

Attachment E: SAMPLE CONTRACT TERMS

Clackamas Soil and Water Conservation District

CONSTRUCTION AGREEMENT

THIS AGREEMENT is entered into by and between Clackamas Soil and Water Conservation (“District”) and _____, a(n) _____ registered in the State of _____ and authorized to conduct business in the State of Oregon.

WITNESSETH:

In consideration of the mutual covenants and agreements set forth below, District and Contractor agree as follows:

I. DEFINITIONS.

“Authorized Representative” means a person representing a party to this Agreement who is authorized to make commitments and decisions on behalf of the party regarding the performance of this Agreement.

“Agreement” means all terms and conditions herein and all Exhibits attached hereto.

“BOLI” means the Oregon Bureau of Labor and Industries.

“Delivery Schedule” means the schedule set forth in the Statement of Work that includes the completion date of each task or phase of the Work.

“Effective Date” means the date on which this Agreement is fully executed and approved in accordance with applicable laws, rules and regulations.

“Final Acceptance” is defined in Section 2.3.

“Key Persons” means Contractor’s Authorized Representative, the Project Manager and all other Contractor personnel designated as key persons in the proposal.

“Project Manager” means Contractor’s representative who manages the processes and coordinates the Work with District’s Authorized Representative to ensure completion of the Work. Contractor’s Project Manager is the person so identified in the Proposal.

“Proposal” means Contractor’s response to the Solicitation Document. The Proposal is attached hereto as **Exhibit C**.

“Solicitation Document” means the Invitation to Bid or Request for Proposals for the Work described in this Agreement. The Solicitation Document is attached hereto as **Exhibit B**.

“Work” means all goods to be provided and all services to be performed under this Agreement.

“Statement of Work” means the description of the Work, the performance and payment schedule for such Work, and any other items as agreed by the parties, all attached hereto as Exhibit A.

II. PERFORMANCE AND DELIVERY.

2.1 Statement of Work. Contractor shall perform the Work as set forth in the Statement of Work, attached hereto as **Exhibit A** and incorporated herein by reference. Time and method for performance and delivery shall be as described in the Statement of Work.

2.2 Change Orders. Either District or Contractor may request a change to the Statement of Work by submitting a written change request describing the change requested. A Change Order shall alter only that portion of the Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement. Both parties must sign the Change Order to authorize the Work described therein and incorporate the changes into this Agreement.

District's and Contractor's Authorized Representatives shall review the written change request and either mutually approve it for further analysis or reject it. If a change is approved, the party that submitted the request for the change shall prepare a written change order, detailing all modifications to the scope, price, Delivery Schedule or other terms (the "Change Order"). A Change Order, at minimum, shall contain the following information: (1) The date of issuance of the Change Order; (2) a detailed description of the Work to be performed under the Change Order; (3) the particular specification or matter set forth in the Statement of Work which will be altered and the precise scope of that alteration; (4) the change in cost of the Work to be performed pursuant to the Change Order; and (5) the cumulative cost of all Change Orders previously issued.

No Work shall be performed pursuant to the Change Order and no payment shall be made on account of the Change Order until the Change Order is fully executed and approved as set forth in this Section. District shall pay for Work performed pursuant to a Change Order in accordance with the acceptance and payment procedures set forth in this Agreement.

2.3 Final Acceptance. "Final Acceptance" shall occur when, in the District's sole determination, Contractor has materially complied with all terms and conditions of this Agreement. Upon substantial completion of the Work herein described, Contractor shall notify District that the Work is substantially complete. The District shall then inspect such Work, and, if indicated, shall issue a written Notice of Substantial Completion with an itemized punch list of tasks or services to be completed before Final Acceptance. Upon making a determination that Contractor has materially complied with all terms and conditions of this Agreement, including completion of the itemized punch list described herein, if any, the District shall issue a written Notice of Final Acceptance to Contractor.

2.4 Right to Inspect. Designated personnel or agents of the District shall have the right, at all reasonable times and with reasonable advance notice, to obtain access to the Work Site and to conduct inspection of materials and performance at the site of construction, or at any site where materials used in performing the Work are prepared, processed, manufactured, or treated.

III. CONTRACTOR'S PERSONNEL.

3.1 Project Manager. Contractor shall designate one of the Key Persons as Project Manager for the Work. The Project Manager shall be familiar with the District's business operations and objectives. The Project Manager will participate with the District in periodic review sessions and will provide at District's request detailed progress reports that identify completed tasks and the status of the remaining Work.

3.2 Contractor's Employees and Subcontractors. Contractor shall not use subcontractors to perform the Work unless specifically authorized to do so by the District. Contractor represents that any employees

assigned to perform the Work, and any authorized subcontractors performing the Work shall perform the Work in accordance with the warranties set forth in Article VI of this Agreement.

3.3 Key Persons. Contractor acknowledges and agrees that District selected Contractor, and is entering into this Agreement, because of the special qualifications of Contractor's Key Persons identified in the proposal. Contractor's Key Persons shall not delegate performance of the powers and responsibilities they are required to provide under this Agreement to another Contractor employee(s), and Contractor shall not re-assign or transfer the Key Persons to other duties or positions such that the Key Persons are no longer available to provide the District with their expertise, experience, judgment, and personal attention, without first obtaining the District's prior written consent to such re-assignment or transfer, which consent shall not be unreasonably withheld. In the event Contractor requests that the District approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons due to death, illness or termination of employment with the Contractor, the District shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Persons. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by District shall thereafter be deemed a Key Person for purposes of this Agreement.

3.4 Change in Contractor Representative. District reserves the right to require a change in contractor representative if the District, in its sole discretion, is dissatisfied with the performance of an assigned representative.

IV. TERM.

4.1 Effective Dates. This Agreement shall be effective on the date of signing by both parties hereto and shall terminate on _____.

V. PAYMENT.

5.1 Payment Terms. Payment shall be based upon completion of each task or phase of Work described in the Proposal and Statement of Work. Payment terms shall be set forth in a separate writing mutually agreed to by both parties hereto, attached to this Agreement as **Exhibit D** and incorporated herein by reference.

5.2 Retainage. Notwithstanding and in addition to Section 7.8 of this Agreement, the District may withhold up to five (5) percent of the contract price as retainage until Final Acceptance, as described in Section 2.3 of this Agreement.

VI. CONTRACTOR'S DUTIES, REPRESENTATIONS, AND WARRANTIES.

6.1 General Representations and Warranties. Contractor represents and warrants to District that:

6.1.1 Contractor has the power and authority to enter into and perform this Agreement;

6.1.2 This Agreement, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

6.1.3 Contractor will, at all times during the term of this Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Work;

6.1.4 Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator

applicable to provision of the Work, and Contractor's provision of the Work shall not violate any such law, ordinance, regulation or order.

6.1.5 Contractor's performance under this Agreement creates no potential or actual conflict of interest, as defined by ORS Chapter 244, for either Contractor or any Contractor personnel that will perform the Work under this Agreement.

6.2 Contractor's Performance Warranty. Contractor represents and warrants to District that Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Work described in this Agreement in accordance with the standards prevalent in Contractor's profession.

6.3 Guaranty. Contractor guarantees all materials and workmanship and agrees to replace at Contractor's sole cost and expense, and to the satisfaction of the District, any or all materials adjudged defective or improperly installed, and to indemnify the District against liability, loss or damage arising from such defects or improper installation during a period of one year from Final Acceptance.

6.4 Security of Work Site. Contractor shall take all reasonable precautions necessary to secure and protect the Work and the Work site during the performance of this Agreement, and to eliminate or prevent access to dangerous conditions. Contractor assumes full responsibility for the condition and safety of the Work site until Final Acceptance by the District.

VII. COMPLIANCE WITH LAWS.

Both parties agree to comply, and assist one another in complying with, all applicable Federal, State and local laws and regulations, including, but not limited to, the following:

7.1 Prompt Payment. Pursuant to ORS 279C.515, if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the District 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 the Contractor by reason of this Agreement.

7.1.1 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 project 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.

7.1.2 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.

7.2 Medical Payments. Pursuant to ORS 279C.530, the 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 the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

7.3 Worker's Compensation. Pursuant to ORS 279C.530(2), the Contractor attests that it is either a subject employer required to comply with ORS 656.017 (worker's compensation), or an employer that is exempt under ORS 656.126. If Contractor employs subject Workers who provide Work under this Agreement in the State of Oregon, Contractor shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

7.4 Hours of Work. Pursuant to ORS 279C.520, Contractor shall ensure that no person is employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one 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 in any one 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.

Each employer performing work under this Agreement must give written notice to employees who work on the project of the number of hours per day and days per week that the employees may be required to work. Such notice must be given 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.

7.5 Prevailing Wage. Pursuant to ORS 279C.830(1), the higher of the Oregon prevailing wage in effect at the time the work under this Agreement was first advertised or federal Davis-Bacon prevailing wages shall be paid to workers in each trade or occupation required in the performance of this contract either by the Contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work contemplated by this Agreement. A list of the applicable Oregon prevailing wages can be referenced by selecting "Prevailing Wage Publications" on the Oregon BOLI website, www.oregon.gov/BOLI/WHD/PWR/W_PWR_Contracting.shtml. The posted rates are incorporated herein by this reference. Each worker shall be paid not less than the specified minimum hourly rate of wage. The Contractor shall ensure that each subcontractor agreement complies with these requirements.

7.6 Public Works Bond. Pursuant to ORS 279C.830(3), the Contractor and every subcontractor shall have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (7) or (8).

7.7 Prevailing Wage Certification. Pursuant to ORS 279C.845, by the fifth business day of the month following performance of work under this Agreement, the Contractor or subcontractor, as appropriate, shall deliver or mail to the District, written, certified statements, on a form prescribed by the BOLI Commissioner, certifying:

(a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the public works; and

(b) That no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract.

7.7.1 The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

7.7.2 The certified statement shall be verified by the oath of the Contractor or the contractor's surety, or subcontractor or the subcontractor's surety, that the Contractor or subcontractor has read the certified statement and knows the contents thereof and that the same is true to the Contractor's or subcontractor's knowledge.

7.8 Retainage When Certification Not Filed. Pursuant to ORS 279C.845(8), and notwithstanding and in addition to Section 5.2 of this Agreement, the District shall retain 25 percent of any amount earned by the Contractor under this Agreement until the Contractor has filed with the District the certified statements as required under Section 7.7 of this Agreement. The District shall pay the Contractor the amount retained under this Section within 14 days after the Contractor files the certified statements as required, regardless of whether a subcontractor has failed to file certified statements as required by Section 7.7. The District has no obligation to verify the truth of the contents of certified statements filed by the contractor under Section 7.7.

7.8.1 The Contractor shall retain 25 percent of any amount earned by a first-tier subcontractor on the project until the subcontractor has filed with the District certified statements as required by this Section. The Contractor shall verify that the first-tier subcontractor has filed the certified statements before the Contractor may pay the subcontractor any amount retained under this subsection. The Contractor shall pay the first-tier subcontractor the amount retained under this subsection within 14 days after the subcontractor files the certified statements as required by this section. Neither the District nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor under Section 7.7.

7.9 Other Laws. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

7.10 Recycled Products. As required by ORS 279A.125, in the performance of this Agreement, Contractor shall use, to the maximum extent economically feasible, recycled products.

VIII. INDEMNITIES.

8.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify District, its officers, employees and agents, from and against all third-party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, for personal injury, including death, damage to real property and damage to tangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Agreement; provided that Contractor shall have no obligation to indemnify District from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of District, its officers, employees or agents.

8.2 Control of Defense and Settlement. Contractor's obligation to indemnify District as set forth in Sections 8.1 and 8.2 is conditioned upon District providing to Contractor prompt notification of any claim or potential claim of which District becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 8.1 or Section 8.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the District, nor purport to act as legal representative of the District, without the approval of the District, nor shall Contractor settle any claim on behalf of the District without the approval of the District. The District may, at its election and expense, assume its own defense and settlement in the event that the District determines that Contractor is prohibited from defending the District, is not adequately defending the District's interests, or that an important governmental principle is at issue and the District desires to assume its own defense.

8.3 Damages to District Property and Employees. Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property of the District or any of its employees resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Agreement.

8.4 Delays. Contractor shall indemnify the District for any and all loss and damages resulting from delays in completion of the Work when such delay is caused or attributable to default in the proper performance by Contractor.

IX. INSURANCE.

9.1 General Liability Insurance. Contractor shall obtain and maintain, at its own expense, for the duration of this Agreement, general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000, for each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement.

9.2 Automobile Liability. Automobile Liability Insurance, including MCS-90 endorsement if applicable, with a combined single limit of no less than \$1,000,000 or equal to the U.S. Department of Transportation requirements, whichever is greater. The policy shall insure against bodily injury, property damage, or environmental damage arising out of the use (including loading, transporting and unloading) by or on behalf of Contractor, its agents and employees of owned, non-owned or hired vehicles.

9.3 Additional Insureds. Each of the insurance policies that Contractor obtains pursuant to this Article IX shall provide that the District and its divisions, officers and employees are additional insureds under the policy, but only with respect to the Work that Contractor will provide under this Agreement.

9.4 Notice of Cancellation or Change. Contractor shall not cancel, cause a material change in, reduce its limits for or omit or intend not to renew the insurance coverage required under this Agreement without thirty (30) calendar days' prior written notice from Contractor or its insurers to District.

9.5 Certificates of Insurance. As evidence of the insurance coverage required under this Agreement, Contractor shall furnish acceptable insurance certificates to District before commencing the Work and annually thereafter. The certificates shall specify all of the parties who are additional insureds and shall indicate all deductible amounts or retentions for all self insurance. Insuring companies shall be authorized to sell insurance in the State of Oregon. Contractor shall be financially responsible for all pertinent deductibles, self-insured retention, and self-insurance. Insuring companies or entities are subject to District acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the District. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance

X. EVENTS OF DEFAULT.

10.1 Default by Contractor. Contractor shall be in default under this Agreement if:

10.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

10.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform the Work and Contractor has not obtained such license or certificate within thirty (30) business days after delivery of District's notice or such longer period as District may specify in such notice; or

10.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement, fails to perform the Work in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Agreement, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) business days after delivery of District's notice or such longer period as District may specify in such notice.

10.2 Default by District. The District shall be in default under this Agreement if:

10.2.1 The District fails to pay Contractor any amount pursuant to the terms of this Agreement, and District fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

10.2.2 The District commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and District fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

XI. REMEDIES FOR DEFAULT.

11.1 District's Remedies. In the event Contractor is in default under Section 10.1, District may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, which include, without limitation:

11.1.1 Termination of this Agreement under Section XII;

11.1.2 Withholding all monies due for Work that Contractor is obligated but has failed to perform within thirty (30) days after District has notified Contractor of the nature of Contractor's default;

11.1.4 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;

11.1.5 Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Sections 10.1, the rights and obligations of the parties shall be the same as if this Agreement was terminated pursuant to Section XII.

11.2 Contractor's Remedies. In the event District terminates this Agreement as set forth in Section 12.1, or in the event District is in default under Section 10.2 and whether or not Contractor elects to exercise its right to terminate the Agreement under Section 12.3, Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the hours worked but not yet billed with respect to each phase of work, up to the not-to-exceed amount set forth in the Statement of Work; authorized expenses incurred, less previous amounts paid and any claims which District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to District upon written demand.

XII. TERMINATION.

12.1 District's Right to Terminate. District may, at its sole discretion, terminate this Agreement, as follows:

12.1.1 For its convenience upon thirty (30) days' prior written notice to Contractor.

12.1.2 If District fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's services;

12.1.3. If Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Work under this Agreement is prohibited or District is prohibited from paying for such Work from the planned funding source.

12.2 District's Right to Terminate for Cause. In addition to any other rights and remedies District may have under this Agreement, District may terminate this Agreement, in whole or in part, immediately upon Contractor's default under Section 10.1.

12.3 Contractor's Right to Terminate for Cause. Contractor may terminate this Agreement upon District's default under Section 10.2.

XIII. INDEPENDENT CONTRACTOR STATUS.

13.1 Performance of Work. Contractor shall perform all Work as an independent contractor. Although District reserves the right to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

13.2 Declaration and Certification. Contractor by execution of this Agreement declares and certifies that, in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the District for which Contractor or its personnel work

or are employed prohibit Contractor or its personnel from providing the Work under this Agreement. Contractor also declares and certifies by execution of this Agreement that it is not an “officer,” “employee,” or “agent” of District, as those terms are used in ORS 30.265.

13.3 Responsible for Taxes. Contractor shall be responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, District will not withhold from such compensation and payments any amount to cover Contractor’s federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers’ compensation benefits from compensation or payments paid to Contractor under this Agreement, except as a self-employed individual.

XIV. DISPUTE RESOLUTION.

14.1 Litigation. Any claim, action, suit, or proceeding (collectively, “Claim”) between District and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. **CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.**

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

14.3 Attorneys’ Fees. In any suit or action instituted to enforce compliance with any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such attorney fees, costs and expenses as the court may adjudge reasonable in such suit or action, or any appeal therefrom.

XV. MISCELLANEOUS PROVISIONS.

15.1 Order of Precedence. This Agreement consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Agreement, less its Exhibits; (b) the Statement of Work, Exhibit A; (c) the Solicitation Document, Exhibit B; (d) the Proposal, Exhibit C; and (d) the terms of payment, Exhibit D. In the event of a conflict between the terms of this Agreement and the terms provided in the Proposal, the Agreement terms shall prevail.

15.2 Subcontracts and Assignment. Contractor shall not enter into any subcontracts for any of the Work required by this Agreement or assign or transfer any of its interest in this Agreement without District’s prior written consent. District’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Agreement. Pursuant to ORS 279A.110, the Contractor shall not discriminate against minority- or woman-owned or emerging small business enterprises in the awarding of subcontracts.

15.3 Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

15.4 No Third-Party Beneficiaries. District and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third

persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

15.5 Funds Available and Authorized. District believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within District's budgetary appropriation or limitation. Contractor understands and agrees that District's payment of amounts under this Agreement is contingent on District receiving appropriations, limitations, or other expenditure authority sufficient to allow District, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

15.6 Records Maintenance; Access. Contractor shall maintain all financial records and other records relating to its performance under this Agreement in accordance with generally accepted accounting principles and in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that District, the departments and agencies of the State of Oregon, and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of three (3) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

15.7 Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Agreement. Contractor shall demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon before entering into this Agreement.

15.8 Time Is of the Essence. Contractor agrees that time is of the essence under this Agreement.

15.9 Force Majeure. Neither District nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots, strikes, or pandemics. Contractor 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 Agreement.

15.10 Notices. Except as otherwise expressly provided in this Agreement, any notices to be given under subsection 2.3, or under Sections X, XI, or XII of this Agreement shall be given in writing by personal delivery of, facsimile transmission of, or mailing the same, postage prepaid, to Contractor at the address or number, and to District at the address or number, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any notice delivered by facsimile shall be deemed to be given when the transmitting machine generates receipt of the transmission. To be effective against District, such facsimile transmission must be confirmed by telephone notice to the District Authorized Representative. Any communication or notice by personal delivery shall be deemed to be given when actually received by the appropriate Authorized Representative. Any other notice or communication made or required under this Agreement may be made by electronic mail, which shall be deemed made on the date and at the time such communication is received by the recipient.

15.11 Severability. The parties agree that if any term or provision of this Agreement 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 this Agreement did not contain the particular term or provision held to be invalid.

15.12 Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

15.13 Amendments. This Agreement may be amended, modified, or supplemented only by a written amendment signed by District and Contractor. Any amendment that provides for additional goods or services may only provide for goods or services directly related to the Scope of Work described in the Solicitation Document, and no amendment shall be effective until all requisite signatures and approvals are obtained.

15.14 Waiver. The failure of either party to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance shall not constitute a waiver by the party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

15.15 Headings. The headings in this Agreement are included only for convenience and shall not control or affect the meaning or construction of this Agreement.

15.16 Integration. This Agreement and attached Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

CONTRACTOR: BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED BEFORE NECESSARY DISTRICT APPROVALS.

**CLACKAMAS SOIL AND WATER
CONSERVATION DISTRICT**

CONTRACTOR

District Manager

Chief Executive Officer

Date

Date