

**NOTICE TO CONTRACTORS
INVITATION TO BID
MISCELLANEOUS PAVING SERVICES
PW-1209**

**FOR
CITY OF WEST LINN, OREGON**

Competitive sealed bids for the annual miscellaneous paving services contract for the City of West Linn, Oregon must be physically received by the West Linn City Hall - Engineering Division, 22500 Salamo Road, West Linn, Oregon 97068 until 2:00 pm local time May 15, 2012, after which time they shall be publicly opened. Faxed and e-mailed bids will not be accepted. Bids shall be clearly marked **“Miscellaneous Paving Services Project #PW-1209”**.

The project specifications and proposed contract provisions may be reviewed at no cost through the City of West Linn’s website at <http://westlinnoregon.gov/rfps> or obtained through the City of West Linn Engineering Division located at 22500 Salamo Road, West Linn, Oregon at a cost of \$15.00 per set, plus \$5 additional cost if mailed. If you wish to receive any possible future addendums for this project, please email prich@westlinnoregon.gov with your name, address, telephone number, fax and email address or call 503-722-5501 to be placed on the plan holders list.

Questions may be directed to Jeff Randall, Transportation Operations Supervisor and City Project Manager, at 503-656-6081, ext. 2103.

All bidders must be pre-qualified with the State of Oregon – Oregon Department of Transportation (ODOT). The apparent low bidder will be required to submit to the City the state-approved pre-qualification application and confirmation letter within five business days after the bid opening.

The hourly rate of wage to be paid workers on this project shall not be less than the minimum wage rate as required by ORS 279C.838 and ORS 279C.840.

The City of West Linn reserves the right to reject any and all bids, waive informalities, or to accept any portion thereof which serves the best interests of the City.

Pat Rich
Administrative Assistant
Public Works Department

Publish: Daily Journal of Commerce, Monday, April 16, 2012

SPECIFICATIONS
MISCELLANEOUS PAVING SERVICES

PW-1209

FOR
CITY OF WEST LINN, OREGON

1. SCOPE:

The purpose of this specification is to secure miscellaneous contract paving services for the City of West Linn. The Contractor's services under this Agreement shall consist of the following:

Bidders shall provide lump sum bids for materials, labor, and equipment for prepping (Prepping will consist of removing four inches of ¾" minus and or cold-mix) and paving patches up to 50 square feet and for paving berms up to 50 lineal feet. Bidders shall provide a price per square foot for materials, labor, and equipment for paving patches over 50 square feet (these patches will typically be prepped by the city). Berms over 50 lineal feet shall be bid by the foot. Paving of speed bumps may be required and costs for speed bumps shall be determined as a part of the work order for such project.

Quantities listed are estimates and are subject to change due to weather, volume of work, etc. Estimated quantities may vary by up to 50% without renegotiation of unit price.

2. GENERAL REQUIREMENTS:

- 2.1** Silence of Specification – The apparent silence of this specification as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that all work must comply with the West Linn Public Works Design and Construction Standards. Where the Standards are silent, only best commercial practice is to prevail and that only materials of first quality are to be used.
- 2.2** All prices specified in the bids shall be effective August 1, 2012 through July 31, 2013.
- 2.3** All services will be performed for the City of West Linn within or near the city limits of the City of West Linn.
- 2.4** Miscellaneous contract paving includes utility trench patching, minor street repairs and berms. The successful Contractor shall develop a work order for each task or group of tasks performed. The work order shall outline the scope of work, deliverables, key personnel, fee basis (i.e., task, hourly not to

exceed, or lump sum), time for completion of the work and estimated expenses.

- 2.5** Paving patches up to 50 square feet and berms up to 50 lineal feet will be prepped for patching by the contractor and done at lump sum. Patches within 500 feet of each other will be considered a single patch site for the billing purposes. Patching of berms in conjunction with pavement patches will be billed at the berm per lineal foot price. The contractor will be responsible for material clean up and traffic control at the time of patching. Patches will be paved within 2 weeks of notification, and may not be a full day of work. Patches on major roadways may require patching at time of completion of utility work and will be coordinated between Public Works and the Contractor. Paving information will be faxed to the contractor.
- 2.6** Paving of speed bumps, and patches over 50 square feet will generally be prepped by the City; however, the City may request the Contractor to perform some prep work, on an hourly basis. Paving of speed bumps and patches over 50 square feet will require a minimum 4-person crew to insure productivity.
- 2.7** Paving of large patches, berms, speed bumps and street sections will be scheduled by the Transportation Division. The scope of the work will be coordinated between Contractor and the City.
- 2.8** Asphalt is generally standard duty "C" mix as per City and APWA standards. Some special applications may require a modified mix. Asphalt temperature not to be below 240°F at time of placement. Temperature not to be below 180°F at time of final compaction.
- 2.9** Patches will be paved at a 4" depth, and to be installed in two lifts, unless otherwise directed by the City Project Manager. All vertical faces of repair must be tacked prior to patching. Sealing and sanding to be done following compaction. City reserves the right to test density at its discretion and will pay for testing. If the density fails to meet the City Standards, the contractor will be required to reimburse the City for the testing, reconstruct the defective work and pay for additional testing as needed to meet the density requirements. Roller size for all patching will be a minimum 3 tons static.
- 2.10** All construction debris must be removed from the site and properly disposed of in an approved manner, unless prior arrangements have been made with Project Manager.
- 2.11** Historically, the yearly average of asphalt acquired under this contract has been 300 tons. This may change, depending on weather and construction trends and is provided for information only and is not to be relied upon on the preparation of unit price cost estimates.

- 2.12** No bid for construction shall be received or considered by the City unless the bidder or proposer is registered with the Construction Contractors Board as required by ORS Chapter 701, or licensed by the State Landscape Contractors Board as required by ORS 671.530.
- 2.13** Work done pursuant to the award of this contract shall be governed by all applicable Oregon public contracting laws, including but not limited to ORS 279A.110, ORS 279C.505, ORS 279C.510, ORS 297C.515, ORS 279C.520, ORS 279C.530, and ORS 279C.800-279C.870.
- 2.14** Payment of minimum wage rate as required by ORS 279C.838 and ORS 279C.840. The hourly rate of wage to be paid workers on this project shall not be less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality of the project. This requirement shall apply to all workers employed on the project by the prime contractor, subcontractors, or other persons doing or contracting to do the whole or any part of the work required for the project. The existing prevailing rates of wages as established by the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to ORS 279C.815 and are hereby incorporated into these Specifications by reference. The contractor shall obtain copies of applicable schedules of prevailing wage rates from the Bureau of Labor and Industries, 1400 Southwest Fifth Avenue, Room 514, Portland, Oregon 97201. When a contractor or subcontractor is a party to a statewide collective bargaining agreement in effect with any labor organization, the rate of wages provided for in such agreement shall be considered to be the prevailing rate of wage to be paid to the workers on this project. **Although no work order will exceed \$50,000, the total cost of the work anticipated under this contract could exceed \$50,000. Work performed under this contract shall be considered prevailing wage work as established by the Commissioner of the Bureau of Labor and Industries pursuant to ORS 279C.815. The wage rate tables are available at the BOLI web site:**

<http://www.boli.state.or.us/BOLI/WHD/PWR/index.shtml>

In conformance with State of Oregon regulations, the contractor or its surety and every subcontractor or its surety shall submit a statement in writing to the City in a form prescribed by the State Labor Commissioner certifying under oath the hourly rate of wage paid each classification of workers employed for work on the project, and further certifying that no worker has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in this contract. These statements are to be submitted to the Public Works Transportation Operations Supervisor.

There is no representation on the part of the City that labor can be obtained at the hourly rates required by this contract. It is the responsibility of the contractor to be aware of local labor conditions and perspective changes or adjustments of wage rates. No increase in the contract price shall be allowed

or authorized on account of a payment of wage rates in excess of the prevailing wage rates.

- 2.15 Bids shall be submitted on the form provided by the City. Bid form shall not be altered and only one (1) bid price for each bid item is allowable.
- 2.16 The contract must be signed and included in the bid submission packet. If the contract is not returned signed, the City may reject the bid.
- 2.17 Bids shall be submitted in a sealed envelope, marked on the outside "BID FOR MISCELLANEOUS PAVING SERVICES- PROJECT #PW-1209" to ensure proper identification and must be physically received by the West Linn Engineering Division, 22500 Salamo Road, West Linn, Oregon 97068 at or before 2:00 pm local time May 15, 2012, after which time they shall be publicly opened. The City shall not be responsible for the proper identification and handling of any bid not submitted in the designated manner or format to the required delivery point. The City may refuse to accept or may reject any bid or proposal not properly sealed or marked. Faxed or e-mailed bids will not be accepted.
- 2.18 It should be understood by the contractor that if the contractor is unable to provide services within the time specified upon request for services, the City reserves the right to seek additional competitive bids and obtain services from alternate contractors.
- 2.19 The City requires all bidders be pre-qualified with the State of Oregon – Oregon Department of Transportation (ODOT). Pre-qualification application forms may be obtained at the State of Oregon, Purchasing Division, Department of Administrative Services, 1225 Ferry St SE, Salem, OR 97310. <http://www.oregon.gov/ODOT/CS/CONSTRUCTION/Prequalifications.shtml>
Apparent lowest bidder shall submit to the City the state-approved pre-qualification application and confirmation letter within five (5) business days after the bid opening.
- 2.20 Successful bidder must also have either a City of West Linn Business License or a current Metro License and must comply with ORS 279C.505(2) relating to employee drug-testing program. Bidder shall also identify whether he/she is a resident Bidder as defined in ORS 279A.120.
- 2.21 At the option of the City, this procurement may be canceled prior to the specified termination date without penalty.

BID
MISCELLANEOUS PAVING SERVICES
FOR
CITY OF WEST LINN, OREGON

TO: City of West Linn
 Engineering Division
 22500 Salamo Road
 West Linn, Oregon 97068

For miscellaneous paving services for the period August 1, 2012 to July 31, 2013, inclusive.

In compliance with your invitation for competitive bids, and in strict accordance with the bid specifications, the undersigned hereby proposes to furnish and warrant to City of West Linn:

Item	Estimated Number	Unit Price	Lump Sum Item Total*
- Patches up to 50 square feet:	30 patches	\$ _____ /ea	\$ _____
- Berms up to 50 lineal feet:	8 berms	\$ _____ /ea	\$ _____
- Patches over 50 square feet (includes materials, labor and equipment:	8,200 sf	\$ _____ /sf	\$ _____
- Berms over 50 lineal feet:	1,100 lf	\$ _____ /lf	\$ _____

Total Lump Sum Bid based on Estimated Quantities **\$
(Numerals)

Total Lump Sum Bid based on Estimated Quantities in words: _

(In writing)

*Lump Sum Item Total = Estimated Number multiplied by Unit Price

**Equals sum of above lump sum item totals.

Additionally, provide a unit price as shown below but this will not be calculated into the evaluation to determine lowest responsive, responsible bidder.

Item	Estimated Number	Unit Price	Lump Sum Item Total
Prep work for patches over 50 square feet (includes labor and equipment)	Unknown	\$ _____/hr	\$ _____

NAME OF BIDDER: _____
(Corporation, Firm, Individual)

SIGNATURE OF BIDDER: _____

TITLE: _____ DATE: _____

Address to which notices may be delivered:

Telephone: _____

**PUBLIC IMPROVEMENT CONTRACT
WITH THE CITY OF WEST LINN
FOR
MISCELLANEOUS PAVING SERVICES
PW-1209**

THIS CONTRACT, made and entered into this _____ day of _____, _____, by and between the City of West Linn, a municipal corporation of the State of Oregon, hereinafter called "City" and _____ hereinafter called "Contractor", duly authorized to perform such services in Oregon.

RECITALS

WHEREAS, the City requires construction and related services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, time is of the essence in this contract and all work under this contract shall be completed within the time period stated in the Bid;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Services

Contractor's services under this Agreement shall consist of the following:
Miscellaneous contract paving services for the City of West Linn. Bidders shall provide lump sum bids for materials, labor, and equipment for prepping (Prepping will consist of removing four inches of $\frac{3}{4}$ " minus and or cold-mix) and paving patches up to 50 square feet, and for paving berms up to 50 lineal feet. Bidders shall provide a price per square foot for materials, labor, and equipment for paving patches over 50 square feet (these patches will typically be prepped by the city). Berms over 50 lineal feet shall be bid by the foot. Paving of speed bumps may be required and costs for speed bumps shall be determined as a part of the work order for such project.

Quantities listed are estimates and are subject to change due to weather, volume of work, etc. Estimated quantities may vary by up to 50% without renegotiation of unit price.

2. Prevailing Wage

If the contract price exceeds \$50,000 and this Contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. The applicable prevailing wage rates may be accessed via the internet at: http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml. Hard copies of the prevailing wage rates publication may be obtained by contacting the Oregon Bureau of Labor and Industries via telephone at: (971) 673-0839. If this Project is subject to the Davis-Bacon Act and the state prevailing rate of wage is higher than the federal prevailing rate of wage, the

contractor and every subcontractor on the Project shall pay at least the state prevailing rate of wage as determined under ORS 279C.815.

The Contractor must have a public works bond filed with the Oregon Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). The Contractor shall pay the applicable prevailing wage rates that are in effect at the time Owner enters into this Construction Contract with Contractor.

For contracts \$50,000 or greater, City shall pay a fee to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries
Wage and Hours Division
Prevailing Wage Unit
800 NE Oregon Street, # 32
Portland, Oregon 97232

3. Contract Documents

The Contractor is hereby bound to comply with all requirements of this agreement, the Contractor's proposal, the detailed specifications and requirements, the drawings, and the special conditions and modifications in conditions as set forth in the documents prepared by the City Engineer and the performance pertaining to this contract, in the City of West Linn, Oregon, and by this reference made a part hereof to the same legal force and effect as if set forth herein in full.

4. City's Representative

For purposes hereof, the City's authorized representative will be Jeff Randall, City Project Manager.

5. Contractor's Representative

For purpose hereof, the Contractor's authorized representative will be

_____.

6. Contractor Identification

Contractor shall furnish to the City the Contractor's employer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

7. Compensation and Completion

- A. Payments:** City agrees to pay Contractor amount based upon the unit prices bid by the Contractor as listed in attached bid for performance of those services provided hereunder, which payment shall be based upon the following applicable terms:

Contractor shall prepare and submit each month to the City's authorized representative, Jeff Randall, 22500 Salamo Road, West Linn, OR 97068, a statement of services rendered, (indicating the description of each service used in the bid and the dollar amount of each service completed through the stated date), together with a request for payment duly verified by the Contractor's Representative.

Payment by the City shall release the City from any further obligation for payment to Contractor for services performed or expenses incurred as of the date of the statement of services. Payment of installments shall not be considered acceptance or approval of any work or waiver of any defects therein. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

Contractor shall include proof of payment to any and all subcontractors and suppliers with each statement submitted to the City. The City shall retain the right to withhold payments if required proof of payment to subcontractor and suppliers is not included with a statement.

B. Timing of Payments and Liquidated Damages: Progress payments, less a five percent retainage as authorized by ORS 279C.555, shall be made to the Contractor within twenty (20) days of the City's receipt of the statement of services. The Contractor agrees that the "Time of Completion" is defined in the Bid, and agrees to complete the work by said date. All work on the project shall be completed within thirty (30) days of the date of the Field Mobilization as defined in the Standard Construction Specifications – West Linn and within three (3) months of contract award. The Contractor and City agree that the City will suffer damages each day the work remains uncompleted after the Time of Completion and that the amounts of those damages are difficult to calculate. Contractor and City agree that a reasonable amount of damages for late completion is contained in the West Linn Public Works Standards Section 108.07 Liquidated Damages on a per calendar day basis and Contractor agrees to pay such amounts as liquidated damages if the work is not completed by the Time of Completion. Contractor agrees that the liquidated damages specified herein are a fair way of ascertaining damages to the City and are not a penalty for late completion.

C. Final Payment: The Contractor shall notify the City in writing when the Contractor considers the project complete, and the City shall, within 15 days after receiving the written notice, either accept the work or notify the Contractor of work yet to be performed on the contract.

If accepted by the City, the remaining balance due to the Contractor, including the retained percentage, shall be paid to the Contractor by the City within 30 days after the date of said acceptance.

The City shall pay to the Contractor interest at the rate of one and one-half percent per month on the final payment due the Contractor, to commence 30 days after the work under the

Contract has been completed and accepted and to run until the date when final payment is tendered to the Contractor. If the City does not, within 15 days after receiving written notice of completion, notify the Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

As a further condition of final acceptance, the City may require the Contractor to submit evidence, satisfactory to the City's Representative, that all payrolls, material bills, and other indebtedness connected with the project have been paid. If any indebtedness or liens are in dispute, the Contractor may submit a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts if such payment has not already been guaranteed by surety bond.

8. Status of Contractor as Independent Contractor

Contractor certifies that:

- A.** Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent Contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- B.** The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- C.** If this payment is to be charged against Federal funds, Contractor certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.
- D.** Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

E. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.

F. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

9. Subcontracts - Assignment & Delegation

Contractor shall submit a list of Subcontractors for approval by the City, and Contractor shall be fully responsible for the acts or omissions of any Subcontractors and of all persons employed by them, and neither the approval by City of any Subcontractor nor anything contained herein shall be deemed to create any contractual relation between the Subcontractor and City.

This agreement, and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon the City and the Contractor respectively and their legal representatives.

Contractor shall not assign any rights nor delegate any duties incurred by this contract, or any part hereof without the written consent of City, and any assignment or delegation in violation hereof shall be void.

10. Contractor - Payment of Benefits - Hours of Work

A. The Contractor shall:

- 1) Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the work provided for in this contract;
- 2) Pay all contributions or amounts due the Industrial Accident Fund under the Worker's Compensation Law from such Contractor or Subcontractor incurred in the performance of this contract;
- 3) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167; and
- 4) Not permit any lien or claim to be filed or prosecuted against the City of West Linn on account of any labor or material furnished;

B. The Contractor or the Contractor's Surety and every Subcontractor or the Subcontractor's Surety shall file certified statements with the City in writing on a 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 upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the Contractor or the Contractor's Surety or Subcontractor or the Subcontractor's Surety that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's knowledge.

- 1) The certified statements shall set out accurately and completely the payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, and the gross wages the worker earned during each week identified in the certified statement.
 - 2) Each certified statement required herein shall be delivered or mailed by the Contractor or Subcontractor to the City. A true copy of the certified statements shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements shall be submitted as set forth in ORS 279C.845.
 - 3) City shall retain 25 percent of any amount earned by Contractor until the certified statements as required by this section have been filed. City shall pay Contractor the amount retained under this subsection within 14 days after Contractor files the certified statements as required by this section, regardless of whether a subcontractor has failed to file certified statements as required by this section. City is not required to verify the truth of the contents of certified statements filed by Contractor.
- C.** The Contractor agrees that if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this contract as such claim becomes due, the proper office of the City of West Linn may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of such contract. Payment of a claim in this manner shall not relieve the Contractor or the Contractor's Surety from obligation with respect to any unpaid claims.
- D.** Contractor agrees that no person shall be employed 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 when public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the workweek is five consecutive days, Monday through Friday, or ten (10) hours in any one day and or forty (40) hours in any one week when the workweek is four consecutive days, Monday through Friday and for all work performed on Saturday and on any legal holiday as specified in ORS 279C.540.
- E.** No City employee shall be required to work overtime or on a Saturday, Sunday or holiday in the fulfillment of this contract except where the Contractor agrees to reimburse the City in the amount of money paid the employee for such work as determined by state law, the City's personnel rules or union agreement. The Contractor shall require every Subcontractor to comply with this requirement.

11. Drug Testing Program

ORS 279C.505 requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. The Contractor demonstrates that a drug-testing program is in place by signing of the contract. The drug testing program will apply to all employees and will be maintained for the duration of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

12. Contractor's Employee Medical Payments

Contractor agrees to pay promptly as due, to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Contractor's employees, of all sums which the Contractor agreed to pay for such services and all money and sums which the Contractor collected or deducted from employee wages pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

13. Salvage, Composting or Mulching

If this is a contract for demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this is a contract for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

14. Early Termination

- A. This agreement may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties and for the following reasons:
 - 1) If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or
 - 2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.
- B. Payment of Contractor shall be as provided by ORS 279C.660 and shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Contractor against City under this Agreement.
- C. Termination under any provision of this paragraph shall not affect any right, obligation, or liability of Contractor or City which accrued prior to such termination.

15. Cancellation with Cause

- A.** City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:
- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds,
 - 2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement,
 - 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed, or
 - 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.
 - 5) If Contractor fails to maintain reasonable relations with the public. Verbal abuse, threats, or other inappropriate behavior towards members of the public constitutes grounds for termination.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B.** City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:
- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such

total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

16. Access to Records

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

17. Work is Property of City

All work performed by Contractor under this Agreement shall be the property of the City.

18. Adherence to Law

- A.** Contractor shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning workers' compensation, and minimum and prevailing wage requirements. Specifically but not by way of limitation, this contract is subject to all applicable provisions of ORS 279C.505, 279C.510, 279C. 515, 279C.520, 279C.525, 279C.530, 279C.540, 279C.570, 279C. 580, and 279C.800- 279C.870.
- B.** To the extent applicable, the Contractor represents that it will comply with Executive Order 11246 as amended, Executive Order 11141, Section 503 of the Vocational Rehabilitation Act of 1973 as amended and the Age Discrimination Act of 1975, and all rules and regulations issued pursuant to the Acts.
- C.** As provided by ORS 279C.525, all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the work under this contract are by reference incorporated herein to the same force and affect as if set forth herein in full. If the Contractor must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful bid, the City shall issue a Change Order setting forth the additional work that must be undertaken. The Change Order shall not invalidate the Contract and there shall be, in addition to a reasonable extension, if necessary, of the contract time, a reasonable adjustment in the contract price, if necessary, to compensate the Contractor for all costs and expenses incurred, including overhead and profits, as a result of the delay or additional work.

19. Changes

City may at any time, and without notice, issue a written Change Order requiring additional work within the general scope of this Contract, or any amendment thereto, or directing the omission of or variation in work. If such Change Order results in a material change in the

amount or character of the work, an equitable adjustment in the Contract price and other provisions of this Contract as may be affected may be made. Any claim by Contractor for and adjustment under this section shall be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of change or the claim will not be allowed. Whether made pursuant to this section or by mutual agreement, no change shall be binding upon City until a Change Order is executed by the Authorized Representative of City, which expressly states that it constitutes a Change Order to this Contract. The issuance of information, advice, approvals, or instructions by City's Representative or other City personnel shall not constitute an authorized change pursuant to this section. Nothing contained in this section shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the Contract, as changed.

20. Force Majeure

Neither City nor Contractor shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled, including, but not restricted to, an act of God or of a public enemy, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of Subcontractor or suppliers due to such cause; provided that the party so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under Contract.

21. Nonwaiver

The failure of the City to insist upon or enforce strict performance by Contractor of any of the terms of this contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

22. Warranties

All work shall be guaranteed by the Contractor for a period of one year after the date of final acceptance of the work by the Owner. Contractor warrants that all practices and procedures, workmanship, and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this contract.

23. Attorney's Fees

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.

24. Governing Law

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Agreement must be brought in the Circuit Court of Clackamas County or the U. S. District Court in Portland.

25. Conflict Between Terms

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid of the Contractor, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

26. Indemnification

Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the City and its employees. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

27. Insurance

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Contractor and its subcontractors shall provide at least the following limits and coverages:

- A. **Commercial General Liability Insurance:** Contractor and its subcontractors shall obtain, at contractor's or subcontractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance including all Liability including all major divisions of coverage, including, but not limited to, Premises/Operations, Completed Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability (including coverage for the Contractor's indemnity obligations and other contractual

indemnity obligations assumed by the Contractor), Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse, and Underground Hazards). The following insurance will be carried:

Employer's Liability Insurance

\$ 2,000,000.00 Each Occurrence
\$2,000,000.00 Disease Each Employee
\$ 2,000,000.00 Disease – Policy

Commercial General Liability insurance

\$ 2,000,000.00 Each Occurrence Limit
\$ 3,000,000.00 General Aggregate
\$ 3,000,000.00 Products/Completed Operations Aggregate
\$ 3,000,000.00 Personal and Advertising Injury

\$ 2,000,000.00 Limited Job Site Pollution Occurrence Sub-Limit

Comprehensive Automobile Liability Insurance including coverage for all owned, hired and non-owned vehicles

\$ 2,000,000.00 Each Occurrence Combined Single Limit
\$ 3,000,000.00 Aggregate Bodily Injury & Property Damage

or

\$ 2,000,000.00 Each Person Bodily Injury
\$ 2,000,000.00 Each Occurrence Bodily Injury
\$ 2,000,000.00 Each Occurrence Property Damage
\$ 2,000,000.00 Each Occurrence Pollution Occurrence Sub-Limit

“All risk” Builder's Risk Insurance (including earthquake and flood) covering the real and personal property of others in the care, custody, and control of the contractor. Coverage shall include theft and damage to building interiors, exterior, in transit and offsite storage. The minimum amount of coverage to be carried shall be equal to the full amount of the contract. Contractor shall be financially responsible for any deductible applied to loss. This insurance shall include Owner, the contractor and its sub-contractors as their interests may appear and may not be cancelled or terminated until such time as City's final acceptance of the project. The policy shall be endorsed to have the General Aggregate apply to this Project Only.

- B. Additional Insured Provision:** The City of West Linn, Oregon, its officers, directors, and employees shall be added as additional insureds with respect to this contract. All Liability Insurance policies will be endorsed to show this additional coverage.
- C. Insurance Carrier Rating:** Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- D. Certificates of Insurance:** As evidence of the insurance coverage required by the contract, the contractor shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions

within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read “Insurance certificate pertaining to contract for Sunset/Hemlock Waterline Replacement Project. The City of West Linn, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary” in the description portion of certificate.

- E. Primary Coverage Clarification: All parties to this contract hereby agree that the contractor's coverage will be primary in the event of a loss.
- F. Cross-Liability Clause: A cross-liability clause or separation of insureds clause will be included in general liability, policy. .

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Pat Rich, Administrative Assistant City of West Linn 22500 Salamo Road West Linn, OR 97068	Ph: 503- 722-5501 Fax: 503- 656-4106
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Such policies or certificates must be delivered prior to commencement of the work. Ten days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit contractor’s liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

28. Method and Place of Giving Notice, Submitting Bills and Making Payments

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

City of West Linn	(Contractor’s Name)
Attn: Pat Rich	Attn:
	(Contract Manager’s Name)
22500 Salamo Road	Address:
West Linn, OR 97068	

Phone: 503- 722-5501	Phone:
Fax: 503-656-4106	Fax:
Email Address: prich@westlinnoregon.gov	Email Address:

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

29. Hazardous Materials

Contractor shall supply City with a list of any and all hazardous substances used in performance of this Agreement. That list shall identify the location of storage and use of all such hazardous substances and identify the amounts stored and used at each location. Contractor shall provide City with material safety data sheets for all hazardous substances brought onto City property, created on City property or delivered to City pursuant to this Agreement. For the purpose of this section, "hazardous substance" means hazardous substance as defined by ORS 453.307(5). Contractor shall complete the State Fire Marshall's hazardous substance survey as required by ORS 453.317 and shall assist City to complete any such survey that it may be required to complete because of substances used in the performance of this Agreement.

30. Hazardous Waste

If, as a result of performance of this Agreement, Contractor generates any hazardous wastes, Contractor shall be responsible for disposal of any such hazardous wastes in compliance with all applicable federal and state requirements. Contractors shall provide City with documentation, including all required manifests, demonstrating proper transportation and disposal of any such hazardous wastes. Contractor shall defend, indemnify, and hold harmless City for any disposal or storage of hazardous wastes generated pursuant to this Contract and any releases or discharges of hazardous materials.

31. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

32. Complete Agreement

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement 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 specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the City has caused this agreement to be executed by its duly authorized undersigned officer, acting pursuant to authorization of the City Council, duly passed at the regular meeting held on the _____ day of _____, _____, and the Contractor has executed this agreement on the date herein above first written.

CONTRACTOR

CITY OF WEST LINN

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

RESIDENT BIDDER STATUS

Is the Bidder a resident bidder, as defined in ORS 279A.120? _____.

If not, list the state of residence of the bidder: _____.

CONTRACTOR'S LICENSE NUMBER

List Contractor's License Number: _____

Tax I.D. : _____

WARRANTY AND QUALITY OF WORK

The Contractor warrants to the City for a period of one year from acceptance of the work by the City that all materials and equipment furnished under this contract will be new, unless otherwise specified, and the work will be of good quality, free from faults and defects and in conformance with the City specifications. Work not so conforming to these standards shall be considered defective.

At its own expense, the Contractor will make good and repair any defects arising from faulty workmanship or materials, if the defective work is discovered within the one-year warranty period and notice thereof is given to the Contractor within 60 days after the expiration of the warranty period. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used to repair the defect.