

**STANDARD FORM OF AGREEMENT
BETWEEN
CITY OF COOS BAY, OREGON
AND
[BUILDING CONTRACTOR]**

THIS AGREEMENT FOR CONTRACTED SERVICES (the "Contract") is made as of the _____ day of _____, 20____, by and between the **CITY OF COOS BAY**, with offices located at **500 Central Avenue, Coos Bay, Oregon 97420** (the "**OWNER**") and _____ a(n) _____ (Corporation/LLC/Partnership/Sole Proprietor), with offices located at _____ (the "**CONTRACTOR**") (Owner and Contractor hereinafter collectively referred to as the "**Parties**").

ARTICLE 1 -- Work: Contractor shall complete all Work as specified and/or included in ATTACHMENT 'A'. All provisions of this contract supersede any items listed on the proposal submitted by the contractor. The contractor shall perform all work in accordance with applicable specifications, i.e., latest version of APWA/ODOT, State of Oregon Building Code, City Engineering Standards and City Ordinance.

ARTICLE 2 -- Effective Date and Duration: This Contract shall become effective upon the date of the last signature. No services shall be performed prior to this Contract Execution Date. The Contractor shall at all times carry on the work diligently, without delay and punctually fulfill all requirements herein. The passage of the contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured or the breach of any Contractor warranty.

ARTICLE 3 -- Statement of Work: The Contractor will furnish all materials, supplies, labor, equipment, tools, and other services necessary for the construction and completion _____, as provided in these Contract Documents.

ARTICLE 4 -- Contract Price: The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the total sum of \$XXXXXXXX (**XXXX Thousand XXXX Hundred XXX Dollars and No Cents**) unless this Contract Price is modified by an executed change order. The Owner agrees to pay the Contractor in the manner and at such times as set forth in the City of Coos Bay General Conditions, unless otherwise modified by written agreement of the parties

ARTICLE 5 -- Contract Period: The Contractor will commence the work required by this Contract within ten (10) calendar days after the date of the Contractor's receipt of the Notice to Proceed, and will complete the work within XX calendar days following the date of receipt of the Notice to Proceed, unless the Contract Period is extended or otherwise modified by written agreement of the parties.

ARTICLE 6 -- Liquidated Damages: In event the Contractor fails to complete the work on or before the Contract Expiration Date, for each and every day the work contemplated under this Contract remains uncompleted beyond the Contract Expiration Date, the Contractor shall pay to the Owner the sum of _____ per calendar day as liquidated damages and not as a penalty. This sum may be deducted from money due or to become due to Contractor as compensation under this Contract.

ARTICLE 7 -- Payment to Oregon Bureau of Labor and Industries Pursuant to ORS 279C.825(2):

If this Contract is a public works contract subject to ORS 279C.800 to 279C.870, Owner shall pay a fee equal to one-tenth of one percent (.1%) of the Contract Price, but not less than \$250 nor more than \$7,500 regardless of the Contract Price, to the Oregon Bureau of Labor and Industries at the following address:

Oregon Bureau of Labor and Industries
Wage and Hour Division, Prevailing Wage Unit
800 NE Oregon St. #32
Portland, OR 97232

The fee shall be paid at the time the Owner executes this Contract. Within 30 days of issuing the final progress payment, the Owner shall recalculate and adjust fees based on the final Contract price including all change orders and other Contract price adjustments, in accordance with OAR 839-025-0210.

ARTICLE 8 -- Tax Compliance. By its signature on this Contract, Contractor hereby certifies that it is not in violation of any Oregon tax law. For the purpose of this certification, "Oregon tax laws" includes, but may not be limited to, ORS Chapter 118, 119, 314, 316, 317, 318, 320, 321, and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the Homeowner's and Renters Property Tax Relief Program under ORS 310.630 to 310.690; and any local tax laws administered by the Oregon Owner of Revenue under ORS 305.620.

ARTICLE 9 -- Access to Records: For not less than three (3) years after the Contract Expiration Date, the Owner, the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, this Contract, or any part thereof, becomes the subject of or is involved in litigation, Contractor shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Full access will be provided to the Owner in preparation for and during litigation.

ARTICLE 10 -- Funds Available and Authorized: Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance costs of this Contract within the Owner's current appropriation or expenditure limitation.

ARTICLE 11 -- Indemnity: Contractor shall defend, save, and hold harmless the Owner, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the errors, omissions, negligence or willful misconduct of Contractor or his employees, subcontractors, or agents under this contract.

ARTICLE 12 -- Insurance

Specific Directives

1. General Liability shall be a per occurrence form and must cover the time for which the work is being performed.
2. Proof of insurance of not less than the amount required is to be provided. Written notice of cancellation of insurance shall be provided to the City/Agency not less than 30 days prior to the date of cancellation.
3. If the City/Agency is required to use Federal or State insurance policy limits, or is subject to the Federal or State tort claim limits, the limits required through this directive shall be superseded by such limits.
4. If a claim occurs where the amount of the claim exceeds the insurance policy limits required by this directive, the contractor assumes full responsibility for the payment of such claim.
5. Insurance policy limits shall not be less than those listed in this directive without the consensus of the City Manager, City Attorney and the City Risk Manager of Record. Insurance policy limits may be waived at the discretion of the City/Agency. Insurance policy limits may be required to be higher based upon the City Manager's review of the specific application for which the certificate is required.
6. Tail Coverage": If any of the required liability insurance is on a "claims made" basis, recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Contract/Agreement, for a minimum of 24 months following the later of:
 - (1) Recipient's completion of all services and the City's/Agency's acceptance of all services required under the Contract/Agreement, or
 - (2) The expiration of all warranty periods provided under the Contract/Agreement. Notwithstanding the foregoing 24-month requirement, if recipient elects to maintain "tail" coverage and the maximum time period "tail" coverage is reasonably available in the marketplace is less than the 24-month period described above, recipient shall maintain "tail" coverage for the maximum time period "tail" coverage is reasonably available in the marketplace for the coverage required.
7. Definitions:

Commercial General Liability: To cover bodily injury, death, and property damage. This insurance shall include contractual liability coverage for the indemnity provided under those listed in the Agreement/Contract, personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits).

Professional Liability: To cover error, omission or negligent acts related to the professional services to be provided under the Agreement/Contract.

Automobile Liability: To cover each accident for bodily injury and property damage, including coverage for owned, hired, non-owned, leased, or rented vehicles as applicable. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).

Builders Risk: To cover structures being built, temporary structures at the building site, and building materials not yet having become part of the building. The building materials are covered while on the insured location, in transit, or in storage at another location.

Installation Floater: To cover materials, equipment, and personal property while in transit, installation, and until coverage terminates according to the terms of the floater. This coverage can cover the property of others in the contractor's care, custody or control that is often excluded under the contractor's general liability coverage.

Umbrella Liability: To cover excess liability over several of the insured's primary liability policies. An excess liability policy may be what is called a following form policy, which means it is subject to the same terms as the underlying policies; it may be a self-contained policy, which means it is subject to its own terms only; or it may be a combination of these two types of excess policies. Umbrella policies provide three functions:

- (1) To provide additional limits above the each occurrence limit of the insured's primary policies;
- (2) To take the place of primary insurance when primary aggregate limits are reduced or exhausted; and
- (3) To provide broader coverage for some claims that would not be covered by the insured's primary insurance policies, which would be subject to the policy retention.

Most umbrella liability policies contain one comprehensive insuring agreement. The agreement usually states it will pay the ultimate net loss, which is the total amount in excess of the primary limit for which the insured becomes legally obligated to pay for damages of bodily injury, property damage, personal injury, and advertising injury.

Level 5 Insurance Requirements: Construction contracts over \$50,000:

Commercial General Liability Per occurrence	\$ 1,000,000
Workers' Compensation	Statutory Limit
Applicable Federal (e.g., Longshoremen's)	Statutory Limit
Employer's Liability	\$ 500,000
Umbrella/Excess Insurance Per occurrence	\$ 2,000,000
Automobile Liability Per occurrence	\$ 1,000,000
Builders Risk Insurance and Installation Floater	See Section 8

8. Should the Umbrella/Excess Insurance coverage combined with Commercial General Liability coverage not equal or exceed the minimum combined coverage shown, coverage must be increased to equal or exceed the minimum total coverage limits shown. If there is no Umbrella/Excess Insurance coverage, then the Commercial General Liability, Employers Liability, and Automobile Liability limits must be increased to equal or exceed the minimum total coverage limits shown. The Certificate of Insurance(s) and Endorsement(s) will be a

part of the Contract and shall be provided to the City/Agency with endorsement(s) indicating that the Commercial General Liability insurance coverage is in effect which shall be primary and non-contributory with any insurance maintained by the City/Agency and include a per project aggregate (form CG 2503 05/09 or equivalent).

Such certificate(s) and endorsement(s) shall name the City/Agency as an additional insured commercial general liability, automobile liability, and umbrella liability policies. Copies of such endorsements or coverage enhancements **shall be attached to the certificate. A waiver of subrogation under the workers' compensation and commercial general liability policies shall be provided.** Thirty (30) days written notice shall be provided to the certificate holder prior to cancellation or significant modification of coverage. The Certificate of Insurance(s) and Endorsement(s) shall be provided to the City/Agency which will become a part of the Contract. Insurance Coverage provided must be underwritten by an insurance company deemed acceptable by the City/Agency. The City/Agency reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

Contractor will purchase and maintain property insurance for the entire work at the site on a replacement cost basis. Contractor shall obtain, at Contractor's expense, and keep in effect until final acceptance of the work performed under this contract, an Installation Floater or equivalent property coverage for materials, equipment, supplies, and tools to be used for completion of the work performed under this contract. The Installation Floater shall include coverage for testing, if applicable. The minimum amount of coverage to be carried shall be equal to the full amount of this contract. The contractor will be responsible for any applicable deductibles.

9. Non-profits, community groups, and governmental entities that conduct meetings on city-owned property are exempt from the requirements of this administrative directive unless otherwise directed by the City Manager.

ARTICLE 13 -- Successors & Assignments: After the original Contract is executed, the Contractor shall not enter into any new subcontractor agreements for any of the work required under this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of the Owner. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

ARTICLE 14 -- Compliance with Applicable Law: Contractor certifies that it will comply with all federal, state and local laws, ordinances and regulations applicable to this Contract, including, but not limited to all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, as well as all local ordinances and regulations pertaining to public contracting. Without in any manner limiting the foregoing, Contractor agrees that the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, ORS 279C.505, 279C.515, 279C.520 and 279C.530, shall apply to the Contract, to the extent that such statutes are not inconsistent with local ordinances and regulations pertaining to public contracting. Further, that ORS Chapter 656, ORS 979.350 and/or USC Section § 276A, apply to Contractor's performance under this Contract."

ARTICLE 15 -- Prevailing Wage: The Contractor certifies, and it shall be a condition of the Contractor's bond as provided by ORS 279C.800-279C.870, that in performing this Contract the Contractor will pay and cause to be paid not less than the prevailing wages as of the date of the bid, per hour, per day, and per week, for each and every person who may be employed in the performance of this Contract.

ARTICLE 16 -- Severability: The parties agree that if any term or provision of the 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.

ARTICLE 17 -- Waiver: The terms of this Contract shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument. Such waiver, alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if it is signed by all parties to this Contract. The failure of the Owner to enforce any provision of this contract shall not constitute a waiver by the Owner of that or any other provision.

ARTICLE 18 -- Governing Law and Venue: This Contract shall be governed by and construed in accordance with the laws of the State of Oregon. Any litigation between the Owner and the Contractor arising out of or related to this Contract shall be brought and maintained solely and exclusively in the Circuit Court of Coos County, Oregon. Provided, if any litigation arising under this Contract must be brought in a federal forum, it shall be brought and maintained solely and exclusively in the United States District Court for the District of Oregon in Eugene, Oregon. Contractor hereby consents to the personal jurisdiction of all courts within the State of Oregon. Should any litigation be brought to enforce the terms of this Contract, the prevailing party shall be entitled to reasonable attorney fees, costs and disbursements at trial and upon appeal. Should any dispute over the terms and conditions of this contract result in mediation or arbitration, any attorney's fees and costs incurred in such mediation or arbitration shall be paid by the party incurring such fees and costs.

ARTICLE 19 -- Merger. This Contract, which includes all Contract Documents as defined herein, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, regarding this Contract, except as specified or referenced herein. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this contract, understands it and agrees to be bound by its terms and conditions.

ARTICLE 20 -- Warranty. All labor and material will be warranted for one (1) year after final acceptance by the City Engineer.

ARTICLE 21 -- Execution in Counterparts. This Contract may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

ATTACHMENT “A”

_____, a(n) _____ (Corporation/LLC/Partnership/Sole Proprietor) (hereinafter “**Contractor**”) agrees to provide the following Work (hereinafter “Base Contract”) for **CITY OF COOS BAY** (hereinafter “**Owner**”), in accordance with the terms and conditions of the Contract, dated _____, 20____, all of which terms and conditions are incorporated herein by reference:

Part ‘A’ -- Original Request for Services:

Part ‘B’ -- Contractor Proposal and Bid:

Part ‘C’ -- Project Schedule:

(The Contractor shall attach a Project Schedule to Part ‘C’, which will become a part of this Contract)

Part ‘D’ -- List of Sub contractors:

(The Contractor shall attach a List of Subcontractors to Part ‘D’, which will become a part of this Contract)

Part ‘E’ -- Performance & Payment Bond:


(The Contractor shall attach the Performance & Payment Bond to Part ‘E’, which will become a part of this Contract)

Part ‘F’ -- Certificate of Insurance:

(The Contractor shall attach all Certificate of Insurance(s) & Endorsement(s) to Part ‘F’, which will become a part of this Contract)

Exhibit "A"

CHANGE ORDER

	Date:
	Change Order No.:
	Project Name:
	Project No.:

_____, a(n) _____ (Corporation/LLC/Partnership/Sole Proprietor) (hereinafter **"Contractor"**) agrees to perform and complete the following work (hereinafter **"Work"**) for **CITY OF COOS BAY** (hereinafter **"Owner"**), in accordance with the terms and conditions of the Contract, dated ____, 20__, all of which terms and conditions are incorporated herein by reference:

Part 'A-X' Scope of Additional Services:

Part 'B-X' Project Schedule (Revised):

Part 'C-X' Modification of Construction Bid (increase/decrease):

Original Contract Amount:	
Net amount of previous Change Order No. ____:	
Total Original Contract Amount net of Change Orders:	
Total Amount of Change Order No. ____:	
Total Contract Amount net of Change Order No. ____:	
Contract Time will be increase/decreased by:	
Date of completion as a result of this Change Order No. ____ is:	

"CONTRACTOR"	"OWNER"
	CITY OF COOS BAY, OREGON
BY:	BY:
Print Name:	Print Name: JIM HOSSELY
Title:	Title: PUBLIC WORKS AND DEVELOPMENT,
	DIRECTOR
Date:	Date:

PART 'A'
ORIGINAL REQUEST FOR SERVICES

PART 'B'
CONTRACTOR PROPOSAL & BID

PART 'C'
PROJECT SCHEDULE

(The Contractor shall attach a Project Schedule to Part 'C', which will become a part of this Contract)

PART 'D'
LIST OF SUB CONTRACTORS

(The Contractor shall attach a List of Subcontractors to Part 'D', which will become a part of this Contract)

PART 'E'
PERFORMANCE & PAYMENT BOND

(The Contractor shall attach the Performance & Payment Bond to Part 'E', which will become a part of this Contract)

PART 'F'
CERTIFICATE OF INSURANCE(S) & ENDORSEMENT(S)

(The Contractor shall attach all Certificate of Insurance(s) & Endorsement(s) to Part 'F', which will become a part of this Contract)