

REQUEST FOR PROPOSALS

**WATER RESILIENCY PROJECT – PHASE 3
RESERVOIR REPLACEMENT
& NORTH-SOUTH BACKBONE
for the**

City of Cannon Beach, Oregon

August 7, 2023



Submittals Due: 2:00 pm on September 5, 2023

**Karen La Bonte, Public Works Director
City of Cannon Beach
163 E. Gower
PO Box 368
Cannon Beach, OR 97110**

REQUEST FOR PROPOSALS

The City of Cannon Beach is seeking firms to provide engineering, design and construction management services for a water resiliency project funded through a loan from Business Oregon. The consultant selected through this proposal process will be asked to provide engineering and construction plans, a construction cost estimate, as well as construction management of the work performed and administering the funding and loan reporting requirements.

The project described in this RFP is “Phase 3” of a three-phase water resiliency plan. Work under this contract is funded by the federal Safe Drinking Water Revolving Loan Fund through Business Oregon and a partnership of Local and/or Private Funds. The City of Cannon Beach has secured Business Oregon loan funding for Phases 1, 2, and the engineering and Main Reservoir replacement portions of Phase 3. The City is pursuing funding for the construction of the North-South Backbone along Highway 101.

The selected firm will be contracted for engineering, construction management, and related services as described in this document for described elements of Phase 3, funded entirely by Business Oregon loans. Contingent upon securing funding for the project’s remainder, the firm selected during this process may also be contracted for construction management, permitting, and other associated elements of the North-South Backbone Replacement project. Any portions not immediately funded by Business Oregon are specifically denoted in the RFP document.

BACKGROUND

The City of Cannon Beach (City) is upgrading its water utility to mitigate damage and mitigate potential consequences associated with earthquake and/or tsunami events. A “Phase 1” capital project has been defined as “Seismic Valves & Associated Piping.” A “Phase 2” capital project has been defined as “Source to City Transmission Replacement.” Both Phase 1 and Phase 2 have been funded with the assistance of Business Oregon through the Safe Drinking Water Revolving Loan Fund (SDWRLF) and the projects are currently being implemented by the City of Cannon Beach. The next portion of the resiliency program is known as “Phase 3” and will include replacement of the Main Reservoir and installation of a north/south backbone pipeline. Included in this document is a preliminary Phase 3 Scope of Services and a list of recommended qualification requirements for engineering firms.

PROJECT DESCRIPTION

Current Phases of Work included with Phase 3 Engineering Services Request for Proposal (RFP).

The project will consist of the following:

- Funding Agency Reporting and Coordination
- Surveying
- Preliminary Design
- Final Design

- Local and State Permitting
- Bidding of Main Reservoir
- Construction Management and Inspection for Main Reservoir
- Planning and Reporting Associated with Project Closeout for Main Reservoir
- Labor Standards Review and Coordination for Main Reservoir
- Update Needs and Prioritization for Future Resiliency Improvements

The City intends to hire an engineering consultant team to assist with funding agency reporting and coordination, surveying, preliminary design, final design, local and state agency permitting, updating the needs and prioritization for future resiliency improvements, and the bidding and construction of the Main Reservoir.

Future Phases of Engineering Services

The following phases are related to implementation of this project and will be funded separately from the elements listed above when funding is secured:

- Bidding of N-S Backbone Construction
- Construction Management and Inspection for N-S Backbone
- Labor Standards Review and Coordination for N-S Backbone
- Planning and Reporting Associated with Project Closeout for N-S Backbone

When funding becomes available for the bidding and construction of the N-S backbone, the City may choose to add the “future phases of engineering services” by mutually agreed written amendment. The City may, however, choose to issue a separate request for proposals for some or all of the “future phases of engineering services” if it is determined to be in the best interests of the City to do so.

The estimated value of this engineering contract is \$1,400,000. The estimated total project cost funded by Business Oregon is \$5,377,000, with an additional \$6,700,000 being pursued through other funding channels for a Phase 3 total of \$12,100,000. This work is anticipated to start on October 13, 2023, pending necessary approvals, forms, insurance and executed agreement. The estimated project duration is 26 months, with the work being broken down into the following phases:

- Engineering: 11 months
- Planning: 14 months
- Design: 9 months
- Reservoir & Pipelines: 3 months
- Permitting: 3 months
- Bid: 2 months
- Construction & Construction Management: 6 months

(Project schedule is subject to change contingent on available funding for N-S Backbone construction.)

Anticipated project elements are described below:

- Main Reservoir Replacement Project
- Cannon Beach Conference Center Trail Relocation
- Demolition of Existing Reservoir
- Pipeline design – Main Reservoir to US Highway 101
- North pipeline backbone to Fir Street
- South pipeline backbone to Tolovana Reservoir
- Interconnections to existing water mains (6-8 locations)
- Design of pipeline segments to reach existing water mains, where necessary
- Update resiliency-related capital improvement plan to address future needs and priorities beyond Phase 1, 2, and 3 projects.
- Associated public improvement, land acquisition, environmental review, permitting, funding coordination, and reporting.

I. SCOPE OF SERVICES

The selected consultant shall further develop a detailed scope of services as part of contract development. The scope of services will include, at a minimum, the following tasks:

- Task 1. Kickoff Meeting
 - o Agenda development
 - o Coordination with City and Business Oregon
 - o Attendance
 - o Meeting Notes

- Task 2. Gathering Information
 - o Review of available data
 - o Request for information memo
 - o Identification of applicable code requirements
 - o Identification of Oregon Department of Transportation (ODOT) permitting process
 - o Collecting all necessary documents to manage funding & associated reporting

- Task 3. Agency Coordination
 - o Coordination with City
 - o Coordination with ODOT
 - o Support City with Funding Agency Reporting. Consultant tasks to include:
 - Ensure Contract Scope and Terms Align with Business Oregon Requirements
 - Include Business Oregon in appropriate meetings
 - Manage Funding Agency Reporting
 - Develop Construction Documents in Compliance with Business Oregon requirements
 - o Coordination with Pacific Power
 - o Coordination with Cannon Beach Conference Center
 - o Coordination with Oregon Health Authority
 - o Coordination with Other Property Owners – as required
 - o Coordination with Other Agencies for environmental permitting purposes
 - o Identification of needs of each agency and communications with City about necessary deliverables, permits, and check-in dates/milestones

- Task 4. Preliminary Assessments
 - o Alignment Survey - identify location of existing pipeline segments, and appropriate topo and road width surfaces
 - o Transmission System Hydraulics – hydraulic modeling and review of system to determine sizing requirements and pipe wall thickness requirements.
 - Consultant to use hydraulic modeling software consistent with City existing model as updated during Phase 1 seismic resiliency project

- work.
- o Arborist/Tree Removal Needs Analysis and Coordination
- o Schematic Design (10% drawings of all improvements that are described in Tasks 5 and 6)
- o Environmental Constraints Analysis
- o Geotechnical Analysis
- o Basis of Design Report to summarize above
- Task 5. Main Reservoir Replacement Design
 - o The Main Reservoir is considered vulnerable to failure during an earthquake event. A complete replacement of the reservoir is planned.
 - o Consultant to verify suitability of proposed location.
 - o 1,000,000-gallon concrete reservoir to be designed to current seismic standards.
 - o Overflow elevation to match existing tank.
 - o Associated site work, piping, valving, vaults, instruments, lighting, and miscellaneous electrical improvements are to be included.
 - o Discipline Engineering Design to accommodate above tasks
 - Civil Design
 - Structural Design
 - Electrical
 - Instrumentation and Control Design
 - Security Design
 - Mechanical Design (if required)
 - SCADA Design
- Task 6. Pipeline Design
 - o Pipeline design – Main Reservoir to US Highway 101
 - o North pipeline backbone to Fir Street
 - o South pipeline backbone to Tolovana Reservoir
 - o Interconnections to existing water mains (6-8 locations)
 - o Design pipeline segments to reach existing water mains, where necessary. Generally, the goal will be to interconnect with Hemlock water main in as many places as practical without relying on existing AC pipe connections.
 - o Discipline Engineering Design to accommodate above tasks
 - Civil Design
 - Structural Design (bridge crossings)
 - Electrical (if needed)
 - Mechanical Design (vaults, isolation valving, pressure-reducing valves [PRVs], if required)
 - SCADA Design (if needed)
- Task 7. Ancillary Design Requirements

- o Erosion Control and Temporary Construction Facilities including contractor staging areas
- o Cannon Beach Conference Center Trail Relocation
- o Construction Access/Pacific Power Right of Way – grading and road improvements to provide safe and secure access to deliveries, concrete trucks, laborers, etc.
- o Fencing
- o ODOT/Highway Restoration Requirements
- o Demolition of Existing Tank
 - Design elements
 - Sequencing plan
 - Health & Safety plan (to avoid interference with high voltage power lines)
 - Permit coordination requirements
 - Regrading and Vegetation plan
- Task 8. Construction Document Preparation
 - o Phasing Plan
 - o Construction Sequencing Plan
 - o Consideration of pipe or equipment prepurchase needs
 - o Definition of Project Limitations (work hours, seasonal requirements, ODOT right of way construction requirements, traffic control, etc.).
 - o Bid Documents including full specifications
 - o Front end contract and Div. 0/1 specification coordination
- Task 10. Permitting
 - o Local City Permitting
 - o Power Company Permitting
 - o Environmental Permitting (including bridge crossings over Ecola Creek)
 - o Oregon Health Authority Permitting
- Task 11. Project Management
 - o Budget oversight
 - o Schedule management
 - o Communications
 - o Invoicing
 - o Subconsultant management
- Task 12. Quality Assurance / Quality Control
 - o Review of submittals prior to issuance
 - o Assignment of senior technical advisors to project team
- Task 13. Updated Resiliency Capital Improvement Needs and Priorities
 - o Gather new information that is needed to update capital improvement

planning. This may include:

- List of previously listed projects that are now complete
- New codes since prior water system master plan
- Status of Phase 1 and 2 resiliency improvements
- Proposed construction timing and scope of Phase 3
- Any changes to water usage/connections/annexed areas
- o Update hydraulic water model to reflect all three phases of improvement along with any other distribution system changes that have occurred in recent years.
- o Evaluate alternate/backup water source alternatives at a feasibility level with goal of providing recommendations for how the City could best go about developing a source that could be used in the event of an interruption in the springs/Ecola Creek source due to drought, fire, or earthquake.
- o Prepare a new Water System Capital Improvement Plan that would further reduce vulnerabilities to seismic events and other hazards while also reflecting the condition, age, and capacity of existing infrastructure.
- o Update relevant segments of water system master plan.
- Task 14. Bid Period Services for Main Reservoir
 - o Assist with bid document preparation
 - o Answer questions
 - o Prepare addenda
 - o Review bids
- Task 15. Construction Services for Main Reservoir
 - o Conformed drawings
 - o Periodic design engineer site visits
 - o Respond to RFI's
 - o Review change orders
 - o Review pay requests
- Task 16. Inspection Services for Main Reservoir
 - o Special instructions
 - o Day-to-day construction observation
 - o Daily inspection reports
 - o Coordinate with City, ODOT, Design Engineer as coordination issues and construction challenges arise.
- Task 17. Labor Standards Review and Coordination for Main Reservoir
 - o Inclusion of Davis-Bacon wage provisions in bid documents
 - o Review contractor pay requests to confirm compliance with Davis-Bacon and Oregon prevailing wage requirements.
 - o Inclusion of appropriate Business Oregon forms in bid documents
 - o Review of contractor submittals

- Communications and reporting per state and Business Oregon requirements.
- Task 18. Startup, Testing, and Closeout for Main Reservoir
 - Review commissioning and startup plan with Contractor
 - Oversee pressure testing, disinfection testing, and other integrity tests required at startup
 - Punchlist development
 - Record drawings
 - Review of O&M Submittals from Contractor
 - Support City with Funding Agency Coordination
- Task 19. Presentations and Meetings for Main Reservoir
 - Weekly or bi-weekly construction meetings
 - Presentation/Meeting with Public Works Committee
 - Presentation to City Council
 - ODOT meetings
 - Presentation to Other Agencies (power company, property owner)
 - Project Meetings with City staff
- Task 20. Construction Phase Project Management for Main Reservoir
 - Budget oversight
 - Schedule management
 - Communications
 - Invoicing
 - Subconsultant management
- Task 21. Quality Assurance/Quality Control for Main Reservoir
 - Review of submittals prior to issuance
 - Assignment of senior technical advisors to project team.

Future Phases of Engineering Services

As stated previously, the City may choose to add some or all of the following services to the Engineering Services via a mutually agreed upon written amendment. The City may alternately choose to issue a separate Request for Proposal for some or all of the services. The decision on how to procure the future phases of engineering services will be based upon funding agency requirements and what is determined to be in the best interests of the City.

- Tasks 14-21 as described above, for North-South Backbone Construction

II. PROPOSAL SUBMISSION REQUIREMENTS

Submittals should be prepared in generally the following format for the ease of the selection committee in reviewing multiple submittals:

General Overview

Provide a general overview of the firm or individual, including a discussion relative to the Qualifications section of this RFP. Include relevant information for the firm/individuals included in your staffing plan.

Project Approach and Work Plan

Describe the strategy for achieving the goals and deliverables of each phase. Include a schedule for completion of the entire project.

Consultant Identification and Team

Provide the name of the consultant, the consultant’s principal place of business, and the name and telephone number of the contact person. Clearly identify team members, their roles, and qualifications.

Any professional services required but not proposed by the qualified consultant firm shall be listed and reasons should be provided for not including them as part of the proposal.

Related Project Examples and References

Provide recent (within last 5-8 years) visual examples of relevant projects completed by the consultant that exhibit the team’s ability to successfully complete a range of services as outlined in this RFP. Along with each example, please include descriptive information such as location of the project, date, scope and scale, contract amount, name of the team member(s) involved in the project and their roles, name of the client, and email address and telephone number of the client contact.

III. QUALIFICATION EVALUATION AND SCORING

Minimum qualifications include:

- STAFF
 - Consultants shall be licensed to practice engineering in the State of Oregon and insured at the levels required in the example Professional Services Agreement.
 - Engineer of record shall be licensed as a professional engineer in the State of Oregon.
 - Consultant shall be qualified to provide consulting advice and design services related to drinking water storage.
 - Consultant shall be able to provide the majority of services in-house, with qualified subconsultants included as needed to provide a full-service team.
 - Project manager and key consultant team members located within a three-hour drive of Cannon Beach is preferred for efficiency of project meetings and site visits.

- EXPERIENCE
 - Experience working with Business Oregon on project funding coordination is preferred.

- Key staff – including project manager – to have a minimum of fifteen years of consulting experience on municipal water systems in Oregon.
 - Key staff to have experience with seismic engineering services.
 - Consultant team shall have experience with Oregon Health Authority coordination and reviews.
 - Consultant team shall have knowledge of utility right-of-way permitting and review requirements, specifically Pacific Power.
 - Knowledge of the City of Cannon Beach water system is preferred.
 - Consultant team shall be qualified to provide consulting advice and design services related to drinking water storage.
 - Demonstrated coastal engineering experience on public water projects is preferred.
- GENERAL
 - Consultants are required to certify non-discrimination in employment practices, and identify resident status as defined in ORS 279A.120.
 - All consultants are required to comply with the provisions of Oregon Revised Statutes and Cannon Beach City Municipal Code.
 - Consultants must have the financial resources to perform their obligations under the contract or the ability to obtain the necessary resources.
 - Consultants must be an equal opportunity employer and being otherwise qualified by law to enter into a contract with the City.

Submittals which conform to the qualification instructions will be evaluated. Proposals will be evaluated by the City on the basis of what is most advantageous for the City of Cannon Beach. The evaluation will consider:

- Approach and understanding.
- Experience and reputation in the field. Experience with projects of similar size/complexity. Familiarity with local site conditions and local experience
- Project team experience and utilization of locally procured services or personnel.
- References.

Scoring

Item	Description	Scoring
1. Approach and Understanding	The proposal shall be of such scope and depth to sufficiently describe and demonstrate the consultant’s understanding of approach to the project. Please include all conditions and assumptions.	35
2. Similar Project Experience	Knowledgeable of consultant’s experience with similar projects, familiarity with local site conditions and local experience.	50
3. Project Team	Qualifications of consultant project team and utilization	10

	of locally-procured services.	
4. References	References from successfully completed projects.	5
	Initial Total	100
5. Interviews (if applicable)		10
6. Price Proposals		15
	Final Total	125

IV. CONSULTANT SELECTION PROCESS

The City’s objective in soliciting submittals is to enable it to select respondents that will provide high quality, effective, and professional services to the citizens of the City of Cannon Beach in a timely manner. The City will consider submittals only from respondents that, in the City’s sole judgment, have demonstrated the capability and willingness to provide high quality services to the citizens of the City in the manner described in this RFP.

The City will utilize the following general selection process in determining the most qualified and best consultant to provide these services for the City:

- A selection committee will review and rank all submittals based upon the criteria established in this RFP.
- If the selection committee believes interviews are necessary, the interview scores will be combined with the other criteria to obtain a total score.
- After completing the evaluation, the City may determine that up to three of the top-ranked proposers are qualified to perform the services the City seeks through this RFP and may request from each of them a pricing proposal based on the “Scope of Services” identified in this RFP.
- Pricing Proposal:
 - Must contain a schedule of hourly rates that the proposer will charge for the work of each individual or each labor classification that will perform the services the City requires;
 - Must be in the form of an offer that is irrevocable for not less than 90 days after the date of the pricing proposal; and
 - Must provide a reasonable estimate of hours that the proposer believes will be needed to perform the services the City requires.

Pricing proposals must be submitted no later than the date and time identified in the City’s written request, which will be at least seven days from the date of the request. The City will award a total of 15 points to a pricing proposal. After reviewing and scoring the pricing proposals, the City will add the score of the pricing proposal to the existing scores and the City will begin contract negotiations with the highest-ranked proposers. Pursuant to ORS 279C.110(6), the negotiations will seek to finalize the scope of services. If negotiations are successful, the City will issue a notice of intent to award a contract to the highest-ranked proposer.

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If negotiations with the top-ranked proposer are not successful, the City in its sole discretion may terminate negotiations and begin negotiations with the second-ranked proposers and may continue in this manner through successive proposers until an agreement is reached or until the City cancels the RFP.

V. SUBMISSION REQUIREMENTS

Submission of Proposals

Submittals must be received by the City no later than 2:00 p.m. prevailing time on September 5, 2023, by mail or hand delivery to the address below. Any submittal received after this time will be returned unopened. Submittals delivered by email or facsimile will not be accepted. It is the Proposer’s responsibility to ensure that Proposals are received prior to the stated submission deadline.

To be responsive, submittals must provide all requested information, and must be in conformance with the instructions set forth herein. Submittals must be signed and acknowledged by the respondent.

Submittals will be evaluated by staff. The City reserves the right to reject any or all submittals.

Number of copies

Respondents must submit one (1) signed original. Completed submittals shall be addressed to:

City of Cannon Beach
Attn: Karen La Bonte
Public Works Director
163 E Gower
PO Box 368
Cannon Beach, OR 97110

VI. SITE TOUR /PRE-SUBMITTAL CONFERENCE

A **mandatory** site tour/pre-proposal conference will be held on August 22, 2023, at 2:00 pm. The tour group will meet at City Hall and navigate to the site together.

VII. ANTICIPATED SELECTION SCHEDULE

RFP Advertised	August 7, 2023 (Mon)
Mandatory Pre-Proposal Meeting	August 22, 2023 (Tues) 2:00 pm
Deadline to Submit Changes/Solicitation Protest	August 25, 2023 (Fri) 12:00 noon
Last Date for Addenda	September 1, 2023 (Fri)
Submittals Due	September 5, 2023 (Tues) 2:00 pm
Evaluation of Submittals	September 6-8 (Weds-Fri)
Notification of Interviews, if Conducted	September 8, 2023 (Fri)
*Interviews, if Conducted	September 11-13, 2023 (M, T, W)
*Notice of Intent to Award	September 26, 2023 (Tues)
Council Approves Award	October 3, 2023 (Tues)
Notice of Award	October 4, 2023 (Weds)

VIII. METHOD OF AWARD

The City reserves the right to award this contract to the consultant that demonstrates the best ability to fulfill the requirements of the contract. The successful consultant will be chosen based on the selection criteria described above.

The consultant selected will be given the first right to negotiate an agreement acceptable to the City. In the event that an agreement satisfactory to the City cannot be reached, the City may enter into negotiations with one or more of the remaining consultants who submitted their proposals. The successful consultant shall commence work only after execution of an acceptable agreement and approval of insurance certificates. An example of our agreement has been attached. Review the sample agreement and detail the requirements in the agreement that your firm cannot comply with or would request modified. The City will not consider contract modification requested after selection. The successful consultant will perform services indicated in the RFP in compliance with the negotiated agreement. The consultant contract will be reviewed by Business Oregon and approved by the City Council prior to notice to proceed.

IX. INQUIRIES

Any questions related to this request must be submitted in writing and sent via email to schutt@ci.cannon-beach.or.us. Inquiries must be submitted no later than **12:00 noon August 25, 2023**. Questions answered via email will be followed up by written addenda as deemed necessary; oral interpretations shall have no effect.

X. OTHER PROVISIONS AND NOTICES

Consultants may submit a written protest of anything contained in the RFP and may request a change to any provision, specification or Contract Term contained in the RFP, no later than 10 calendar days prior to the date submittals are due. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications, or Contract Terms. The City will not consider any protest or request for change that is submitted after the submission deadline.

The City will evaluate any request submitted but reserves the right to determine whether to accept the requested change. If, in the City's opinion, additional information or interpretation is necessary, such information will be supplied in the form of an Addendum. Any addenda shall have the same binding effect as though contained in the main body of the RFP. Oral instructions or information concerning the scope of work of the project given out by City managers, employees, or agents to the prospective Proposers shall not bind the City.

The City reserves the right to make changes to the RFP by written addendum, which shall be issued to all prospective Proposers known to the City to have received the Proposal document.

The City will provide to all consultants responding to the RFP a copy of the notice of intent to

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award. Consultants responding to the RFP but not selected may submit a written protest no later than seven (7) calendar days after the date of the intent to award notice. The protester must meet the requirements in OAR 137-048-0240.

Consultants responding to the RFP do so solely at their expense, and that the City is not responsible for any Consultant expenses associated with the RFP.

The City reserves the right to cancel the RFP, reject all or portions of any or all submittals, to waive irregularities and technicalities, to re-advertise, or to proceed to provide the services otherwise, in the best interest of the City. The City may, at its sole discretion, modify or amend any and all provisions herein. The City will not pay for any information herein requested, nor is it liable for any costs incurred by the participating consultant.

The City reserves the right to extend the RFP submittal date if needed. All changes and/or clarifications will be distributed to all consultants indicating interest in the form of addenda. Addenda will be distributed via email only.

The City reserves the right to request additional information or request clarification from those making a submittal and request personal interviews.

Every submittal should be valid for a minimum of ninety (90) days after the RFP submittal deadline.

All submissions are the property of the City of Cannon Beach and are public records. If you believe your documents are exempt public records, please clearly mark each document and/or portion of document as such and indicate what exemption may apply. The City makes no guarantees that document submitted to the City will be kept confidential.

**CITY OF CANNON BEACH
PROFESSIONAL SERVICES CONTRACT**

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is made and entered into by and between the City of Cannon Beach a municipal corporation in the State of Oregon ("City") and _____ ("Consultant") identified as follows:

Company _____
Federal ID # _____
Mail Address _____
City, State Zip _____
Phone # _____
Fax # _____
E-Mail _____

1. EFFECTIVE DATE AND DURATION OF CONTRACT. This Contract shall become effective on _____ ("Effective Date"). This Contract shall bind the City when it is authorized or ratified by the City. Unless earlier terminated, this Contract shall remain in full force and effect until City accepts Consultant's completed performance or on _____, whichever first occurs.

2. PROJECT MANAGERS. City's project manager is _____. Consultant's project manager is _____. Each party shall give the other timely written notification of any change in their respective project manager.

3. FUNDS AVAILABLE AND AUTHORIZED. City has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract.

4. RELATIONSHIP OF THE PARTIES.

4.1. Professional consultant. The Consultant shall provide the Services for the Project as described in Section 5 in accordance with the terms and conditions of this Contract. The Consultant's performance of Services shall be as a professional consultant to City to carry out the activities of the Project and to provide the technical documents and supervision to achieve City's Project objectives.

4.2. City oversight/other consultants. In administering this Contract, City may retain the services of an independent project manager, and potentially, other consultants or other contracts for additional or related work as needed to fulfill City's objectives. Consultant shall fully cooperate with such additional contractors and with any City employees concerned with such additional or related work and shall coordinate the performance of work under this Contract, with such additional or related work. Consultant shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by any City employee.

4.3. Written consent for sub-contracts, assignment; successors-in-interest. Consultant shall not make any sub-contract with any other party for furnishing any of the Project's Services or assign or transfer any interest in this Contract, without obtaining the express prior written consent of City. In any case, this

Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any. Should sub-contracts be allowed, the Consultant shall provide a list of all Sub-contractors which the Consultant intends to utilize on the Project. This list shall include such information on the qualifications of the Sub-contractors as may be requested by City. City reserves the right to review the Sub-contractors proposed, and the Consultant shall not retain a Sub-contractors to which City has a reasonable objection.

5. SCOPE OF WORK. The Consultant shall provide to the City all services related to completion of the project (the "Project") as more particularly described in Consultant's proposal ("Proposal"), attached to this Contract as Exhibit A and incorporated herein by reference. In the event of inconsistencies between this Contract and Exhibit A, the provisions of this Contract shall control. Generally, the services to be performed by the Consultant on the Project consist of the following and as more specifically described in Exhibit A (the "Services"): architect, engineer or survey services.

Consultant is required to obtain all necessary licenses (state and local) necessary to operate its business in the City and to perform the Services.

6. PAYMENT. City agrees to pay Consultant on the schedule and the amounts set forward in the attached Exhibit A (Budget) incorporated by reference herein for satisfactory completion of the Project. Any work or Services to be provided beyond that set forth in Exhibit A must be approved in writing in advance by the City. In the event such authorization is not obtained, the Consultant shall not be entitled to compensation for the performance of such work.

6.1 Unless otherwise agreed to by the City in writing, Consultant shall submit monthly billings for work performed. The billings shall describe all materials supplied and work performed with particularity and shall itemize and explain all expenses for which reimbursement is claimed. Unless the amount and rate of reimbursement are specified in an attached exhibit to this Contract, the City will not reimburse Consultant for any expenses under this Contract.

6.2 City shall pay Consultant for the amount billed each month within 30 (thirty) days after receiving Consultant's billing in a format acceptable to the City. City shall not pay any amount in excess of the compensation amounts set forth above nor shall City pay Consultant any fees or costs which City reasonably disputes. If such a dispute arises, Consultant will continue to perform its duties under this Contract.

7. CONTRACT PERFORMANCE. Consultant shall at all times perform the Services diligently, without delay and punctually fulfill all requirements herein, consistent with the schedule for the performance of Consultant's services set forth in Exhibit A. Expiration of this Contract shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a warranty of Consultant or any default or defect in performance that has not been cured. Consultant shall perform such additional work as may be necessary to correct errors in the work performed without undue delay or additional cost. Time is of the essence in the performance of this Contract.

8. CHANGES. This Contract, including all exhibits attached hereto, shall not be waived, altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by both parties. Such waiver, alteration, modification, supplement, extension or amendment, if made, shall be effective only in the specific instance and for the specific purpose given. The parties acknowledge and agree that, to the extent permitted by law, this Contract may be amended to specifically provide for additional Consultant services that are within or directly related to the Project. Failure of Consultant to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

9. EXECUTION AND COUNTERPARTS. This Contract, and any amendments to this Contract, may be executed in counterparts (each of which shall be an original and all of which shall constitute one and the same instrument) or in multiple originals. A faxed or email form of this Contract or any amendment thereto,

executed by one or more of the parties, will constitute a counterpart hereof, as long as the counterpart bearing the party's original signature is transmitted to the other party and received by that party forthwith.

10. DUTY TO INFORM. Consultant shall give prompt written notice to City's Project Manager if, at any time during the performance of this Contract, Consultant becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim and shall not constitute a waiver of any of City's rights.

11. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing, postage prepaid, to Consultant or City at the address or number set forth on this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given 5 (five) calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates a transmission receipt. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the City's Project Manager identified in this Contract and shall not be deemed to be given until such confirmation is completed. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Email may be used in addition to the other methods described in this section.

12. CONFLICT OF INTEREST. Except with City's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

13. NO THIRD-PARTY BENEFICIARIES. City and Consultant 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 or 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.

14. PROJECT INFORMATION & CONFIDENTIALITY. Consultant agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No reports, information or data given to or prepared or assembled by Consultant under the Contract shall be made available or used for anything other than the work set forth under the Contract by Consultant to any individual or organization (except City) without the prior written approval of City which approval is in the City's sole and absolute discretion.

14.1 Intellectual Property. All work performed under this Contract including but not limited to documents, drawings, papers, computer programs, and photographs performed or produced by the Consultant under this Contract shall be the property of the City. The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Contract shall vest in the City. Consultant shall execute any assignment or other documents necessary to effect this paragraph. Consultant may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Consultant shall transfer to the City any data or other tangible property generated by Consultant under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

15. RECORDKEEPING. Consultant and Sub-contractors shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and Sub-contractors shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Consultant's and Sub-contractors' performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Consultant and Sub-contractors and kept accessible for a minimum of 6 (six) years after the Contract's expiration, except as required longer by law,

following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. If for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than 6 (six) years or until all litigation is resolved, whichever is longer. Consultant shall provide City with full access to these records in preparation for and during litigation.

16. ACCESS TO RECORDS. Consultant agrees that City and its authorized representatives shall have access to all books, documents, papers and records of the Consultant which are directly related to the Contract for the purpose of making any audit, examination, copies, excerpts and transcripts.

17. INDEPENDENT CONTRACTOR STATUS. Consultant shall be free from City's direction and control over the means and manner of providing Project labor or service, subject only to the specifications of the desired results. Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

17.1 Consultant is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Contract.

17.2 Consultant is not eligible for any federal social security, unemployment insurance, pension, state retirement system or workers' compensation benefits from compensation or payments paid to Consultant under this Contract.

17.3 Consultant has filed federal and state income tax returns in the name of the business as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.

17.4 Consultant is not an employee any special district, or local government, including City, the federal government or the State of Oregon.

18. PAYMENT OF LABORERS; PAYMENT OF TAXES.

18.1 Consultant shall:

18.1.1 Make payment promptly, as due, to all persons supplying to the Consultant labor and material for the performance of the work provided for in the Contract (ORS 279B.220(1));

18.1.2 Pay all contributions or amounts due to the Industrial Accident Fund incurred in the performance of this Contract and shall ensure that all Sub-contractors pay amounts due from their performance (ORS 279B.220(2));

18.1.3 Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished (ORS 279B.220(3)); and

18.1.4 Be responsible for all federal, state and local taxes applicable to any compensation or payments paid to the Consultant under this Contract and pay to the Department of Revenue all sums withheld from employees under ORS 316.167. Unless the Consultant is subject to backup withholding, the City will not withhold from such compensation or payments any amount(s) to cover the Consultant's federal or state tax obligation (ORS 279B.220(4)).

18.2 The Consultant shall promptly as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident

to sickness or injury, to the employees of the Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the service (ORS 279B.230(1)).

18.3 Consultant, its subcontractors and all employers, if any, providing services, labor or materials under the Contract are subject to Oregon Workers' Compensation Law, which requires all subject employers working under this Contract are either employers that will comply with ORS 656.017 or are employers that are exempt under ORS 656.126. Consultant shall ensure that each of its subcontractors, if any, complies with these requirements (ORS 279B.230(2)).

19. COMPLIANCE WITH APPLICABLE LAW. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Services under the Contract.

19.1 Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract and incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated:

19.1.1 Titles VI and VII of the Civil Rights Act of 1964, as amended;

19.1.2 Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

19.1.3 the Americans with Disabilities Act of 1990, as amended;

19.1.4 Executive Order 11246, as amended;

19.1.5 the Health Insurance Portability and Accountability Act of 1996;

19.1.6 the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

19.1.7 the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;

19.1.8 ORS Chapter 659, as amended;

19.1.9 all regulations and administrative rules established pursuant to the foregoing laws;
and

19.1.10 all other applicable requirements of federal, state and municipal civil rights and rehabilitation statutes, rules and regulations.

19.2 City's performance under the Contract is conditioned upon Consultant's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 which are incorporated by reference herein.

19.3 Any person employed on work under this Contract shall be paid at least time and a half for all overtime worked in excess of 40 (forty) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime (ORS 279B.235(3)).

20. REPRESENTATIONS AND WARRANTIES.

20.1 Consultant represents and warrants to City that:

20.1.1 Consultant has complied and will continue to comply with all Oregon laws relating to the performance of Consultant's obligations under this Contract;

20.1.2 Consultant shall be qualified, professionally competent and duly licensed to perform the Services at all times during the term of this Contract;

20.1.3 Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and will apply that skill and knowledge with care and diligence to perform the Project under this Contract in a professional manner and in accordance with standards prevalent in Consultant's industry, trade or profession;

20.1.4 Consultant has the power and authority to enter into and perform this Contract;

20.1.5 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms;

20.1.6 The persons executing this Contract on behalf of the Consultant have the actual authority to bind the Consultant to the terms and conditions of this Contract;

20.1.7 Consultant prepared its Proposal, Exhibit A to this Contract, independently from all other proposers, and without collusion, fraud or other dishonesty; and

20.1.8 The provisions of this Contract do not conflict with, or result in a default under, any agreement or other instrument binding upon the Consultant and do not result in a violation of any law, regulation, court decree or order applicable to the Consultant

20.2 Upon City's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other provided warranties.

21. INSURANCE. 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 an "occurrence" form and with coverage that is satisfactory to the City. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract and is made on an occurrence basis. Coverage shall be a minimum of \$2,000,000 per occurrence and \$2,000,0000 aggregate. The policy shall name the City as an additional insured and the additional insured endorsement shall provide coverage for ongoing and completed operations and be written as primary and non-contributory. Contractor shall provide written notice of cancellation to the City at least 60 days prior to cancellation. Contractor shall provide City with a certificate of insurance within 5 business days after the date the contractor receives notification of award of contract as evidenced by receipt from the City of prepared contract documents.

b. Contractor shall also obtain, at their own expense, and keep in effect during the term of contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

c. "Waiver of Subrogation" clause. The "contractor" shall obtain from its insurance carriers endorsements waiving their respective subrogation rights in favor of the City on General Liability policies affected by this agreement.

21.1 WORKERS' COMPENSATION COVERAGE. Consultant certifies that Consultant has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier insured employer as provided by ORS 656.407 or as a self-insured employer. Consultant shall provide to City within 10 (ten) days after Contract Effective Date, a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without 30 (thirty) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Consultant is self-insured. Consultants based in the State of Washington shall comply with Workers' Compensation coverage as required by the Labor and Industry insurance laws of the State of Washington and show proof of Washington Stop Gap coverage in the amount of \$1,000,000.

21.2 PROFESSIONAL ERRORS AND OMISSIONS. Consultant shall provide City with evidence of professional errors and omissions liability insurance for the protection of the Consultant and its employees, insuring against bodily injury and property damage and arising out of or resulting from Consultant's negligent acts, omissions, activities or services in an amount not less than \$2,000,000 per occurrence or claim. In the event Consultant's coverage is written on a claims made basis, Consultant is responsible for purchasing extended reporting period/tail coverage for a minimum of one (1) year and showing proof to the City at the completion of the contract.

22. INDEMNIFICATION. Consultant shall indemnify, defend, save and hold harmless City, its elected and appointed officials, officers, agents, employees and volunteers against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees, based upon or arising out of the acts or omissions of the Consultant or its Sub-contractors, agents, or employees under this Contract except that arising out of the sole negligence of the City. In addition, Consultant expressly agrees to indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents, employees and volunteers against all liability, claims, suits, actions, loss or expenses, including attorney fees, arising out of or related to any claims that the Project, Services, or any other tangible or intangible items delivered to City by Consultant that may be the subject of protection under any state of federal intellectual property law or doctrine, or the City's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design or other proprietary right of any third party.

23. BREACH OF CONTRACT. Consultant shall remedy any breach of this Contract within the shortest reasonable time after Consultant first has actual notice of the breach or City notifies Consultant of the breach, whichever is earlier. If Consultant fails to remedy a breach in accordance with this Section, City may terminate that part of the Contract affected by the breach upon written notice to Consultant, may obtain substitute services in reasonable manner, and may recover from Consultant the amount by which the price for those substitute services exceeds the price for the same services under this Contract.

23.1. If the City determines that the breach is material and Consultant fails to remedy the breach in accordance with this Section, City may declare Consultant in default and pursue any remedy available for a default.

23.2. Pending a decision to terminate all or part of this Contract, City unilaterally may order Consultant to suspend all or part of the services under this Contract. If City terminates all or part of the Contract pursuant to this Section, Consultant shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Contract and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

23.3 To recover amounts due under this Section, City may withhold from any amounts owed by

City to Consultant, including but not limited to amounts owed under this or any other contract between Consultant and City.

24. FORCE MAJEURE. Neither City nor Consultant shall be held responsible for delay or default caused by fire, riot, acts of nature, or war where such cause was beyond, respectively, City's or Consultant's reasonable control. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. WAIVER. The failure of City to enforce any provision of this Contract shall not constitute a waiver by City of that or any other provision.

26. DEFAULT. City, by written notice of default (including breach of contract) to Consultant, may terminate the whole or any part of the Contract:

26.1 If Consultant fails to provide Services called for this Contract within the time or manner specified herein, or any extensions thereof; or

26.2 If Consultant fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such longer period as City may authorize in writing.

27. TERMINATION.

27.1 This Contract may be terminated at any time by written mutual consent of both parties.

27.2 Consultant may terminate this Contract upon 30 (thirty) days' written notice to City if City fails to pay Consultant pursuant to the terms of this Contract and City fails to cure within 30 (thirty) days after receipt of Consultant's notice or such longer period of cure as Consultant may specify in such notice.

27.3 City, in its sole discretion, may terminate this Contract, in whole or in part, at any time upon written notice to Consultant by specifying the termination date of the Contract.

27.4 In the event of termination under this Section, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services performed through the termination date. Consultant shall submit an itemized invoice for all un-reimbursed Services completed before termination for costs actually incurred by Consultant. City shall not be obligated to pay for any such costs invoiced to and received by City later than 30 (thirty) days after termination.

27.5 Upon receiving a notice of termination, Consultant shall immediately cease all activities under this Contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, As directed by City, Consultant shall deliver to City all Contract documents, information, works-in-progress and other property that are or would be deliverable had the Contract been completed. Upon City's request, Consultant shall surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Project or Services. By Consultant's signature on this Contract, Consultant allows City to use said Work Product and other property for its intended use. The rights and remedies of City provided in this Section related to defaults by the Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

28. GOVERNING LAW; JURISDICTION; VENUE. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "the claim") between City and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Clatsop

County for the State of Oregon. If the 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, Portland Division. Consultant, by its execution of this Contract, hereby consents to the *in personam* jurisdiction of said courts.

29. MEDIATION; TRIAL WITHOUT A JURY. Should any Contract related dispute arise between the Parties it is agreed that such dispute will be submitted to a mediator prior to any litigation and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, then through litigation. Any litigation arising under or as a result of this Contract shall be tried to the court, without a jury.

29.1 The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Cannon Beach, Oregon, unless the Parties agree in writing otherwise. Parties agree to exercise good faith efforts to resolve all Contract related disputes through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clatsop County Circuit Court upon the request of either party. The Parties shall retain all rights with respect to any dispute not covered by this Section.

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

31. MERGER CLAUSE; CONTRACTOR CERTIFICATION. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT THE SUPPLIED CONTRACTOR DATA IS TRUE AND ACCURATE AND CONSULTANT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

32. CANNON BEACH BUSINESS LICENSE. Prior to beginning work, the Contractor shall have a current City of Cannon Beach business license per Cannon Beach Municipal Code Chapter 5.04 Business License. Before permitting a subcontractor to begin work, Contractor shall verify that subcontractor has a current City of Cannon Beach business license.

33. DUNS NUMBER AND SAM REGISTRATION. All entities that enter into contracts with a Safe Drinking Water Revolving Loan Fund (SDWRLF) recipient (i.e. contractors) must have both a DUNS number and be a SAM Registration.

SAM Registration: https://www.sam.gov/SAM/ NOTE: The SAM registration expires annually and must be kept active until the SDWRLF project is closed	DUNS Number http://www.dnb.com/get-a-duns-number.html
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34. SOURCE OF FUNDS. Work under this Contract is funded by the federal Safe Drinking Water Revolving Loan Fund through Business Oregon and a partnership of Local and/or Private Funds.

35. WHISTLEBLOWER. Contractor receiving SDWRLF funds shall under or through this Contract to, post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).

36. NON-DISCRIMINATION. The Contractor shall not discriminate on the basis of race, color, national

origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in the termination of this contract or other legally available remedies.

37. TERMINATION FOR CAUSE AND FOR CONVENIENCE & BREACH OF CONTRACT. In addition to Sections 26 and 27 above, Contractor shall address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. In addition, contractor shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

38. INTELLECTUAL PROPERTY. Contractor hereby grants to the U.S. E.P.A. a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, any intellectual property developed under this Contract. Contractor shall secure from third parties the same license in the name of the U.S. E.P.A. regarding any intellectual property developed by third parties as subcontractors to perform this project, or developed under contract with the Contractor specifically to enable Contractor's obligations related to this project.

39. INSPECTIONS; INFORMATION. In addition to Sections 15 and 16 above, Contractor shall permit, and cause its subcontractors to the City, the State of Oregon, the federal government and any party designated by them to:

(1) Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.

(2) Interview any officer or employee of the Contractor, or its subcontractors, regarding the Project. Contractor shall retain all records related to the Project for three years after final payments are made and any pending matters are closed.

40. AMERICAN IRON STEEL. The Contractor acknowledges to and for the benefit of the City ("Water System") and the State of Oregon (the "State") that subsequent construction activities funded under this agreement are being funded with monies made available by the Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement"). The Contractor hereby represents and warrants to and for the benefit of the Water System and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, and (b) all engineering design, plans and specifications, and cost estimates shall facilitate compliance with the American Iron and Steel Requirement. While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

41. PROHIBITION ON THE USE OF FEDERAL FUNDS FOR LOBBYING. For any contracts in excess of \$100,000, the following form will be completed and returned to the City.

CERTIFICATION REGARDING LOBBYING

(Awards to Contractors and Subcontractors in excess of \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Signed _____

Title _____

Date _____

Signed this _____ day of _____, 20__.

FOR THE CONSULTANT:

FOR THE CITY:

Signature

Signature

Name (Printed)

Bruce St. Denis
Name (Printed)

Company

City Manager
Title

Title

SAMPLE