY MENTAL HEALTH, ADDICTION TREATMENT,
RECOVERY, & PREVENTION, AND PROBLEM GAMBLING SERVICES**

This **Fifteenth** Amendment (this “**Amendment**”) to Oregon Health Authority 2024-2025 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services effective as of January 1, 2024 (as amended, the “**Agreement**”), is entered into, as of July, 1, 2025 (the “**Effective Date**”) by and between the State of Oregon acting by and through its Oregon Health Authority (“**OHA**”) and **Marion County (“CMHP” or “County”)**.

RECITALS

- A.** OHA and County finding it necessary to extend the time for entering into a new Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention (the “**New CFAA**”) to allow County time to develop its Local Plan and Budget guided by the priorities in the New CFAA.
- B.** The New CFAA sets priorities related to the funds OHA will provide to County for behavioral health services. During the Extension Period (as hereinafter defined), County shall develop its Local Plan and Budget in accordance with those priorities and this Amendment.
- C.** OHA and County also desire to modify the Financial Assistance Award set forth in Exhibit C of the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1.** Section 1 “**Effective Date and Duration**” The date “**June 30, 2025**” is hereby deleted and replaced with the date “**December 31, 2025**”. The following sentence is hereby added to the end of Section 1: “The time between June 30, 2025, and December 31, 2025, is referred to herein as the “**Extension Period**”.

2. Exhibit A “Definitions” Section 18. ~~only to read as follows: language to be deleted or replaced is struck through~~; new language is **underlined and bold**.
“Local Plan” or “Plan” means a comprehensive plan, adopted by the Local Mental Health Authority and approved by OHA, that describes the delivery of Services and the methods by which the Services will be provided to the community. The Local Plan must be directed by and responsive to the Behavioral Health needs of the community and consistent with the requirements identified in ORS 430.630. **The Plan shall be consistent with content and format to that of OHA’s Local Plan guidelines located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>**.

3. **Exhibit B-1 “Service Descriptions” Section m. “AID AND ASSIST SERVICES, MHS04”**, subsection (4) “Special Reporting Requirements” the first paragraph is hereby deleted in its entirety and replaced with the following:

“County shall prepare and electronically submit monthly MHS 04 reports using forms and procedures prescribed by OHA located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx> no later than 15 calendar days following the end of each subject month for which Financial Assistance is awarded through this Agreement.”

4. **For Services provided on and after the Effective Date of this Amendment, Exhibit C, “Financial Pages”** and service information in the Financial Assistance Award is hereby amended as described in **Attachment 1** attached hereto and incorporated herein by this reference. Attachment 1 must be read in conjunction with the portion of Exhibit C of the Agreement that describes the effect of an amendment of the financial and service information.

5. **For Services provided on and after the Effective Date of this Amendment**, the following new section is added to **Exhibit E, “Special Terms and Conditions”**:

“**12. Local Plan and Budget.** In accordance with ORS 430.630(9) and ORS 430.640(1)(f), County shall prepare a Local Plan and Budget using forms and procedures prescribed by OHA. During the Extension Period County shall develop its Local Plan and Budget and submit a draft of the same to OHA electronically for review to BHD.Contracts@oha.oregon.gov no later than October 1, 2025. The Local Plan and Budget must be finalized for approval by OHA no later than December 31, 2025, to execute the New CFAA.”

6. **For Services provided on and after the Effective Date of this Amendment, Exhibit G, “Standard Terms and Conditions”** Section 8. c. ~~only to read as follows: language to be deleted or replaced is struck through~~; new language is **underlined and bold**.
 - c. OHA and County agree that this Amendment extends the Agreement to ~~September 1, 2025~~ **March 1, 2026**, but only for the purpose of amendments to adjust the allocated budget (Exhibit C, “Financial Assistance Award”) for Services performed, or not performed, by County during the 2024 calendar year and first quarter of the 2025-2027 biennium, prior to ~~July 1, 2025~~ **January 1, 2026**. If there is more than one amendment modifying the Financial Assistance Award, the amendment shall be applied to the Financial Assistance Award in the order in which the amendments are executed by County and OHA. In no event is County authorized to provide any Services under this Agreement, and County is not required to provide any Services under the Agreement after ~~June 30, 2025~~ **December 31, 2025**.

7. Capitalized words and phrases used but not defined herein have the meanings ascribed to them in the Agreement.
8. County represents and warrants to OHA that the representations and warranties of County set forth in the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
9. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
10. This Amendment may be executed in any number of counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed constitutes an original.

**SIGNATURE PAGE FOR
MENTAL HEALTH IGA# PO-44300-00026019 - HE-5997-24
between
MARION COUNTY and OREGON HEALTH AUTHORITY**

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

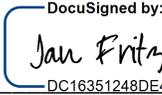
Chair	Date
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Commissioner	Date
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Commissioner	Date
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Authorized Signature:	 <small>7D28A787656F458...</small>	10/16/2025
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Department Director or designee	Date
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Authorized Signature:	 <small>DC16351248DE4EC...</small>	10/20/2025
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Chief Administrative Officer	Date
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Reviewed by Signature:	 <small>60C98A6F708240B...</small>	10/17/2025
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Marion County Legal Counsel	Date
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Reviewed by Signature:	 <small>2A951B5756514CF...</small>	10/16/2025
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Marion County Contracts & Procurement	Date
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ATTACHMENT 1

EXHIBIT C Financial Pages

MODIFICATION INPUT REVIEW REPORT

MOD#: A0216

CONTRACT#: 026019

CONTRACTOR: MARION COUNTY

INPUT CHECKED BY: _____ DATE CHECKED: _____

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2025-2026													
63		420	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$13,016.71	\$0.00	A	1	Y		
63		421	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$90,550.99	\$0.00	A	1	Y		
63		450	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$9,621.04	\$0.00	A	1	Y		
TOTAL FOR SE# 63							\$113,188.74	\$0.00					
66		420	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$6,160.46	\$0.00	A	1	Y		1
66		421	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$12,062.09	\$0.00	A	1	Y		1
66		450	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$284,521.37	\$0.00	A	1	Y		1
66		520	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$321,774.91	\$0.00	A	1	Y		1
66		807	MARION CO.	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$11,853.75	\$0.00	A	1	Y		1
TOTAL FOR SE# 66							\$636,372.58	\$0.00					
TOTAL FOR 2025-2026							\$749,561.32	\$0.00					
TOTAL FOR A0216 026019							\$749,561.32	\$0.00					

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: MARION COUNTY
DATE: 06/29/2025

Contract#: 026019
REF#: 017

REASON FOR FAAA (for information only):

Payments provided through this Financial Assistance Agreement (FAA) are subject to the 2025-2027 Legislative Approved Budget (LAB) for Oregon Health Authority for the first 6-month period starting July 1, 2025 through December 31, 2025, as allocated for the 2025-2027 biennia, at the level proposed for the (continuing service level or "CSL"). This FAA may either be amended to further extend this Agreement or enter into a new agreement for the remaining term of the 2025-2027 biennium. Notwithstanding, this FAA may require modification by written amendment to reflect actual changes in funding amounts, or by administrative amendment (memo) provided that such administrative amendment is only used to change fund source coding and not the amount of funding.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

A0216 1 These funds must result in the delivery of A&D 66 Services to a minimum of 804 unduplicated individuals receiving outpatient Services and enrolled in the MOTS system on or after January 1, 2024. Up to 20% of 804 can be provided as Prevention, Education, and Outreach to non-enrolled individuals. Cases without evidence of treatment engagement in the clinical record do not count toward the service delivery requirement, except as listed above for Prevention, Education, and Outreach. Report of Prevention, Education, and Outreach must be submitted annually on the form located at <https://www.oregon.gov/OHA/HSD/AMH/Pages/federal-reporting.aspx> Under delivery of Services subject to this financial assistance may result in recovery of funds at the rate of \$1200 per individual.

MODIFICATION INPUT REVIEW REPORT

MOD#: M1182

CONTRACT#: 026019

CONTRACTOR: MARION COUNTY

INPUT CHECKED BY: _____ DATE CHECKED: _____

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2025-2026													
		BASE	SYSTEM MANAGEMENT AN										
1	804	MHS01		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$187,792.94	\$0.00	A	1	Y		
		BCIVLM	SYS MGT CO-CHINOOK										
1	804	MHS01		7/1/2025 - 12/31/2025	0 /NA	\$4,065.62	\$24,393.72	\$0.00	A	1	Y		1
		MHCI14	SYS MGT CO-CADENZA										
1	804	MHS01		7/1/2025 - 12/31/2025	0 /NA	\$5,693.69	\$34,162.14	\$0.00	A	1	Y		2
TOTAL FOR SE# 1							<u>\$246,348.80</u>	<u>\$0.00</u>					
		BASE	AID & ASSIST PROJECT										
4	804	AAP		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$509,341.23	\$0.00	A	1	Y		
		BASE	AID & ASSIST PROJECT										
4	804	AAP		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$92,738.82	\$0.00	C	1	Y		3
		NAVPIL	AID & ASSIST PROJECT										
4	804	AAP		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$250,000.00	\$0.00	C	1	N		8
		BASE	AID & ASSIST PROJECT										
4	806	AAP		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$149,409.85	\$0.00	A	1	Y		
TOTAL FOR SE# 4							<u>\$1,001,489.90</u>	<u>\$0.00</u>					
		BASE	ASSERTIVE COMMUNITY										
5	804	MHACT		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$38,322.69	\$0.00	A	1	Y		
TOTAL FOR SE# 5							<u>\$38,322.69</u>	<u>\$0.00</u>					
		BASE	NI JAIL DIVERSION										
9	406	NIJAIL		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$154,793.15	\$0.00	A	1	Y		
		BASE	NI JAIL DIVERSION										
9	804	NIJAIL		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$15,242.95	\$0.00	A	1	Y		
		BASE	JAIL DIVERSION										
9	806	JAIL		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$165,782.42	\$0.00	A	1	Y		
TOTAL FOR SE# 9							<u>\$335,818.52</u>	<u>\$0.00</u>					
		BASE	NI MH PROMOTION AND										
10	411	NIMHPP		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$58,716.86	\$0.00	A	1	Y		
		BASE	NI MH PROMOTION AND										
10	804	NIMHPP		7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$5,782.14	\$0.00	A	1	Y		

MODIFICATION INPUT REVIEW REPORT

MOD#: M1182

CONTRACT#: 026019

CONTRACTOR: MARION COUNTY

INPUT CHECKED BY: _____ DATE CHECKED: _____

SE#	FUND	PROJ	CPMS	PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2025-2026														
TOTAL FOR SE# 10								<u>\$64,499.00</u>	<u>\$0.00</u>					
12	804	BASE		RENTAL ASSISTANCE PR	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$236,227.78	\$0.00	A	1	Y		
12	804	BASE		RENTAL ASSISTANCE PR	7/1/2025 - 12/31/2025	45 /SLT	\$0.00	\$240,480.25	\$0.00	C	1	Y		4
TOTAL FOR SE# 12								<u>\$476,708.03</u>	<u>\$0.00</u>					
17	804	BASE		INVOICE SERVICES	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$234,214.47	\$0.00	C	1	Y		5
TOTAL FOR SE# 17								<u>\$234,214.47</u>	<u>\$0.00</u>					
20	301	CMHS		MH BLOCK GRANT	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$191,738.66	\$0.00	A	1	Y		
20	804	BASE		NON-RESIDENTIAL MENT	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$818,628.32	\$0.00	A	1	Y		
TOTAL FOR SE# 20								<u>\$1,010,366.98</u>	<u>\$0.00</u>					
24	401	BASE		ACUTE AND INTERMEDIA	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$19,009.00	\$0.00	A	1	Y		
24	804	BASE		ACUTE AND INTERMEDIA	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$404,520.00	\$0.00	A	1	Y		
24	806	BASE		ACUTE AND INTERMEDIA	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$89,223.50	\$0.00	A	1	Y		
TOTAL FOR SE# 24								<u>\$512,752.50</u>	<u>\$0.00</u>					
25	406	BASE		MOBILE CRISIS INTER	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$300,338.48	\$0.00	A	1	Y		
25	804	BASE		MOBILE CRISIS INTER	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$783,411.52	\$0.00	A	1	Y		
25	806	BASE		MOBILE CRISIS INTER	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$679,413.67	\$0.00	A	1	Y		
TOTAL FOR SE# 25								<u>\$1,763,163.67</u>	<u>\$0.00</u>					
26	804	BASE		EARLY ASSESSMENT AND	7/1/2025 - 12/31/2025	0 /NA	\$0.00	\$10,026.67	\$0.00	A	1	Y		

MODIFICATION INPUT REVIEW REPORT

MOD#: M1182

CONTRACT#: 026019

CONTRACTOR: MARION COUNTY

INPUT CHECKED BY: _____

DATE CHECKED: _____

SE#	FUND	PROJ	CPMS	PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2025-2026														
TOTAL FOR SE# 26								<u>\$10,026.67</u>	<u>\$0.00</u>					
30	804	BPSRBM		PSRB DESIG CLIENT	7/1/2025-12/31/2025	24 /SLT	\$465.27	\$113,416.24	\$0.00	A	1	Y		
30	804	BPSRBM		PSRB SH RNTSUB-STEPP	7/1/2025-12/31/2025	5 /SLT	\$407.20	\$12,216.00	\$0.00	A	1	Y		6
30	804	BPSRBM		PSRB SH-STEPPING STO	7/1/2025-12/31/2025	5 /SLT	\$2,241.28	\$67,238.40	\$0.00	A	1	Y		7
30	804	JPSRBM		JPSRB DESIG CLIENT	7/1/2025-12/31/2025	1 /SLT	\$465.27	\$2,791.62	\$0.00	A	1	Y		
TOTAL FOR SE# 30								<u>\$195,662.26</u>	<u>\$0.00</u>					
35	804	BASE		GERO SPECIALISTS	7/1/2025-12/31/2025	0 /NA	\$0.00	\$79,357.70	\$0.00	A 35A	1	Y		
TOTAL FOR SE# 35								<u>\$79,357.70</u>	<u>\$0.00</u>					
38	406	BASE		SUPPORTED EMPLOYMENT	7/1/2025-12/31/2025	0 /NA	\$0.00	\$43,091.79	\$0.00	A	1	Y		
38	804	BASE		SUPPORTED EMPLOYMENT	7/1/2025-12/31/2025	0 /NA	\$0.00	\$1,810.00	\$0.00	A	1	Y		
TOTAL FOR SE# 38								<u>\$44,901.79</u>	<u>\$0.00</u>					
725	406	BASE		CRISIS AND ACUTE TRA	7/1/2025-12/31/2025	0 /NA	\$0.00	\$10,325.69	\$0.00	A 25A	1	Y		
725	804	BASE		CRISIS AND ACUTE TRA	7/1/2025-12/31/2025	0 /NA	\$0.00	\$172,337.19	\$0.00	A 25A	1	Y		
725	815	BASE		CRISIS AND ACUTE TRA	7/1/2025-12/31/2025	0 /NA	\$0.00	\$285,675.63	\$0.00	A 25A	1	Y		
TOTAL FOR SE# 725								<u>\$468,338.51</u>	<u>\$0.00</u>					
726	804	BASE		EARLY ASSESSMENT AND	7/1/2025-12/31/2025	0 /NA	\$0.00	\$197,387.88	\$0.00	A 26A	1	Y		
TOTAL FOR SE# 726								<u>\$197,387.88</u>	<u>\$0.00</u>					
TOTAL FOR 2025-2026								<u>\$6,679,359.37</u>	<u>\$0.00</u>					
TOTAL FOR M1182 026019								<u>\$6,679,359.37</u>	<u>\$0.00</u>					

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: MARION COUNTY
DATE: 09/10/2025

Contract#: 026019
REF#: 020

REASON FOR FAAA (for information only):

Payments provided through this Financial Assistance Agreement (FAA) are subject to the 2025-2027 Legislative Approved Budget (LAB) for Oregon Health Authority for the first 6-month period starting July 1, 2025 through December 31, 2025, as allocated for the 2025-2027 biennia, at the level proposed for the (continuing service level or "CSL"). This FAA may either be amended to further extend this Agreement or enter into a new agreement for the remaining term of the 2025-2027 biennium. Notwithstanding, this FAA may require modification by written amendment to reflect actual changes in funding amounts, or by administrative amendment (memo) provided that such administrative amendment is only used to change fund source coding and not the amount of funding.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

M1182 1A) The financial assistance subject to this special condition is awarded for system management and coordination of Services in the Mental Health Services Program Area. If County terminates its obligation to include this Program Area under this Agreement, OHA shall have no obligation, after the termination, to pay or disburse to County financial assistance subject to this special condition. B) These funds are for MHS 1 at Chinook House RTH.

M1182 2A) The financial assistance subject to this special condition is awarded for system management and coordination of Services in the Mental Health Services Program Area. If County terminates its obligation to include this Program Area under this Agreement, OHA shall have no obligation, after the termination, to pay or disburse to County financial assistance subject to this special condition. B) These funds are for MHS 1 at Cadenza RTH-YAT.

M1182 3A) These funds are for MHS 04 Aid and Assist Client Services. B) The financial assistance subject to this special condition will be disbursed to County in one lump sum within 30 calendar days after the date this Agreement becomes executed.

M1182 4) These funds are for MHS 12 Services. B) The funds subject to this special condition will be disbursed to County upon receipt of quarterly invoices from 1/1/2024-12/31/2025.

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: MARION COUNTY
DATE: 09/10/2025

Contract#: 026019
REF#: 020

- M1182 5 A) These funds are for MHS 17, which encompasses Invoice Services found in service elements 26 ,27, 28, 30, 34 and 36 from 01/01/2024 to12/31/2025 with Part C. B) For Services delivered to individuals, financial assistance awarded to County shall be disbursed to County and expended by County in accordance with and subject to the residential rate on the date of service delivery based upon the rate schedule found at www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx and incorporated into this Agreement by reference that is effective as of the effective date of this Agreement unless a new rate schedule is subsequently incorporated by amendment. Any expenditure by County in excess of the authorized rates as set forth www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx may be deemed unallowable and subject to recovery by OHA in accordance with the terms of this Agreement.
- M1182 6 These funds are for MHS 30 at Stepping Stone for rent subsidy.
- M1182 7 These funds are for MHS 30 for PSRB Supported Housing Services at Stepping Stone.
- M1182 8 A) These funds are for MHS 04 Services for the Community Navigator Pilot. B) The financial assistance subject to this special condition will be disbursed to County in one lump sum within 30 calendar days after the date this Agreement becomes executed.



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting Date: November 5, 2025

Department: Human Resources

Title: Recommendation to approve attached Personnel Findings and Recommendation Reports.

Management Update/Work Session Date: Oct 23, 2025 Audio/Visual aids []

Time Required: 5 minutes Contact: hrcompclass@co.marion.or.us Phone: x7777

Requested Action: Recommendation: Uphold the existing pay grades for class codes #089 Mental Health and Evaluation Spec; #108 Care Coordinator; #114 Policy Analyst; #141 Case Aide; #466, Groundskeeper; and #614 Policy Analyst, Senior. Adjust the pay grades upward for class codes #055, Training and Development Coordinator; #064, Human Resources Manager; #070, Peer Support Specialist; #529, Addiction Treatment Associate 1; #530, Addiction Treatment Associate 2; #536, Addiction Recovery Mentor. Additionally, update all classifications.

Issue, Description & Background: As part of the strategy to maintain Marion County compensation and classification programs, human resources periodically reviews classification specifications and pay ranges. The classification review ensures classification specifications reflect current industry language, standards and county practices, and positions are properly classified and placed in the appropriate pay range. In determining if a classification is appropriately compensated HR conducts a market review in accordance with county personnel rules and HR practices. This review identifies which pay grade will bring the classification closest to the mean (0%) of market comparators within the county's current pay structure; in addition to these market findings, funding and internal equity are also considered when establishing the pay grade.

Financial Impacts:

Impacts to Department & External Agencies: The recommendations impact five departments — the Board of Commissioners Office, Business Services, Health and Human Services, Human Resources, and the Sheriff's Office — affecting a total of 79 positions.

List of Attachments: Personnel Findings and Recommendations Reports (2)

Presenter: Salvador Llerenas

Department Head Signature: [Handwritten Signature]



MARION COUNTY HUMAN RESOURCES

Personnel Findings and Recommendation Report

Date: Oct 24, 2025
To: Jan Fritz, Personnel Officer
From: Salvador Llerenas, Chief Human Resources Officer
Re: Recommendation to update six classifications and uphold pay grades.

Background Information:

As part of the strategy to maintain Marion County compensation and classification programs, human resources periodically reviews classification specifications and pay ranges. The classification review ensures classification specifications reflect current industry language, standards and county practices, and positions are properly classified and placed in the appropriate pay range. In determining if a classification is appropriately compensated HR conducts a market review in accordance with county personnel rules and HR practices. This review identifies which pay grade will bring the classification closest to the mean (0%) of market comparators within the county's current pay structure; in addition to these market findings, funding and internal equity are also considered when establishing the pay grade.

Discussion:

Functions performed by classification:

#089 Mental Health and Evaluation Specialist

GENERAL STATEMENT OF DUTIES To provide supervision recommendations to Parole & Probation Deputies on clinical issues related to mental health, psychopathy, and other related areas. Conduct mental health evaluations. Assess adult offenders under the supervision of the Marion County Sheriff's Office. Provide consultations on issues related to diagnosis, treatment, and assessment; facilitate clinical discussions in difficult cases with professional staff and supervisor. Provide trainings on evaluation and assessment tools, psychopathy and levels of dangerousness of clients to Sheriff's Office staff; coordinate supervision and training meetings with other clinical professionals and the Sheriff's Office to ensure evidence-based practices are being adhered to. Prepare written assessments compiled from clinical interviews, probation file reviews, and criminal history and police reports reviews, analysis of written assessment tools; use tests and assessment tools to determine appropriateness of client referrals.

#108 Care Coordinator

GENERAL STATEMENT OF DUTIES Coordinate care and case management, facilitate team meetings, and develop wraparound care plans incorporating professional and natural supports to meet the intensive, community-based treatment needs of individuals and their families. Provide direct services by conducting strengths and needs assessments, making referrals to appropriate services, supporting system of care development, and assisting with service coordination across partner agencies.

#114 Policy Analyst

GENERAL STATEMENT OF DUTIES Performs complex policy and administrative support for the county commissioners, chief administrative officer, and executive level staff of a limited scope; conducts research and policy analysis; writes issue briefs, position papers, grant applications and other official documents and correspondence; provides administrative support to the commissioners, chief administrative officer, committees, or special task forces requiring in-depth research and policy analysis; manages special projects, issues, and initiatives.

#141 Case Aide

GENERAL STATEMENT OF DUTIES This classification serves to assist deputies with a variety of duties related to the supervision and management of justice involved clients. Conducts interviews, prepares reports, maintains chronological case histories, and provides general operations support.



Personnel Findings and Recommendation Report

#466, Groundskeeper

GENERAL STATEMENT OF DUTIES This classification is responsible for maintaining the grounds and the exterior of county buildings; regularly serves as a crew leader overseeing community service workers on a variety of landscaping, maintenance and repair projects; assists with interior maintenance and custodial work.

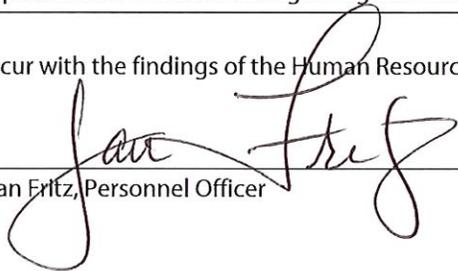
#614 Policy Analyst, Senior

GENERAL STATEMENT OF DUTIES The Policy Analyst Senior functions as a policy analyst to the Board of Commissioners and the Chief Administrative Officer. Identifies and performs complex analysis providing policy options that advance the county's goals and objectives. Functions as a member of the Chief Administrative Officer's management team. Conducts policy analysis, provides coordination of activities and projects that have a countywide scope and significant community involvement; may plan, organize and direct special task forces and committees involving county departments and members of the community. Performs research, and manages major projects and initiatives that are highly visible and of significant interest to the county usually requiring input and coordination among several disciplines, elected officials, departments, agencies, and jurisdictions.

After review, HR found these classifications to be within market.

- Recommendation:**
1. In unit 06, MCEA, uphold the pay grade of class code #089 Mental Health and Evaluation Spec. at 06.C26.
 2. In unit 06, MCEA, uphold the pay grade of class code #108 Care Coordinator at 06.C53.
 3. In unit 13, unrepresented, uphold the pay grade of class code #114 Policy Analyst at 13.G27.
 4. In unit 06, MCEA, uphold the pay grade of class code #141 Case Aide at 06.C48.
 5. In unit 06, MCEA, uphold the pay grade of class code #466, Groundskeeper at 06.C46.
 6. In unit 13, unrepresented, uphold the pay grade of class code #614 Policy Analyst, Senior at 13.G30.
 7. Approve recommendation beginning the first pay period following approval by the Board.

I concur with the findings of the Human Resources Department and approve the actions detailed above.


 Jan Fritz, Personnel Officer

10/27/2025
 Date



Personnel Findings and Recommendation Report

Date: Oct 24, 2025
To: Jan Fritz, Personnel Officer
From: Salvador Llerenas, Chief Human Resources Officer
Re: Recommendation to update six classifications and adjust pay grades upward.

Background Information:

As part of the strategy to maintain Marion County compensation and classification programs, human resources periodically reviews classification specifications and pay ranges. The classification review ensures classification specifications reflect current industry language, standards and county practices, and positions are properly classified and placed in the appropriate pay range.

In determining if a classification is appropriately compensated HR conducts a market review in accordance with county personnel rules and HR practices. This review identifies which pay grade will bring the classification closest to the mean (0%) of market comparators within the county's current pay structure; in addition to these market findings, funding and internal equity are also considered when establishing the pay grade.

Discussion:

Functions performed by classification:

#055, Training and Development Coordinator

GENERAL STATEMENT OF DUTIES Plan, coordinate, design and deliver countywide training and employee development activities; manage the county learning management system (LMS); ensure that topics are consistent with county goals.

#064, Human Resources Manager

Responsible for planning, organizing and managing comprehensive countywide HR functions. This includes the development and implementation of a HR strategic plan aligning various responsibilities such as affirmative action, classification maintenance and compensation, employee and labor relations; Human Resources Information Systems (HRIS), training and development, employee engagement recruitment retention and compliance reporting. Additionally, the Human Resources Manager is responsible for the formulation and compliance of county personnel policies, rules, and regulations. Develops and implements program goals, objectives, policies, and priorities; provides highly complex staff assistance to the Chief Human Resources Officer.

#070, Peer Support Specialist

GENERAL STATEMENT OF DUTIES Provide support, encouragement, and assistance to individuals in care. Positions in this classification promote activities fostering recovery and empowerment by sharing their personal experiences when appropriate and modeling self-help and wellness activities. Act as an advocate who facilitates and connects individuals to services and activities. As a treatment team member, the incumbent will provide expertise, experience, and consultation to encourage a culture where individual points of view and preferences are recognized, respected, and integrated into treatment.

#529, Addiction Treatment Associate 1

GENERAL STATEMENT OF DUTIES Perform counseling and case management functions for persons served and their families. Prepare and maintain service records. Primary responsibility of this class is addiction counseling and case management.

#530, Addiction Treatment Associate 2

GENERAL STATEMENT OF DUTIES Primary responsibility of this class is counseling and case management.



MARION COUNTY HUMAN RESOURCES

Personnel Findings and Recommendation Report

May organize and facilitate care coordination teams. Under clinical supervision: Provide counseling and case management to persons served and their families. Prepare and maintain service records. May develop and implement specific services in the community. May be required to facilitate or coordinate 24/7 on call services.

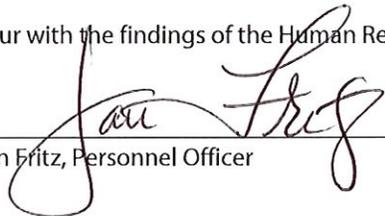
#536, Addiction Recovery Mentor

GENERAL STATEMENT OF DUTIES Assist and support persons served in county addiction treatment programs in accessing community health and social services; refer persons served to appropriate resources; advocate to obtain required services as necessary; provide information and education on wellness-related issues.

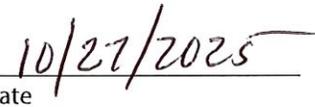
After review, HR found these classifications to be below market.

- Recommendation:**
1. In unit 13, unrepresented, adjust pay grade upward, class code #055, Training and Dev. Coordinator; from 13.G27 to 13.G28.
 2. In unit 02, unrepresented, adjust pay grade upward, class code #064, Human Resources Manager; from 02.A31 to 02.A32.
 3. In unit 06, MCEA, adjust pay grade upward, class code #070, Peer Support Specialist; from 06.C15 to 06.C17.
 4. In unit 06, MCEA, adjust pay grade upward, class code #529, Addiction Treatment Associate 1; from 06.C49 to 06.C50.
 5. In unit 06, MCEA, adjust pay grade upward, class code #530, Addiction Treatment Associate 2; from 06.C51 to 06.C52.
 6. In unit 06, MCEA, adjust pay grade upward, class code #536, Addiction Recovery Mentor; from 06.C15 to 06.C17.
 7. Approve recommendation beginning the first pay period following approval by the Board.

I concur with the findings of the Human Resources Department and approve the actions detailed above.



 Jan Fritz, Personnel Officer



 Date



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 11/5/2025

Department: Public Works

Title: Ehlen Road NE at Butteville Road NE - ROW Resolution of Need

Management Update/Work Session Date: 10/21/2025 Audio/Visual aids

Time Required: 5 minutes Contact: Shane Ottosen Phone: 503-365-3104

Requested Action: Adopt a Resolution of Need authorizing the use of eminent domain for the acquisition of public road right of way easements for the Ehlen Road NE at Butteville Road NE Roundabout Project.

Issue, Description & Background: Marion County received an ARTS grant and congressionally-directed funds to construct a rural single lane roundabout at the intersection of Ehlen Rd NE and Butteville Rd NE.

Construction of the project will require the acquisition of real property in the form of temporary construction easements and permanent right of way easements to accommodate the corridor improvements. ODOT requires the execution of a Resolution of Condemnation (Resolution of Need) prior to the commencement of right-of-way negotiations. No condemnation proceedings are anticipated at this time.

Financial Impacts: Adoption of the Resolution of Need does not financially impact the project.

Impacts to Department & External Agencies: Adoption of the Resolution of Condemnation does impact any other departments or external agencies.

List of attachments: Resolution of Need with attached right-of-way exhibit

Presenter: Ryan Crowther

Department Head Signature: Brian Nicholas Digitally signed by Brian Nicholas Date: 2025.10.07 11:59:14 -07'00'

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the matter of authorizing acquisition)
and eminent domain of certain real) Department of Public Works
properties for the Ehlen Road NE at)
Butteville Road NE Roundabout project)

RESOLUTION NO. _____

WHEREAS, Marion County is authorized by the provisions of ORS Chapters 203 and 368 to locate, acquire, construct, operate, and maintain county roads as its Board deems necessary; and

WHEREAS, Marion County is authorized by the provisions of ORS Chapters 203 and 368 to acquire by purchase, gift, devise, condemnation, or any other means, such real and personal property interests therein and rights-of-way either inside or outside the limits of the county, as in the judgment of its Board are necessary; and

WHEREAS, for the purpose of providing a county road system to serve local residents and businesses and for the health, safety, benefit, and general welfare of the public, Marion County plans to make necessary improvements to the intersection of Ehlen Road NE at Butteville Road NE to construct a rural single-lane roundabout; now, therefore,

BE IT RESOLVED by the Marion County Board of Commissioners follows:

- (1) The Board declares that it needs to improve the intersection of Ehlen Road NE at Butteville Road NE on real properties and interests therein, more particularly set forth in the attached Exhibit. The real properties and interests set forth in the Exhibit are reasonably necessary to protect the full use and enjoyment by the public and businesses of Ehlen Road NE and Butteville Road NE.
- (2) In order to proceed with the acquisition of the right-of-way for this project, which will be located and constructed in a manner most compatible with the greatest public benefit and the least private injury or damage, the real properties must be acquired without delay.
- (3) The County, its agents, and attorneys are authorized to attempt to reach agreement with the owners and other persons with interest in the real properties and interests therein, shown in the attached Exhibit, as to the compensation to be paid for the appropriation of the properties. In the event that no satisfactory agreement can be reached, the attorneys are authorized to commence Eminent Domain proceedings as prescribed in ORS 35.205 to 35.415 and prosecute to final determination such proceedings as may be necessary to acquire the real properties and interest therein and that upon the filing of such proceeding, possession of the real property and interest therein may be taken immediately.

- (4) Upon the trial of any suit or action instituted to acquire any of the real property or any interest therein, the attorneys acting for and on behalf of the county are authorized to make such stipulation, agreement, or admission as in their judgment may be for the best interest of the county.
- (5) In order to protect the health, safety, and welfare of the public, it is necessary that no undue delay be encountered in obtaining access to possession of the real property and interest therein shown in the attached Exhibit, in order to improve the intersection of Ehlen Road NE at Butteville Road NE; therein, this resolution shall be in force and effect immediately upon its passage by the Board.
- (6) This resolution is adopted by the Marion County Board of Commissioners on this _____ day of _____, 2025, and is entered in the minutes and records of the Board as of this date.

MARION COUNTY BOARD OF COMMISSIONERS

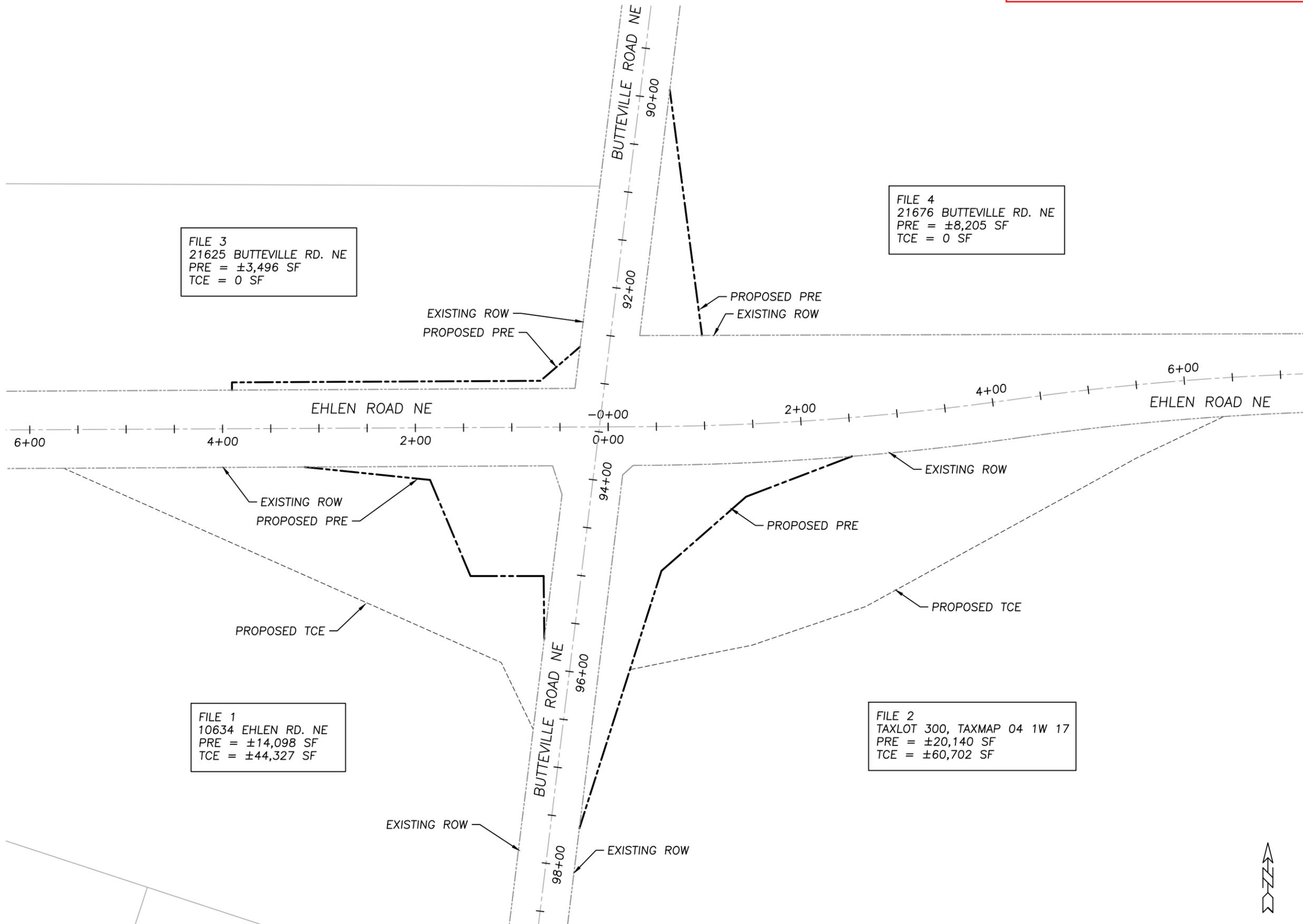
Chair

Commissioner

Commissioner



PRELIMINARY; NOT
FOR CONSTRUCTION



FILE: P:\M\W\00000079\0400CAD\EXHIBITS\2025-07-14_ROW_EXHIBIT\EBR-ROW_EXHIBIT.DWG PLOTTED: 2025/09/23 9:57 AM

MARION COUNTY

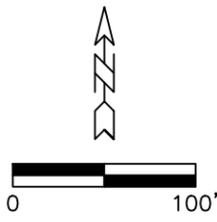
EHLEN RD. NE AT
BUTTEVILLE RD. NE

DEPARTMENT OF PUBLIC WORKS

PROJECT NO.:	106065
ECMS NO.:	5762-24
FED. PROJ. NO.:	C047111
KEY NO.:	22727
SITE NO.:	96-050
HORIZ. DATUM:	OCRS SALEM
VERT. DATUM:	NAVD88, GEOID18
DESIGNED BY:	C. COSTIGAN
DRAWN BY:	D. ILYN

TITLE:
ROW EXHIBIT

SHEET:
ROW 1



Contract Review Sheet

Contract for Services

PW-6336-25

Title: FleetFocus Asset, Inventory, and Maintenance Management Application

Contractor's Name: AssetWorks LLC

Department: Public Works Department

Contact: Janet Wilson

Analyst: Kathleen George

Phone #: (503) 566-4139

Term - Date From: Execution

Expires: 5 years from Effective Date

Original Contract Amount: \$ 516,454.71

Previous Amendments Amount: \$ -

Current Amendment: \$ -

New Contract Total: \$ 516,454.71

Amd% 0%

Outgoing Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 10-0400 Cooperative

Cooperative# COG-2123A

Description of Services or Grant Award

This contract is a Software as a Service agreement for the use of the AssetWorks FleetFocus asset, inventory, and maintenance management application. This will allow for enhanced management of Marion County Fleet assets.

The new system will improve service capabilities and streamline processes by having an interactive scheduling system and efficient and effective inventory management processes, with the capability of integrating directly with Oracle Fusion for purchase order processing and substantially decreasing duplication of work. It will also improve reporting capabilities that will give customers and the Shop time real time information on vehicle status.

Desired BOC Session Date: 11/5/2025

Contract should be in DocuSign by: 10/15/2025

Agenda Planning Date: 10/23/2025

Printed packets due in Finance: 10/21/2025

Management Update: 10/21/2025

BOC upload / Board Session email: 10/22/2025

BOC Session Presenter(s) Dennis Mansfield / Gary Christofferson

Code: Y

REQUIRED APPROVALS

DocuSigned by:

 E4592AF8CAA542C...
 10/20/2025
 Finance - Contracts Date

DocuSigned by:

 47A7913219E34EA
 10/20/2025
 Contract Specialist Date

Signed by:

 60C98A6E708240B
 10/20/2025
 Legal Counsel Date

DocuSigned by:

 DC16351248DF4EC
 10/20/2025
 Chief Administrative Officer Date



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 11/5/2025

Department: Community Services

Title: Department Name Change - Community Services Department

Management Update/Work Session Date: 10/21/25 Audio/Visual aids []

Time Required: 5 Contact: Kelli Weese Phone: 503-589-327

Requested Action: Approval of a Resolution renaming the Community Services Department to the Community and Economic Development Department.

Issue, Description & Background: Over the past several years, the Marion County Community Services Department has shifted its focus from social service programs to community and economic development. Its current name no longer reflects this direction and often causes confusion with unrelated social service agencies. To align with its evolving role, the department is proposed to be renamed the 'Community and Economic Development Department' which better reflects its mission and partnerships. Implementing the name change now will also align with the roll out of the new Enterprise Resource Planning (ERP) system, ensuring consistency across county systems.

Financial Impacts: There is no direct budget impact associated with this name change. Implementation will be completed using existing staff resources to update signage, website content, and official references. Integration of the name change will be incorporated into the new ERP system.

Impacts to Department & External Agencies: The name change will clarify the department's role, helping to reduce confusion with social service agencies. Internally, the updated name will be integrated into the new ERP system to ensure consistency across all county platforms. Externally, partner agencies and the public will benefit from improved clarity regarding the department's role.

List of attachments: Resolution

Presenter: Kelli Weese, Community Services Director

Department Head Signature: Kelli Weese

