



## **REQUEST FOR PROPOSAL**

### **For Residential Backflow Assembly Testing And Maintenance Services**

#### **Proposal Closing:**

**DATE:** Tuesday, November 16, 2010

**TIME:** 3:00 p.m., Local Time

**PLACE:** Medford Water Commission Office

**Medford Water Commission**  
200 South Ivy Street – Room 177  
Medford, Oregon 97501

Telephone: 541-774-2440 ♦ Fax: 541-774-2555  
[www.medfordwater.org](http://www.medfordwater.org)

## **TABLE OF CONTENTS**

- Request for Proposal
- Schedule
- General Information/Scope of Services/Instructions
- Cost Proposal Form
- Proposal Submission Form
- Resident Bidder Form
- Sample Contract

## REQUEST FOR PROPOSAL

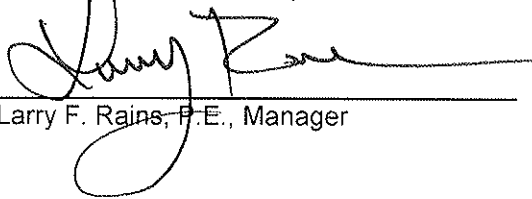
Notice is hereby given that the Medford Water Commission (MWC), by and through its Board of Water Commissioners, will receive sealed proposals until 3:00 pm., Local Time, Tuesday, November 16, 2010 at the MWC office, 200 S. Ivy St. – RM 177, Medford, Oregon 97501, for providing:

### RESIDENTIAL BACKFLOW ASSEMBLY TESTING AND MAINTENANCE SERVICES

Proposals received after the time established for receiving proposals will not be considered. Facsimile (FAX) proposals are not acceptable. Each proposal must contain a Signed Proposal Submission Form. A set of such Request for Proposal documents may be obtained by calling (541) 774-2440, or from the website: [www.medfordwater.org](http://www.medfordwater.org). A **MANDATORY** pre-proposal meeting for all firms interested in submitting a proposal will be held at 10:00 am, Tuesday, November 2, 2010 at the MWC office, 200 S. Ivy St. – Room 177, Medford, Oregon, to provide additional information and to answer questions about the required services, MWC expectations, and the evaluation process. Statements made by MWC's representatives are not binding unless confirmed by Written Addendum. MWC will notify proposers electronically of any addendum(a) and make the addendum(a) available only on the website. Each proposal must contain a statement as to whether the Proposer is a resident, as defined in ORS 279.029. Sealed proposals are to be sent to Medford Water Commission, Attention: Julie Alvis, 200 S. Ivy St. – RM 177, Medford, OR 97501. MWC may cancel the procurement or reject any proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any and all proposals upon a finding of MWC that it is in the public interest to do so. MWC also reserves the right to waive any informality in any proposal and to delete certain items listed in the proposal as set forth herein.

Dated this 12<sup>th</sup> day of October 2010.

BOARD OF WATER COMMISSIONERS  
CITY OF MEDFORD, OREGON



\_\_\_\_\_

Larry F. Rains, P.E., Manager

# SCHEDULE

---

Advertise RFP.....	Sun., Oct. 17, 2010
--------------------	---------------------

---

<b>Pre-Proposal Meeting</b> .....	<b>Tues., Nov. 2, 2010 - 10:00am</b> Medford Water Commission 200 S. Ivy St. – Room 177 Medford, OR 97503
-----------------------------------	--

---

Deadline - Last Date to Protest Specification (in writing).....	Tues., Nov. 9, 2010
---	---------------------

---

Deadline - MWC's Response to Specs Protest .....	Fri., Nov. 12, 2010
--	---------------------

---

<b>RFP Due Date/Time</b> .....	<b>Tues., Nov. 16, 2010 – 3:00pm</b> Medford Water Commission ATTN: Julie Alvis 200 S. Ivy St. – RM 177 Medford, OR 97501
--------------------------------	---

---

Notice of Intent to Award.....	Wed., Dec. 1, 2010
--------------------------------	--------------------

---

Deadline - Last Date to Protest Award (in writing).....	Wed., Dec. 8, 2010
---	--------------------

---

Deadline – MWC's Response to Award Protest .....	Fri., Dec. 10, 2010
--	---------------------

---

<b>Award Contract</b> .....	<b>Wed., Dec. 15, 2010</b> Board of Water Commissioners' Regular Meeting: Lausmann Annex 200 S. Ivy St. – RM 151 Medford, Oregon 97501 12:30 p.m.
-----------------------------	--

---

Work to Commence .....	Mon., Jan. 3, 2011
------------------------	--------------------

---

# **GENERAL INFORMATION AND SCOPE OF SERVICES**

## **INVITATION**

You are invited to submit a proposal to perform professional services for residential backflow assembly testing and maintenance for the Medford Water Commission (MWC).

The selected provider will be required to enter into a formal contract for professional services with MWC; sample "Personal Services Contract" attached.

## **GENERAL INFORMATION**

### **Project Summary:**

MWC has adopted a program to assist single-family residential customers with the annual testing and maintenance requirements for their privately owned backflow prevention assemblies.

The qualified contractor will provide coordination, annual testing, maintenance, and reporting services for approximately 6300 backflow prevention assemblies. The services primarily involve privately owned assemblies located on premises of single-family residential customers. Contract services also include MWC-owned assemblies located at treatment facilities, pump stations, transmission mains and fire hydrants. Several hundred assemblies are expected to be added during the term of the contract.

This is a two-year contract, which may be extended for an additional two years upon mutual, written agreement of both parties. Unless earlier terminated or extended, this contract shall remain in force and effect from January 1<sup>st</sup>, 2011 through December 31<sup>st</sup>, 2012.

Most assemblies are privately owned and located on private property. Contractor will work with MWC to develop and implement an acceptable testing/maintenance schedule, customer contact and communications protocol. Contractor professionalism and customer satisfaction are top priorities.

Contractor shall supply all labor, transportation, equipment, materials and tools necessary to complete the scope of services included herein.

Contractor shall secure and maintain all certifications, licenses, and insurance, as required by the personal services contract.

### **Backflow Assembly Information:**

A complete detailed listing of backflow assemblies due for testing will be provided at the beginning of each year. Data provided for each individual assembly will include the customer name, address, general location, make, model, serial number, size, and last test date. There are

approximately 313 RPAs, 5863 DCAs, and 46 PVBA's included in the contract. Several hundred additional new or existing assemblies are expected to be added as they are identified through the residential inspection program.

Assemblies are located on the customer's private property, typically for landscape sprinkler systems, fire suppression systems, and private wells.

Customers will remain responsible for providing clear access to the assembly for testing and maintenance, however, minor cleanout of backflow assembly boxes is considered a routine maintenance function and will be required by the Contractor to ensure prompt testing of backflow assemblies.

Confined space entry is not required.

### **Licensing, Certification and Insurance Requirements:**

Contractor and/or applicable employees shall secure and maintain in good standing through the term of the contract: State of Oregon Backflow Assembly Tester Certification, City of Medford Business License, Valid Oregon Driver's License, licensing with the State of Oregon Construction Contractor's Board or Landscape Contractor's Board as required by ORS 448.279(2), and any other certifications or licensing that may be required to perform the scope of services herein. Insurance coverage requirements are specified in the sample contract (see attached Exhibit A).

## **SCOPE OF SERVICES**

### **Labor, Transportation, Equipment, Materials and Tools:**

Contractor shall supply all labor, transportation, equipment, materials and tools necessary to complete the scope of services in the contract.

Contractor is expected to maintain a reasonable inventory of common maintenance materials and to facilitate timely maintenance to minimize customer inconvenience.

Only qualified persons with current State of Oregon Backflow Assembly Tester Certification shall perform testing and maintenance work.

Contractor shall perform testing work and maintain test gauge equipment in accordance with requirements of OAR 333-061-0070 through 0072.

Contractor is required to display a magnetic sign on vehicle along with personal identification badges provided by MWC while performing tests & maintenance work for MWC.

### **Testing and Maintenance Services:**

#### **Perform Backflow Assembly Tests**

Perform the routine annual test as per schedule for each backflow assembly identified on the MWC's master-list, as well as any additional backflow assemblies assigned by MWC.

### **Perform Backflow Assembly Maintenance**

Perform maintenance services for all backflow assemblies that fail the routine annual test; if able to maintain, re-test the assembly after maintenance has been completed. Maintenance service is intended to include flushing and cleaning, and the replacement of worn or damaged parts; shut-off valves or assembly body replacements are not covered in this scope of work and remain the responsibility of the owner. The contractor must provide all required materials; MWC will reimburse contractor for materials as per contract. Contractor shall make reasonable efforts to maintain adequate inventory of maintenance materials and to minimize costs through wholesale purchasing.

### **Install Plugs & Caps**

Install approved water-tight plugs or caps in all test cocks for each assembly that does not have plugs or caps installed.

### **Identification Tags**

Complete and attach the MWC's residential program identification tag with test record information to each assembly.

### **Complete Backflow Assembly Test Reports**

The Contractor will provide, complete, and submit Backflow Assembly Test Report Forms to MWC within ten (10) days of testing. MWC will supply to the Contractor door hangers to be completed and submitted to the customer regarding the status of the test. Contractor shall also supply a completed copy of the test report to customers upon request. If an assembly fails, the Contractor must highlight that information when submitting a test report to MWC. The Contractor may also be required to provide supplemental data such as water meter numbers and detailed location information. MWC and Contractor may agree to coordinate test and maintenance data via an electronic file format.

### **Inspection and Follow-up**

Contractor is subject to periodic work inspections, which may include witnessing test procedures and customer contact activity, gauge and equipment inspection, verification of current licenses, certification, and insurance information, review of site conditions, and interviews with assembly owners regarding quality of work.

### **Scheduling and Coordination:**

#### **Testing Schedule**

The testing and/or maintenance of residential backflow assemblies identified on MWC's master-list will begin on or about January 3rd, 2011 and will continue through December 31<sup>st</sup>, 2012. Each assembly on the list will be tested once per year or as requested by MWC. Consideration may be given for special circumstances or weather conditions that may affect the specified completion dates.

#### **Additional Assemblies**

Additional assemblies will be added periodically throughout the contract period and shall be tested within 30 days of receipt.

### **Coordination**

Contractor shall communicate and coordinate the testing schedule to facilitate any advanced customer notifications as deemed necessary by MWC. Periodic status reports may also be required.

### **Follow-up Response**

Contractor shall be available to promptly respond to and resolve customer concerns, complaints, or emergency situations that may arise regarding workmanship.

### **Customer Contacts and Communications:**

Most assemblies are privately owned and located on private property. Contractor will work with MWC to develop and implement an acceptable customer contact and communications protocol. Contractor availability and coordination with backflow assembly owners for access and/or interruption of water service is essential. Contractor is required to display a sign and/or identification badges provided by MWC when working on private property.

### **Care to Be Taken When Working on Private Property**

Contractor shall exercise care to avoid damage to plants or landscaping; site cleanup is essential. Contractor is responsible for damages to customer property, including plumbing, valve boxes, landscape, and/or any consequential damages that may result from the contractor's work.

### **Customer Satisfaction**

Contractor is expected to maintain a professional appearance, represent the MWC program in a professional manner, and make all reasonable efforts to accommodate customer satisfaction with the services performed. All aspects of work shall be performed in a neat, professional and courteous manner.

## **MEASUREMENT AND PAYMENT**

Contractor shall submit an invoice on or about the 25<sup>th</sup> day of each month detailing the number of tests, the number of maintenance/re-tests, maintenance materials and plugs or caps installed. The routine annual tests and maintenance/re-tests shall be compensated at the fixed rate charge submitted in the proposal. Maintenance materials shall be itemized and invoiced at cost plus 10%; contractor parts cost documentation is required. Only assemblies with completed test reports submitted will be eligible for payment.

## **PROPOSAL INSTRUCTIONS**

The proposal submittals must include, at a minimum, the following required information:

1. **PROCESS AND METHODOLOGY:** A discussion of approach to the project, intended to demonstrate the Proposer's project understanding and to present a plan to accomplish the scope of work. The discussion might include the contractor's perspectives of MWC program policies, access to customer properties, customer communications, coordination with MWC, expectations for support services, and other topics related to successful completion of the residential testing program.
2. **SCOPE OF WORK:** A recap, but further detailed description of the scope of work to be performed by the consultant on all phases of the project.



3. **QUALIFICATIONS & EXPERIENCE:** A history and structure of the firm; a listing of the project manager and all key personnel to be utilized on the project, including their educational background, certifications, work history, areas of responsibility, and a statement of their particular expertise and experience related to all phases of this type of project. Provide a listing of all vehicles, test equipment, tools, materials, permits, licenses, certifications required to complete the tasks included in the scope of services.
4. **STAFFING PLAN:** Indicate the total number of individuals that will be assigned to the project during the contract period. Provide a listing of work commitments and assigned time allocation for each individual for the MWC project.
5. **REFERENCES:** A minimum of three (3) references related to commercial, municipal and residential backflow testing experience completed by the individual project team members within the last years (3) years. Responder shall connect team members with respective work reference. List should include names, addresses, telephone numbers, FAX numbers and e-mail addresses. MWC reserves the right to investigate the references and past performance of any proposer with respect to successful performance of similar projects, compliance with specifications and contractual obligations, and completion of a project on schedule.
6. **SUB-CONSULTANTS:** Provide a list and description of tasks, qualifications, and responsibilities of any sub-contractor that may be hired.
7. **COST PROPOSAL FORM:** Include a separate, sealed Cost Proposal Form, providing cost proposals per assembly for Annual Testing, and for Maintenance and Re-testing, which are adequate to cover the scope of all services requested.
8. **PROPOSAL SUBMISSION FORM:** Signed by an individual authorized to bind your firm.
9. **RESIDENT BIDDER FORM:** For compliance with Oregon Revised Statutes.

**Proposal Modification:** Modifications or erasures made before signing by the authorized representative must be initialed in ink. Once submitted, proposals may be modified in writing before the time and date set for proposal closing. Any modifications shall be prepared on company letterhead, signed by an authorized representative, and state that the new document supersedes or modifies the prior proposal. Modification must be submitted in a sealed envelope clearly marked "Proposal Modification", and identifying the proposal title and closing date and time. Proposer may not modify proposal after proposal closing time.

**Proposal Withdrawal:** Proposals may be withdrawn in writing on company letterhead signed by an authorized representative and received by MWC Manager prior to proposal closing time. Proposals may also be withdrawn in person before proposal closing time upon presentation of appropriate identification.

**Protest of Proposal Specifications:** A proposer who believes the proposal scope of work or specifications are unnecessarily restrictive or limit competition may submit a protest, in writing, to the Manager. To be considered, protests must be received at least five (5) days before the proposal closing date. Envelopes containing protests should be marked as follows:

Proposal Specification Protest  
 Proposal Title  
 Closing Date and Time

**Protest of Award:** The award by the Board of Water Commissioners shall constitute a final decision of MWC to award the contract if no written protest of the award is filed with MWC within seven (7) calendar days of the Notice of Intent to Award. The written protest shall specify the grounds upon which the protest is based. In order to be an adversely affected proposer with a right to submit a written protest, a proposer must be next in line for award. MWC will not entertain a protest submitted after the time period established in this rule.

## PROPRIETARY INFORMATION

The opened proposals shall be available for public inspection (ORS 192.420 to 192.505) except to the extent the proposer designates trade secrets or other proprietary data to be confidential (ORS 192.501 (2)).

## TIME AND PLACE FOR RECEIVING PROPOSALS

Proposers should submit one (1) clearly marked "ORIGINAL" and three (3) copies of the proposal to the office of the Medford Water Commission, Attention: Julie Alvis, 200 S. Ivy St., Room 177, Medford, Oregon 97501, by:

**3:00 p.m., Local Time – Tuesday, November 16th, 2010**

***Only one sealed envelope containing the separate cost proposal need be submitted with all four proposals.***

Proposals received after the deadline will not be considered. Facsimile (FAX) proposals are not acceptable.

### **PLEASE NOTE**

In order to ensure consideration, proper identification and handling, the Proposal must be enclosed in a sealed envelope clearly marked:

#### **RFP – RESIDENTIAL BACKFLOW ASSEMBLY TESTING AND MAINTENANCE SERVICES**

MWC will not be responsible for identifying and handling any proposal that is not submitted in an envelope labeled this way. Failure to so label the *exterior* of your envelope, whether shipped by the U.S. Postal Service or by an express carrier such as FedEx®, may result in disqualification of your proposal.

## EVALUATION PROCESS

An Evaluation Committee so designated by the MWC Manager will evaluate the proposals submitted and may make a recommendation of award to the Manager. An award recommendation will be based on the Committee's evaluation of the information in the proposal and its determination of which proposal best serves the interests of MWC. Evaluation criteria, as determined at the discretion of the Evaluation Committee, shall include but are not limited to: contractor's understanding of the MWC residential program policies and goals, prior experience

performing similar work, project team qualifications, process and methodology, references, customer service, cost, ability to represent MWC in a professional manner, and the quality of the written proposal. An oral evaluation or interview *may* be performed, at the discretion of the Evaluation Committee.

Information contained in the cost envelope will be secondary and will be opened after the proposals have been reviewed by the Evaluation Committee. How the Committee uses that information is at their discretion.

MWC reserves the right to solicit additional information from proposers should MWC determine that such information is necessary during the evaluation process.

## **AWARD**

The Board of Water Commissioners will consider award of the project based on the Manager's recommendation and will authorize the Manager to execute a contract. The contract will be awarded to the proposer who, in the opinion of the Board of Water Commissioners, best serves the interests of MWC and meets all required specifications. MWC may reject any proposal not in compliance with all prescribed public procurement procedures and requirements and may reject for good cause any and all proposals upon a finding of MWC that it is in the public interest to do so. MWC also reserves the right to waive any informality in any proposal and to delete certain items listed in the proposal as set forth herein.

## **CONTRACT**

A sample personal services contract is attached as Exhibit A. Proposers should carefully review the contract, paying particular attention to the requirements; certain conditions and terms may be modified at the time of contract negotiations.

## **CONTACT PERSON**

Requests for additional information, questions, and changes regarding this proposal, please contact Julie Alvis, at (541) 774-2450 or write to the address on the front cover. Please do not attempt to contact any other member of the Selection Committee. Such contact may disqualify your proposal.

# COST PROPOSAL FORM

## INSTRUCTIONS

1. Provide a fixed cost proposal for each individual Annual Backflow Assembly Test.
2. Provide a fixed cost proposal for each individual backflow assembly Maintenance and Re-Test. Maintenance materials are compensated separately and should not be included in the Maintenance and Re-Test cost proposal.

***The cost proposals should be sufficient to cover the scope of all services required.***

For evaluation purposes, a total cost estimate will be calculated by MWC using the number of assemblies included herein (6300), times the “per test and per maintenance/re-test” rates; an estimated failure rate of 5% will be used.

The cost proposal is not considered a bid, nor will cost alone decide who is selected.

Only one sealed envelope containing the separate Cost Proposal Form need be submitted with all our proposals (See “Time and Place for Receiving Proposals”).

NO.	DESCRIPTION	COST PER ASSEMBLY
1.	Annual Backflow Assembly Test	\$ .
2.	Maintenance and Re-Test	\$ .

# PROPOSAL SUBMISSION FORM

I, the undersigned, having read and with full understanding of all Proposal specifications, terms and conditions, do submit the following Proposal to provide the Medford Water Commission with **Residential Backflow Assembly Testing and Maintenance Services**, and certify that the Proposal is made without connection with any person, firm or corporation making a proposal for the same goods and/or services and is in all respects fair and without collusion or fraud.

Proposer's Printed Name: \_\_\_\_\_

Proposer's Signature: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

## **RESIDENT BIDDER CERTIFICATE**

Pursuant to Compliance with Oregon Revised Statutes:

“Resident Bidder” Certification:

Yes, I certify that I am a “resident bidder.”

(ORS 279A.120(b): “Resident bidder” means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder is a “resident bidder” under this paragraph)

No, I am not a “resident bidder.”

(“Non-resident bidder” means a bidder who is not a “resident bidder” as defined in ORS 279A.120(a); please refer to the Oregon Revised Statutes regarding state requirements for Non-Resident Bidders that are awarded a contract in Oregon.)

I am domiciled in the State of \_\_\_\_\_  
Indicate State

**EXHIBIT A**  
**SAMPLE**  
**PERSONAL SERVICES CONTRACT**

For  
(Name of Project)

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter referred to as "CONTRACTOR"), and MEDFORD WATER COMMISSION, a chartered municipal water utility of the City of Medford, Oregon, governed by and through its Board of Water Commissioners (hereinafter referred to as "CLIENT").

**WITNESSETH:**

WHEREAS, the CLIENT desires to engage the CONTRACTOR to render certain technical and/or professional services hereinafter described in connection with \_\_\_\_\_ and;

WHEREAS, the CONTRACTOR is qualified and agreeable to render the aforesaid technical and/or professional services;

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual promises hereinafter expressed, and intending to be legally bound hereby, the parties hereto do mutually agree as follows:

Article 1. Engagement of Contractor

The CLIENT hereby agrees to engage the CONTRACTOR to perform the technical and/or professional services as hereinafter set forth. CONTRACTOR is not an employee of the CLIENT.

Article 2. Scope of Services

The CONTRACTOR shall perform the services set forth in Exhibit "A", entitled Scope of Services, attached hereto and by reference incorporated herein and made a part hereof. CONTRACTOR is employed to render a professional service only, and any payments made to the CONTRACTOR are compensation solely for such services rendered and recommendations made in carrying out the work. Except as otherwise agreed by the parties, CONTRACTOR shall follow the usual and customary practice of the Personal profession to make findings, provide opinions, make factual presentations, and provide professional advice and recommendations.

Article 3. Data to be Furnished

All information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work as outlined in Exhibit A hereof shall be made

available to the CONTRACTOR without charge by the CLIENT, and the CLIENT shall cooperate in the carrying out of the work without undue delay.

#### Article 4. Personnel

- A. The CONTRACTOR represents that it employs, or will employ at its own expense, all personnel required in performing the services under this Agreement.
- B. All of the services required hereunder will be performed by the CONTRACTOR or under his direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.
- C. CONTRACTOR shall be responsible to ensure that it and any subcontractors comply with all applicable Federal, State and local laws regarding employee wages, hours, benefits, health care, and workers compensation, and shall ensure that all expenses and claims related thereto are paid promptly. The applicable provisions of ORS 279C are attached hereto as Exhibit \_\_\_ and incorporated herein by reference.
- D. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the CLIENT.

#### Article 5. Time of Performance

The services of the CONTRACTOR are to commence within \_\_\_\_\_ after the date of this Agreement. The work shall be completed in accordance with the schedule developed by the parties hereto and contained in the schedule of performance and all work covered by this Agreement shall be completed within \_\_\_\_\_ from the date of this Agreement.

#### Article 6. Compensation

The CLIENT shall compensate the CONTRACTOR in accordance with the Schedule of Charges and Payment Schedule set forth in Exhibit \_\_\_\_, which shall include the basis for rates and charges. Compensation shall be billed monthly in summary form giving employees names and hours and expense data. Payment to CONTRACTOR is due upon presentation of invoice to CLIENT and is to be made within thirty (30) days.

#### Article 7. Changes

The CLIENT may from time to time request changes in the scope of the services and the time of performance as set forth herein. Such changes, including any increase or decrease in the amount of compensation to the CONTRACTOR, shall be mutually agreed upon by and between the parties hereto and shall be incorporated as written amendments to this Agreement.

#### Article 8. Extras

Except as otherwise provided herein, no payment for extras shall be made unless and until such extras and the price therefore have been authorized in writing in advance.

#### Article 9. Suspension of Work



CLIENT may suspend, in writing, all or a portion of the work under this Agreement if unforeseen circumstances beyond CLIENT'S control make normal progress of the work impossible. CONTRACTOR may request that the work be suspended by notifying CLIENT, in writing, of circumstances that are interfering with the normal progress of work. CONTRACTOR may suspend work on Project in the event CLIENT does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. If the period of suspension exceeds ninety (90) days, the terms of this Agreement are subject to renegotiation, and both parties are granted option to terminate work on the suspended portion of Project in accordance with Article 10.

#### Article 10. Termination of Work

CLIENT may terminate all or a portion of the work covered by this Agreement for its convenience. CLIENT or CONTRACTOR may terminate work if the other party fails to perform in accordance with the provisions of this Agreement by providing fifteen (15) days prior, written notice to the other by certified mail with receipt for delivery returned to the sender.

In that event, all finished or unfinished documents and other materials shall, at the option of CLIENT, become its property. If requested by CLIENT, CONTRACTOR shall perform such additional work as is necessary for the orderly filing of documents and closing of Project. The time spent on such additional work shall not exceed ten (10%) percent of the time expended on the Project prior to the effective date of termination. CONTRACTOR shall be compensated for work on the Project, plus work required for filing and closing as described in this Article, either of which is performed up to the effective date of termination; provided, however, that CLIENT shall not be required to pay for work that is not done in substantial compliance with requirements of this contract and CONTRACTOR shall be liable to CLIENT for any damages resulting from CONTRACTOR'S breach of its obligations under this contract.

#### Article 11. Interest of the Contractor

The CONTRACTOR hereby covenants that it has, at the time of the execution of this Agreement, no interest and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONTRACTOR further covenants that in the performance of this work no person having any such interest shall be employed.

#### Article 12. Findings Confidential

No report, information, or other data given to or prepared or assembled by the CONTRACTOR pursuant to this Agreement which the CLIENT has requested be kept confidential, shall be made available to any individual or organization by the CONTRACTOR without the prior written approval of the CLIENT.

#### Article 13. Subletting or Assignment

Neither of the parties hereto shall assign, sublet or transfer his interest in this Agreement or any portion thereof without the prior written consent of the other.

#### Article 14. Rights to and Disposition of Data

The term "subject data" as used herein includes all data, written materials, photographs, drawings or other information collected or created under this Agreement whether delivered under this Agreement or not. The term does not include financial records, accounting records or other information incidental to the administration of this Agreement. All subject data shall be retained by the CONTRACTOR, in accordance with the terms of this Agreement, until disposition of such subject data shall have been determined in a manner mutually agreeable to the parties hereto. Subject data shall be available for study and utilization by the CLIENT so long as such subject data is in the possession of the CONTRACTOR. Following termination or completion of the work pursuant to this Agreement, upon request, CONTRACTOR will deliver copies of all subject data to CLIENT and the CLIENT may duplicate, use and disclose in any manner and for any purpose whatsoever all subject data. Upon request, all final reports and other materials prepared by CONTRACTOR under this agreement shall be the property of CLIENT.

#### Article 15. Publications

It is agreed that either or both of the parties hereto may publish at any time, subject to the terms of this Agreement, the results of the work conducted hereunder, provided credit is given to the individuals and organizations who conducted and sponsored the work. A copy of each manuscript to be submitted for publication by either or the parties hereto shall be furnished to the other party prior to such submission for publication, and five (5) copies or reprints shall be furnished to the other party subsequent to publication. Articles or works reporting on the subject work hereunder or on portions thereof which are published by the CONTRACTOR shall contain the forward, preface or footnote a statement to the effect that publication of the article or work does not necessarily indicate acceptance by the CLIENT of the findings, conclusions or recommendations either inferred or specifically expressed therein.

#### Article 16. Federal Requirements and Provisions

If applicable, Federal requirements and provisions are attached hereto as Exhibit \_\_\_\_\_. CONTRACTOR agrees to comply with such attached provisions.

#### Article 17. Indemnity and Compliance with Laws and Regulations

CONTRACTOR agrees that CONTRACTOR will be solely responsible for any damage or trespass to or upon adjacent property or injury thereto and any and all other liability or damages resulting from or in connection with CONTRACTOR'S operation, and that CONTRACTOR will hold CLIENT harmless from any claim, liability, damages or obligation arising therefrom and indemnify CLIENT for the amount of any obligation it may incur on account thereof or arising therefrom. Provided, however, that CONTRACTOR shall not be required to indemnify CLIENT against liability for damage arising out of death or bodily injury to persons or damage to property caused solely by the negligence of CLIENT.

CONTRACTOR shall at all times observe and comply with all federal and state laws and local ordinances and regulations, including but not limited to possession of a valid City of Medford business license, in any manner affecting the conduct of the work, and all such orders or decrees as exist at the present and those which may be made or enacted later by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless CLIENT and all its officers, agents and servants against any claim or liability arising or

based on the violation of any such law, ordinance, regulation, order or decrees, whether by CONTRACTOR or CONTRACTOR'S employees.

#### Article 18. Insurance

During the life of this Agreement, CONTRACTOR shall maintain the following minimum insurance:

- (1) Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The following minimum limits are required: General Aggregate - \$1,000,000, Products/Completed Operations Aggregate - \$1,000,000, Personal & Advertising Injury Aggregate - \$1,000,000, Each Occurrence- \$500,000. "The Medford Water Commission and its officers, employees and agents while acting within the scope of their duties as such" shall be named an additional Insured.
- (2) Commercial automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired autos. The combined single limit for bodily injury and property damage shall be not less than \$500,000. "The Medford Water Commission and its officers, employees and agents while acting within the scope of their duties as such" shall be named an additional Insured.
- (3) Statutory workers compensation and employers liability insurance as required by State law.
- (4) Professional liability insurance. The limit of liability shall be not less than \$500,000.

Coverages 1 and 2 shall be written on an occurrence basis not on a claims-made basis and satisfactory "tail" coverage shall be provided for coverage 4. Coverages 1 and 2 shall be primary and non-contributing over any other insurance available to CLIENT. CONTRACTOR shall submit to CLIENT certificates of insurance for all policies listed above. The certificates shall provide that the insurance company give written notice to CLIENT at least ten (10) days prior to cancellation of or any material change in the policy.

#### Article 19. Partial Invalidity

If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

#### Article 20. Integration

This Agreement represents the entire understanding of CLIENT and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

#### Article 21. Jurisdiction

This Agreement shall be administered and interpreted under the laws of the State of Oregon. Jurisdiction of litigation arising from this Agreement shall be in that state. IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper officers the day and year first above written.

MEDFORD WATER COMMISSION, BY AND THROUGH  
ITS BOARD OF WATER COMMISSIONERS

By \_\_\_\_\_

Title Manager

ATTEST: \_\_\_\_\_

CONTRACTOR

By \_\_\_\_\_

Title \_\_\_\_\_

## EXHIBIT B

### STATUTORY PUBLIC CONTRACT PROVISIONS

#### **279C.505 Conditions concerning payment, contributions, liens, withholding and drug testing.**

(1) CONTRACTOR shall:

(a) Make payment promptly, as due, to all persons supplying to CONTRACTOR labor or material for the performance of the work provided for in this contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR or subcontractor incurred in the performance of this contract.

(c) Not permit any lien or claim to be filed or prosecuted against CITY on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) If a public improvement contract, CONTRACTOR shall demonstrate that an employee drug-testing program is in place.

#### **279C.510 Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.**

(1) If a contract for demolition, CONTRACTOR shall salvage or recycle construction and demolition debris, if feasible and cost effective.

(2) If a contract for lawn and landscape maintenance, CONTRACTOR shall compost or mulch yard waste material at an approved site, if feasible and cost effective.

#### **279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.**

(1) If CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to CONTRACTOR or a subcontractor by any person in connection with the public improvement contract as such claim becomes due, the proper officer or officers representing CITY 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 CONTRACTOR by reason of such contract.

(2) Every public improvement contract shall contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The

rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

(3) Every public improvement contract and every contract related to the public improvement contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(4) The payment of a claim in the manner authorized in this section shall not relieve CONTRACTOR or CONTRACTOR's surety from obligation with respect to any unpaid claims.

**279C.520 Condition concerning hours of labor.**

(1)(a) No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279C.100, the employee shall be paid at least time and a half pay:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(2) CONTRACTOR shall give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) Persons employed under contracts for personal services as described in ORS 279C.100 shall be paid at least time and a half for all overtime work in excess of 40 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. 201 to 209 from receiving overtime.

(4) N/A.

(5)(a) Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater.

(b) CONTRACTOR shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by

posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

**279C.530 Condition concerning payment for medical care and providing workers' compensation.**

(1) CONTRACTOR shall promptly, as due, make payment to any person, copartnership, 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 CONTRACTOR, of all sums which CONTRACTOR agrees to pay for such services and all moneys and sums which CONTRACTOR collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(2) 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.

**ORS 279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; fee; bond.**

(1)(a) Except as provided in paragraph (d) of this subsection, the specifications for every contract for public works shall contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. When the prevailing rates of wage are available electronically or are accessible on the Internet, the rate may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

(b) If a public agency is required under paragraph (a) of this subsection to include the state and federal prevailing rates of wage in the specifications, the public agency also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(c).

(c) Every contract and subcontract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C840.

(d) A public works project described in ORS 279C.800(6)(a)(B) or (C) is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

(2) The specifications for every contract for public works between a public agency and a contractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a provision that the fee shall be paid to the commissioner under the administrative rule of the commissioner.

(3) The specifications for every contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9). Every contract awarded by a contracting agency shall contain a provision requiring the contractor:

(a) To have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

(b) To include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).