

CITY OF DUNDEE
PROJECT: Tipsu Palach Park Water Feature

Request for Competitive Quotes (ORS 279C.335(1)(d))

INFORMATION FOR BIDDERS

1. Project DATA and Requirements

- A. Project Name** Tipsu Palach Park Water Feature
- B. Project Location** 1440 Alder Street, Dundee, Oregon
- C. Project Owner** City of Dundee
- D. Project Financing** City and State Funds
- E. Project Manager:** Steve Dahl, City Administrator
- F. City Designer** Dan Jenkins, Sera Architects
- G. Prevailing Wages:** The Contractor must comply fully with prevailing wage rates for public works contracts in Oregon published by the Oregon Bureau of Labor and Industry.
- H. Project Narrative:** The City desires to construct a water feature in Tipsu Palach Park. The Water Feature has been designed as shown in the Project Specifications.
- I. Project Submission Date: April 4, 2025 by 12:00 p.m.**

2. Proposal Documents

The below documents are the Proposal Documents that are part of the RFP. Except as identified below, Proposals must include the below Proposal Documents with its proposal submission. The Proposal Documents include:

- A. Plans and Specifications
- B. Cost Proposal (to be completed by Proposer and included in separately sealed envelope).
- C. Proposer's Description of Similar Experience and References (to be completed by Proposer)
- D. Optional 5-Year Maintenance Proposal (to be provided by Proposer)
- E. Evaluation Criteria
- F. Sample Public Improvement Contract – (for reference only, do not include with Proposal)

3. Copies of Proposal Documents

Complete sets of Proposal Documents must be used in preparing the Proposal; neither the City nor the Engineer/Architect assume responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

The City and the City Engineer/Architect in making copies of available on the above terms do so only for the purpose of obtaining Proposals on the Work and do not confer or grant a license for any other use.

4. Examination of Site and Contract Documents

It is the responsibility of each Proposer before submitting a Proposal to (a) examine the Proposal Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) dig test holes to further evaluate subsurface soil conditions to the extent the Proposer considers necessary; (d) consider federal, state, and local Laws and Regulations that may affect cost, progress, performance or forming of the Work; € study and carefully correlate Proposer's observations with the Contract Documents and (f) notify the City of all conflicts, errors or discrepancies in the Contract Documents.

Proposer's Representations. By submitting a proposal each proposer represents and warrants:

- a. It has visited the site and has reviewed the Proposal Documents and the Information Available to Proposers; it has made any other investigations, explorations or tests and has obtained any other data it considers necessary for preparation of its Proposal.
- b. It has read, studied and understands the entire set of Proposal Documents including the construction Drawings, Specifications and finds them fit and sufficient for the purpose of preparing its Proposal and construction the Work required.
- c. Its Proposal is based on providing all of the material, labor, equipment and services necessary to complete the Work in full compliance with the Contract Documents and existing conditions without exception.

5. Interpretations and Addenda

All questions about the meaning or intent of the RFP and Contract Documents are to be directed to the City. Interpretations or responses considered necessary by the Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties who have contacted the City concerning the Proposal Documents. Questions received less than five days prior to the date of opening of bids may not be answered.

Only questions answered by formal Addenda will be binding. Oral and other interpretations or responses will be without legal effect and are not to be relied upon by the Proposers unless they are integrated in the written RFP or Contract Documents.

Addenda may also be issued to modify the RFP as deemed advisable by the City.

6. Project Schedule

In order to facilitate meeting the Project Completion deadline the city has developed the following schedule:

- a. RFP advertised on March 14, 2025
- b. Proposal submissions by April 4, 2025, by 12:00 p.m.
- c. Proposal opening at 3:00 pm on April 4, 2025 (Proposal will not be opened publicly)
- d. Proposal Evaluation during week of April 7, 2025
- e. Recommended Award for City Council approval on April 15, 2025
- f. Notice to proceed will be given upon execution of Contracts.
- g. Project Completion: August 29, 2025.

7. Substitute or Proposed Equivalent (“Or Equal”) items

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or proposed equivalent (“Or Equal”) items. Whenever it is indicated in the Drawings or specified in the Specifications that a proposed Equivalent (“Or Equal”) item of material or equipment may be furnished or used by the Contractor if acceptable to the City, such acceptance will not be considered by the City until after the effective date of the agreement.

8. Cost Proposal / Bid

- The term Cost Proposal or Bid may be used interchangeably.

- Additional copies of the Proposal Documents may be reproduced by the proposer.
- All blanks on the Cost Proposal must be completed legibly in ink or by typewriter. Amounts must be stated in words and in figures.
- In case of conflict, words will take precedence.
- The Cost Proposal shall not contain any erasures, interlineations, or other corrections unless each such correction is authenticated by affixing in the margin immediately opposite the correction, the surname of the person signing the bid.
- Proposal by corporations must be executed in the corporate name by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed by the secretary or an assistant secretary. The corporate address and the state of incorporation must be shown below the signature.
- Proposals by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- All names must be legibly printed in ink or typed below the signature. The address and telephone number for communications regarding the Proposal must be shown.
- The work is offered on a unit price basis; each item is to be bid. No substitutions, alternate bids, conditional bids, or partial bids are allowed, except as provided by a written addenda from the City.

9. Submission of Proposals

Proposals shall be submitted at the time and place indicated on Page 1 and shall be enclosed in an opaque sealed envelope, marked with the Project title. The Cost Proposal shall be submitted in a separately sealed envelope and marked "Cost Proposal." . The envelope shall bear the name and address of the proposer, and the Proposal shall be accompanied by other required documents. If the proposal is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "Proposal Enclosed" of the face of it.

10. Modification and Withdrawal of Proposals

Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of proposals

If, within five days after Proposals are opened any bidder files a duly signed, written notice with the City and promptly thereafter demonstrated in detail to the reasonable satisfaction of City that there was a material and substantial mistake in the preparation of its proposal, how the mistake occurred, that the mistake was not due to an error in judgement or to carelessness in inspecting the site or reading the plans or specifications, the proposer may withdraw its Proposal. A proposer who withdraws its proposal will be disqualified from further proposing on the work to be provided under the contract documents.

11. Proposers to remain subject to acceptance

All proposals will remain subject to acceptance for sixty (60) days after the day of the bid opening, but the City may, in its sole discretion, release any proposal prior to that date. Proposals shall remain valid for sixty (60) days after the execution of the agreement.

12. Award of Contract

The City reserves the right to reject any and all proposals or to waive any irregularities in any proposal in the public's best interest as determined solely by the City. The City reserves the right to reject any nonconforming, non-responsive, incomplete, unbalanced or conditional bids. The City also reserves the right to reject the bid of any bidder that in the City's judgement would not be financially or otherwise responsible or is not in the best interest of the City.

In evaluating proposals, the City will consider whether or not the proposals comply with the prescribed requirements, and include such alternates, unit price and other data as may be required in the proposal form and supplements thereto.

Discrepancies in the multiplication of units of work and unit prices, if any will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between bid amounts stated in work and in figures will be resolved in favor of the amount stated in words.

13. Insurance. The City's requirements for insurance are set forth in the attached contract. The successful proposer shall purchase insurance as required in the contract

The successful proposer shall deliver the required certificate of insurance to the City prior to beginning work. In no case will the notice to proceed be considered as allowing the work to begin until the insurance certificates are received by the City, even though the contract time as stated in the notice to proceed will commence to run.

14. Limitation of Liability. The agreement contains a clause limiting the liability of the City to the contractor for defects in the contract documents.

15. Supplemental Technical Specifications

- a. **Cost Proposal:** The work included under the Cost Proposal includes the digging and removal of dirt from the park, pouring concrete to form the base of the water feature, installing multiple stone in water basin to ensure they are not moved or easily tipped over, installing water pipes to ensure the water flows up and over the rocks, installing a sanitary pipe that removes water from the ponds and sends it to the affluent plant, plant natives plants around the two ponds and rock the area with color pebbles as directed in the plan.
- b. **The following general clarifications are provided to assist proposers:**
 1. Plans showing the project limits are included in the construction drawings in the Proposal Documents.
 2. The contractor is responsible for grading the area, compacting the area and making sure rocks are securely in place.
 3. City plumbing requirements for the water flow and removal of “used” will be needed to pass city inspection.
 4. The contractor is responsible for all material testing as required.

16. Public Contracting Laws

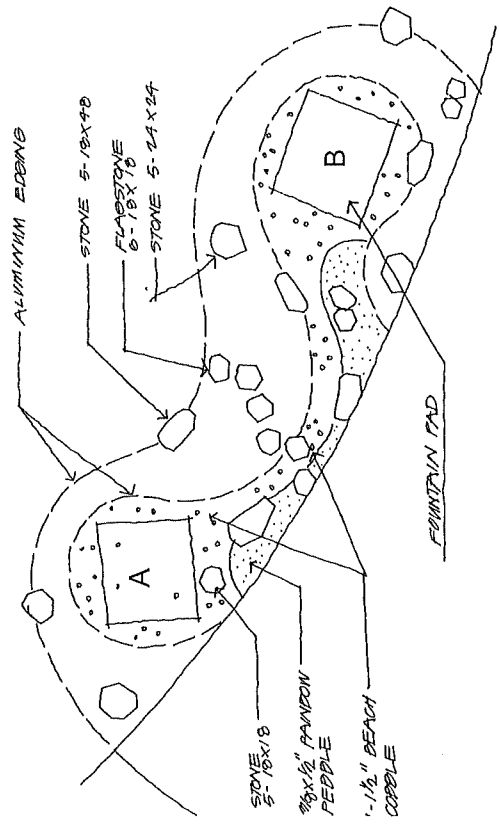
- a. This request for competitive quotes is solicited in accordance with ORS 279C.335(1)(d). The term “bid” and “bidder” or “proposal” and “proposer” used in this solicitation are to be construed in accordance with a competitive quote solicitation authorized in ORS 279C.412 and ORS 279C.414. The Bidder or Proposer shall comply with the laws of the State of Oregon which are pertinent to public improvement contracts even though such laws may not be quoted or referred to in the contract.

MATERIAL SCHEDULE:

ITEM	PRODUCT	SOURCE	SIZE
BOULDERS	BRONZE COLUMNS	VALLEY LANDSCAPE CENTER	AS NOTED ON PLANS
COBBLE	BEACH COBBLE	VALLEY LANDSCAPE CENTER	1 TO 1-1/2 INCH
PEBBLE	RAINBOW PEBBLE	VALLEY LANDSCAPE CENTER	3/8 TO 1/2 INCH
FLAGSTONE	GOLD QUARTZITE	VALLEY LANDSCAPE CENTER	2 INCH THICK
ALUMINUM EDGING	CLEANLINE XL	PERMALOC EDGING	3/16 X 6 INCH
BARK MULCH	FRESH MEDIUM FIR	VALLEY LANDSCAPE CENTER	2 INCH DEPTH

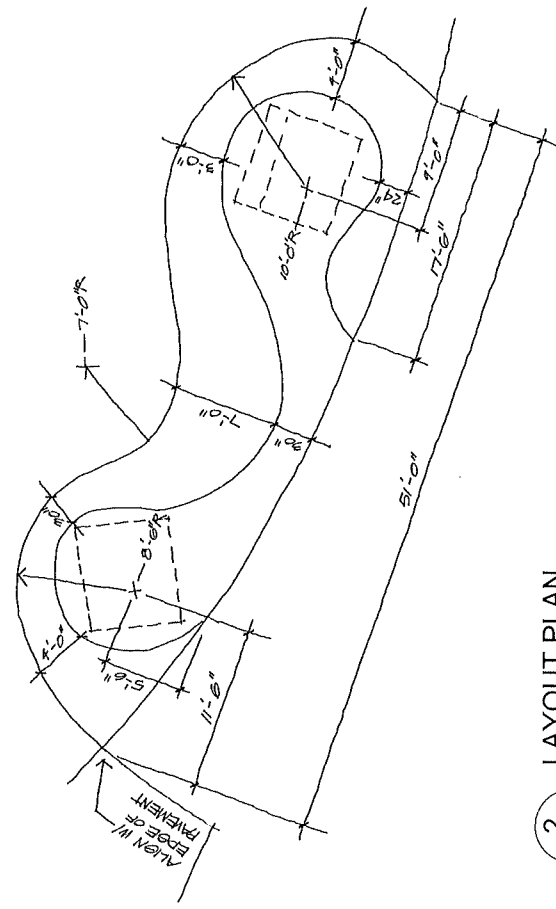
SITWORKS NOTES

1. ALL LAYOUT SHALL BE APPROVED PRIOR TO COMMENCEMENT OF CONSTRUCTION.
2. ALL SOIL COMPACTION AND PREPARATION SHALL BE APPROVED BY OWNER
3. ALL MATERIALS SHALL BE REVIEWED AN APPROVED BY OWNER PRIOR TO INSTALLATION
4. BOULDER MATERIAL IS INTENDED FOR PRICING ONLY. FINAL SELECTION WILL BE APPROVED BY OWNER PRIOR TO INSTALLATION



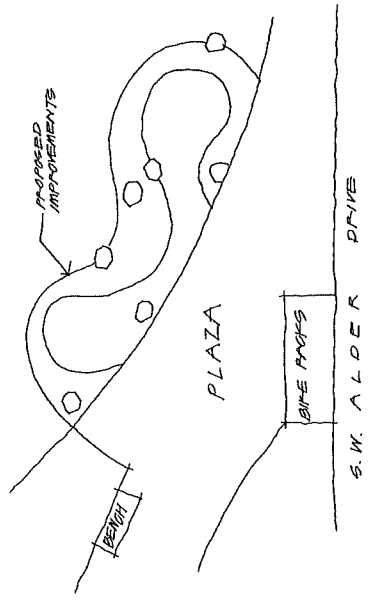
1 SITEWORKS PLAN

SCALE 1/4" = 1'-0"

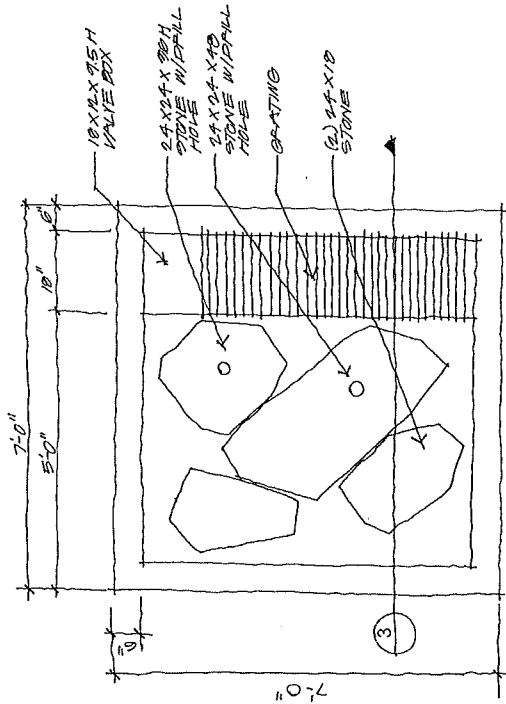


2 LAYOUT PLAN

SCALE 1/4" = 1'-0"

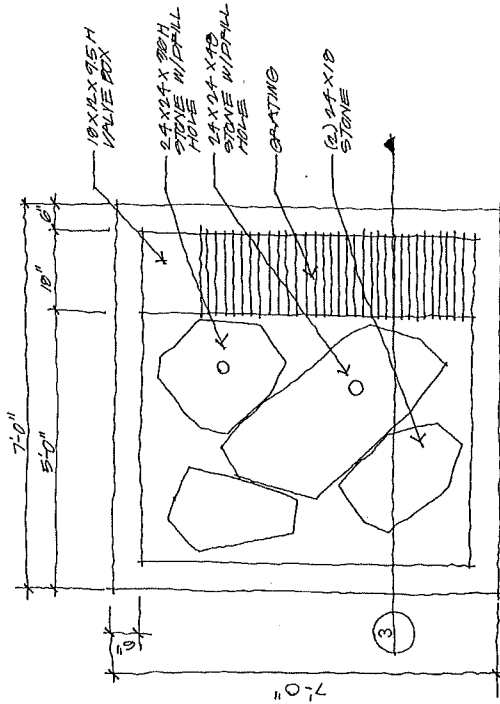


3 SITE LOCATION PLAN



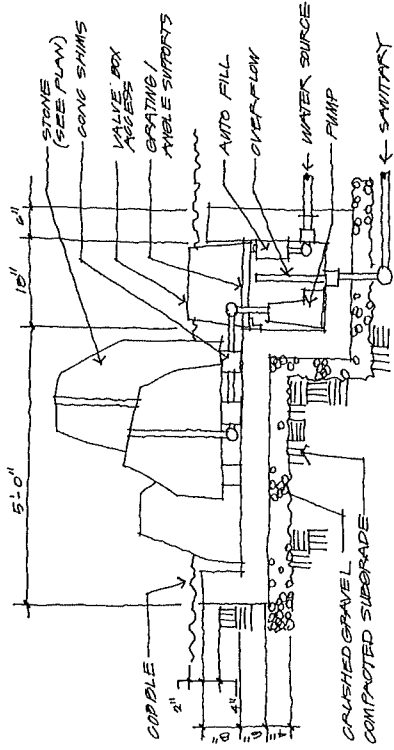
1 FOUNTAIN PLAN - A

SCALE 1" = 1'-0"



2 FOUNTAIN PLAN - B

SCALE 1" = 1'-0"



3 FOUNTAIN SECTION

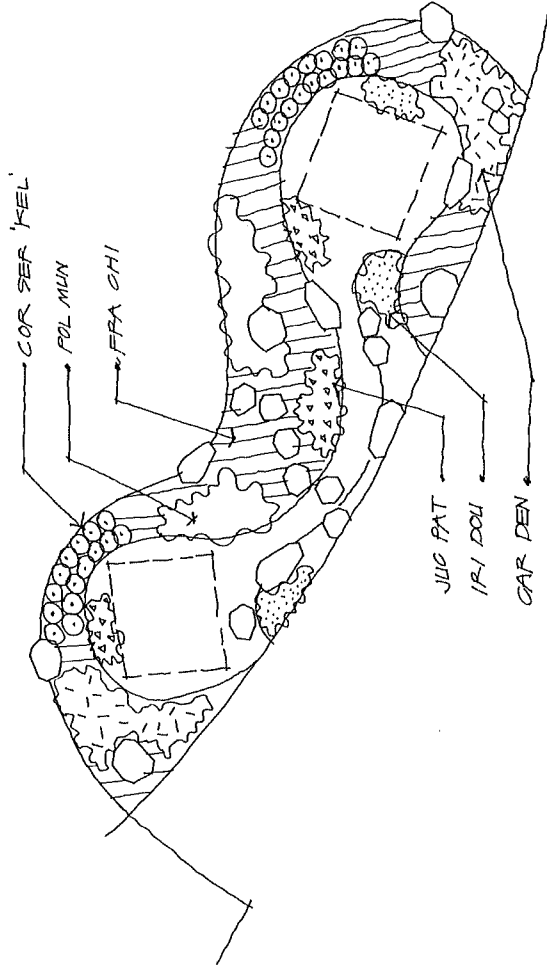
SCALE 1" = 1'-0"

CONSTRUCTION NOTES

1. ALL CONCRETE SLAB AND CURBS SHALL RECEIVE #4 REBAR
2. CONCRETE FOUNTAIN SLABS SHALL RECEIVE WATERPROOF MEMBRANE
3. DETAILS ARE CONCEPTUAL FOR PRICING ONLY - CONTRACTOR SHALL PROPOSE AND SUBMIT DESIGN/BUILD DRAWINGS FOR OWNER REVIEW
4. CONTRACTOR SHALL SUBMIT ALL FOUNTAIN MATERIALS FOR OWNER REVIEW AND APPROVAL PRIOR TO INSTALLATION
5. CONTRACTOR SHALL SUBMIT OPERATIONS AND MAINTENANCE MANUAL TO OWNER.
6. CONTRACTOR SHALL GUARANTEE FOUNTAIN FOR A ONE YEAR PERIOD AND MAINTAIN FOR A 3-MONTH PERIOD AFTER SUBSTANTIAL COMPLETION

PLANTING NOTES

1. ALL PLANTING AREAS NOT COVERED BY COBBLE OR PEBBLE SHALL RECEIVE A 2-INCH LAYER OF BARK MULCH
2. ALL PLANTING SHALL RECEIVE DRIP IRRIGATION CONTROLLED BY A NEW SEPARATE IRRIGATION VALVE CONNECTED TO THE EXISTING CONTROLLER AND POINT OF CONNECTION
3. ALL PLANT MATERIAL SHALL BE REVIEWED AND APPROVED BY OWNER PRIOR TO PLANTING
4. ALL PLANTING AREAS SHALL BE AMENDED WITH ORGANIC COMPOST AT A RATE OF 4 YARDS PER 1000 SQUARE FEET
5. ALL PLANTING SHALL BE FERTILIZED AS RECOMMENDED IN AN AGRICULTURAL SOILS TEST
6. ALL PLANT MATERIAL SHALL BE MAINTAINED AND GUARANTEED FOR A 3 MONTH PERIOD



1 PLANTING PLAN
SCALE 1/4" = 1'-0"

PLANTING SCHEDULE

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	NOTES
CAR DEN	CAREX Densa	DENSE SEDGE	1 GALLON	18 INCHES ON-CENTER
COR SER 'KEL'	CORNUS SERICEA 'KELSEY'	REDTWIG DOGWOOD	2 GALLON	AS SHOWN
FRA CHI	FRAGERIA CHILOENSIS	BEACH STRAWBERRY	4 INCH POTS	12 INCHES ON-CENTER
IRI DOU	IRIS DOUGLASIANA	DOUGLAS IRIS	1 GALLON	18 INCHES ON-CENTER
JUNC PAT	JUNCUS PATENS	SPREADING RUSH	1 GALLON	18 INCHES ON-CENTER
POL MUN	POLYSTICHUM MUNITUM	SWORD FERN	3 GALLON	24 INCHES ON-CENTER

Tipsu Palach Park - Water Feature

Bid Schedule

SECTION 1 -PARK IMPROVEMENTS					
Item	Description	Quantity	Units	Unit Price	Amount
1	Mobilization	1	LS		
2	Surface Prep/Clearing/Grub	1	LS		
3	Aluminum Edging (3/16" x 6")	193	LF		
4	Stone (18" x 18")	5	EA		
5	Stone (18" x 48")	5	EA		
6	Stone (24" x 24")	5	EA		
7	Flagstone (18" x 18") - 2" Depth Minimum	6	EA		
8	Beach Cobble (1" to 1 1/2") - 2" Depth	1	LS		
9	Rainbow Pebble (3/8" to 1/2") - 2" Depth	1	LS		
10	Organic Compost	1	LS		
11	Bark Mulch (2" Thick) - 2" Depth	1	LS		
12	Plantings (include soil test, fertilizer & maintenance)	1	LS		
13	Irrigation	1	LS		
14	Fountain A (Submit design for approval)	1	LS		
15	Fountain B (Submit design for approval)	1	LS		
				Total	

**Tipsu Palach Water Feature
COST PROPOSAL**

Item	Product	Size	Units	Cost
Section 1 - Material Schedule				
Boulders	Bronze Columns	Noted in plans	Noted in Plans	
Cobble	Beach Cobble	1 to 1 1/2 inch	Noted in Plans	
Pebble	Rainbow Pebble	3/8 to 1/2 inch	Noted in Plans	
Flagstone	Gold Quartzite	2 inch thick	Noted in Plans	
Aluminum Edging	Cleanline XL	3/16 by 6 inch	noted in Plans	
Bark Mulch	Fresh Medium Fir	2 inch depth	Noted in Plans	
Section 2 - Planting Schedule				
Dense Sedge		1 gallon - 18" on Center	Noted in Plans	
Redtwig Dogwood		2 gallon -	Noted in Plans	
Beach Strawberry		4 inch pots - 12" on Center	Noted in Plans	

PLANS AND SPECIFICATIONS
To be inserted

Douglas Iris		1 gallon - 18" on Center	Noted in Plans	
Spreading Rush		1 gallon - 18" on Center	noted in Plans	
Sword Fern		3 gallons -24" on Center	Noted in Plans	
TOTAL				

**Proposer's Description of Experience and References
(to be completed by Proposer)**

Proposer shall use a separate paper to provide the information listed below.

1. Describe Proposer's experience with public improvements including the following:
 - a. Describe Proposer's general experience with public improvements.
 - b. Describe Proposer's experience with projects similar to this Project.
 - c. Describe Proposer's organizational structure and personnel.
 - d. Describe Proposer's experience working with public agencies.

2. Provide references for similar work performed in the past 2 years and including the following details:
 - a. Name of company / organization
 - b. Company / Organization representative
 - c. Type of Project
 - d. Cost of Project
 - e. Contact email and phone number of company.

FIVE YEAR MAINTENANCE SCHEDULE AND COST PROPOSAL

1. Describe the required maintenance and maintenance schedule needed to ensure optimal operation and condition of the Tipsu Palach Water Feature.
2. Provide a 5-year maintenance schedule and cost proposal to maintain the Tipsu Palach Water Feature in accordance with the required maintenance described in #1.

Note: Submission of this Five-Year Maintenance Schedule and Cost Proposal is optional and will be used for information only. The City reserves the right and at the City's option, it may enter into a maintenance agreement with the successful proposer using the cost proposal and for maintenance of the water feature with the successful proposer. The City may, at its option, enter into a maintenance contract with an alternative maintenance contractor.

EVALUATION CRITERIA

Bids will be evaluated as follows:

Cost Proposal	60 points
Proposer's Experience and References	40 points
Total	100 points

The City will award the contract to the Firm whose quote receives the highest score based on an evaluation of the criteria above. The City reserves the right to award the contract in the best interest of the City or to cancel the solicitation if it determines that none of the bids are responsive to the City's needs.

**CITY OF DUNDEE
PUBLIC IMPROVEMENT AGREEMENT**

This PUBLIC IMPROVEMENT AGREEMENT (this “Agreement”) is made and entered into by and between the **City of Dundee**, an Oregon municipal corporation (“City”), and **[CONTRACTOR]**, an Oregon corporation, whose address is **[INSERT ADDRESS]** (“Contractor”).

RECITALS

A. The City is in need of construction of a public improvement to perform **[TITLE OF PROJECT]**, Work pursuant to the City’s Public Contracting Rules, ORS Chapters 279A, ORS Chapter 279B, and ORS Chapter 279C.

B. The purpose of this Agreement is to set forth the obligations and duties of each party with respect to the provision of Work by Contractor to the City.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties mutually agree to be bound as follows:

1. Engagement. The City hereby engages Contractor to perform **[TITLE OF PROJECT]**, and Contractor agrees to perform this engagement.

2. Scope of Work. The duties and responsibilities of the Contractor, including the schedule of performance, specifications, and payment schedule, is contained in Exhibit A (the “Statement of Work” or the “Work”), attached hereto and incorporated herein by this reference.

3. Term. Subject to the termination provisions of Section 10 of this Agreement, this Agreement shall commence once executed by both parties and Work shall be complete by _____ 2025 (the “Term”). The Term may be extended by mutual written agreement of the Parties. Notice of intent to extend shall be provided by the City to Contractor in writing no later than 60 days prior to the expiration of the Term.

4. Payment.

4.1 The City agrees to pay Contractor for and in consideration of the faithful performance of the Work, and Contractor agrees to accept from the City as and for compensation for the faithful performance of the Work, an amount not to exceed **(words / numbers)**.

4.2 Contractor shall make and keep reasonable records of work performed pursuant to this Agreement and shall provide detailed monthly billings to the City as applicable under the Agreement. Following approval by the City Administrator, billings shall be paid in full within thirty (30) days of receipt thereof. The City shall notify Contractor of any disputed amount within fifteen (15) days from receipt of the invoice, give reasons for the objection, and

promptly pay the undisputed amount. Disputed amounts may be withheld without penalty or interest pending resolution of the dispute.

4.3 The City may suspend or withhold payments if Contractor fails to comply with any requirement of this Agreement.

4.4 Contractor is engaged by the City as an independent contractor in accordance with the standards prescribed in ORS 670.600. Contractor shall not be entitled to any benefits that are provided by the City to City employees.

4.5 Any provision of this Agreement that is held by a court to create an obligation that violates the debt limitation provision of Article XI, Section 9 of the Oregon Constitution shall be void. The City's obligation to make payments under this Agreement is conditioned upon appropriation of funds pursuant to ORS 294.305 through 294.565.

5. Document Ownership. Contractor shall retain all common law, statutory and other reserved rights, including copyrights, in all work products, including, but not limited to, documents, drawings, papers, computer programs and photographs, performed or produced by Contractor for the benefit of the City under this Agreement, except that all copies of such plans, designs, calculations and other documents and renditions provided to City shall become the property of City who may use them without Contractor's further permission for any lawful purpose related to the project. Upon execution of this agreement, Contractor grants to City an irrevocable, nonexclusive license to use Contractor's work products created through its Work for the project. The license granted under this section permits City to authorize its contractors, subcontractors of any tier, consultants, subconsultants of any tier, and material or equipment suppliers, to reproduce applicable portions of the work products in performing Work for the project. Any unauthorized use of Contractor's work product for purposes unrelated to the project shall be at City's sole risk and without liability to Contractor.

6. Notice. All notices, demands, requests and other communications shall be in writing, and shall be deemed received when delivered to the addressee (i) personally, (ii) via electronic mail, (iii) via certified mail, return receipt requested, postage prepaid, or (iv) via overnight mail, when delivered to the other party. Such notice, demand, request, and other communications shall be deemed to have been received as of the date so delivered or, if mailed, three (3) business days after the date so mailed, or, if sent by overnight courier service, one (1) business day after the date so sent, or, if sent via electronic mail, upon confirmation of successful transmission pursuant to an electronic mail receipt confirmation, or such other objective means of confirming successful delivery of the notice:

CITY: City of Dundee
Attn: City Administrator
520 SW 5th Street
P.O. Box 220
Dundee, Oregon 97115
Email: steve.dahl@dundeecity.org

CONTRACTOR: Company
Attn: Name
Address
City, State, Zip
Email:

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage-prepaid.

7. Standard of Care. Contractor shall perform all Work under this contract in a good and workmanlike manner, in accordance with the degree of care, skill, and diligence, and standards that would ordinarily be used by workers or professionals doing similar work in the relevant industry under similar circumstances.

8. Errors. In addition to any other remedies, Contractor shall perform such additional work as may be necessary to correct errors in the Work required without undue delays and without additional cost.

9. Insurance.

9.1 At all times during the term of this Agreement, Contractor shall carry, maintain and keep in full force and effect a policy or policies of insurance as specified in Attachment B attached hereto and incorporated herein by reference.

9.2 All insurance policies shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without thirty (30) days' prior written notice to the City. Contractor agrees that it will not cancel or reduce said insurance coverage without the written permission of City.

9.3 Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon. If the City procures such insurance, the City may charge the cost against any moneys due Contractor hereunder or for any other contract.

9.4 At all times during the term of this Agreement, Contractor shall maintain on file with the City a Certificate of Insurance or a copy of actual policies acceptable to the City showing that the aforesaid policies are in effect in the required coverages. The policies shall contain an endorsement naming the City, its council members, officers, employees and agents, as additional insureds (except for the professional liability and workers' compensation insurance).

9.5 The insurance provided by Contractor shall be primary to any coverage available to the City. The insurance policies (other than workers' compensation) shall include

provisions for waiver of subrogation. Contractor shall be responsible for any deductible amounts outlined in such policies.

10. Termination.

10.1 Termination for Cause. City may terminate this Agreement effective upon delivery of written notice to Contractor under any of the following conditions:

10.1.1 If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of service. This Agreement may be modified to accommodate a reduction in funding.

10.1.2 If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the Work are no longer allowable or appropriate for purchase under this Agreement.

10.1.3 If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the Work required by this Agreement is for any reason denied, suspended, revoked, or not renewed.

10.1.4 If Contractor becomes insolvent, if a voluntary or an involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

10.1.5 If Contractor is in breach of this Agreement, and such breach is not remedied as contemplated by Section 10.2 of the Agreement.

10.2 Breach of Agreement

10.2.1 Contractor shall remedy any breach of this Agreement within the shortest reasonable time after Contractor first has actual notice of the breach or City notifies Contractor of the breach, whichever is earlier. If Contractor fails to remedy a breach within three (3) working days of its actual notice or receipt of written notice from the City, City may terminate that part of the Agreement affected by the breach upon written notice to Contractor, may obtain substitute Work in a reasonable manner, and may recover from Contractor the amount by which the price for those substitute Work exceeds the price for the same Work under this Agreement.

10.2.2 If the breach is material and Contractor fails to remedy the breach within three (3) working days of receipt of written notice from the City, City may declare Contractor in default, terminate this Agreement and pursue any remedy available for a default under Oregon law without limitation.

10.2.3 Pending a decision to terminate all or part of this Agreement, City unilaterally may order Contractor to suspend all or part of the Work under this Agreement. If City terminates all or part of the Agreement pursuant to this Section 10.2, Contractor shall be entitled to compensation only for Work rendered prior to the date of termination, but not for any

Work rendered after City ordered suspension of Work. If City suspends certain Work under this Agreement and later orders Contractor to resume the Work after determining Contractor was not at fault, Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

10.2.4 In the event of termination of this Agreement due to the fault of the Contractor, City may immediately cease payment to Contractor, and when the breach is remedied, City may recover from Contractor the amount by which the price for those substitute Work exceeds the price for the same Work under this Agreement, along with any additional amounts for loss and damage caused to the City by the breach, and withhold such amounts from amounts owed by City to Contractor. If the amount due Contractor is insufficient to cover City's damages due to the breach, Contractor shall tender the balance to City upon demand.

10.3 Termination for Convenience. City may terminate all or part of this Agreement at any time for its own convenience by providing three (3) days written notice to Contractor. Upon termination under this paragraph, Contractor shall be entitled to compensation for all Work properly rendered prior to the termination, including Contractor's and subcontractors reasonable costs actually incurred in closing out the Agreement. In no instance shall Contractor be entitled to overhead or profit on work not performed.

11. No Third-Party Rights. This Agreement shall not create any rights in or inure to the benefit of any parties other than the City and Contractor.

12. Modification. Any modification of the provisions of this Agreement shall be set forth in writing and signed by the parties.

13. Waiver. A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach. All waivers shall be done in writing.

14. Indemnification. To the maximum extent permitted under the law Contractor shall defend, save and hold harmless City, its officers, agents and employees from all damages, demands, claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities or omissions of Contractor, its subcontractors, sub-consultants, agents or employees under this Agreement. Contractor and the officers, employees, agents and subcontractors of Contractor are not agents of the City, as those terms are used in ORS 30.265.

15. Governing Laws. This Agreement shall be governed by the laws of the State of Oregon. Any suit, action or proceeding relating to any right, duty or liability arising under this agreement, shall be subject to the exclusive jurisdiction and venue of the Yamhill County Circuit Court, Oregon and no other court shall have the authority to decide any matter under this agreement or any subcontract under this agreement.

16. Compliance with Law.

16.1 Contractor shall comply with all applicable federal, state and local statutes, ordinances, administrative rules, regulations and other legal requirements in performance of this Agreement.

16.2 Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the Work provided for in the Agreement and shall be responsible for such payment of all persons supplying such labor or material to any subcontractor.

16.3 Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Agreement.

16.4 Contractor shall not permit any lien or claim to be filed or prosecuted against the City or its property on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien or claim so filed or prosecuted.

16.5 Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617.

16.6 Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such Work and all monies and sums which the 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.

16.7 No person may 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 when the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay:

16.7.1 Either:

16.7.1.1 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

16.7.1.2 For all overtime in excess of ten hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

16.7.2 For all work performed on Saturday and on any legal holiday specified in ORS 279B.020;

16.7.3 Contractor shall pay employees for overtime work performed under the Agreement in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq.).

16.8 The Contractor must give notice to employees who work on this Agreement in writing, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of

hours per day and the days per week that the employees may be required to work.

16.9 All subject employers working under the Contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.

16.10 Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.

16.11 Contractor certifies that it has not and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) ORS 659.425, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

16.12 The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600.

16.13 If Contractor is a foreign contractor as defined in ORS 279A.120, Contractor shall comply with that section and the City must satisfy itself that the requirements of ORS 279A.120 have been complied with by Contractor before City issues final payment under this agreement.

16.14 Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244.

16.15 Contractor shall ensure that any lawn and landscape maintenance, if applicable, shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.16 Contractor is a “subject employer,” as defined in ORS 656.005, and shall comply with ORS 656.017.

16.17 Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, age, national origin, physical or mental disability, or disabled veteran or veteran status in violation of state or federal laws.

16.18 Contractor certifies that it will comply with the City business license code and if required, currently has a City business license or will obtain one prior to delivering Work under this Agreement.

16.19 Any other condition or clause required by law to be in this Agreement shall be considered included by this reference.

17. Confidentiality. Contractor shall maintain the confidentiality, both external and internal, of that confidential information to which it is exposed by reason of this Agreement. Contractor warrants that its employees assigned to this Agreement shall maintain necessary confidentiality.

18. Publicity. Contractor shall not use any data, pictures, or other representations of the City in its external advertising, marketing programs, or other promotional efforts except with prior specific written authorization from the City.

19. Succession. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and such parties' partners, successors, executors, administrators and assigns.

20. Assignment. This Agreement shall not be assigned by Contractor without the express written consent of the City. Contractor shall not assign Contractor's interest in this Agreement or enter into subcontracts for any part of the Work without the prior written consent of the City.

21. Records, Inspection and Audit by the City.

21.1 Contractor shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three years after City makes final payment on this Agreement and all other pending matters are closed.

21.2 Work provided by Contractor and Contractor's performance data, financial records, and other similar documents and records of Contractor that pertain, or may pertain, to the Work under this Agreement shall be open for inspection by the City or its agents at any reasonable time during business hours. Upon request, copies of records or documents shall be provided to the City.

21.3 The City shall have the right to inspect and audit Contractor's financial records pertaining to the Work under this Agreement at any time during the term of this Agreement or within three (3) years after City makes final payment on this Agreement and all other pending matters are closed.

21.4 This Section 22 is not intended to limit the right of the City to make inspections or audits as provided by law or administrative rule.

22. Force Majeure. Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall

within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

23. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the Work described herein.

24. Severance. If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized undersigned agent, and Contractor has executed this Agreement on the date written below.

CITY OF DUNDEE

CONTRACTOR:

an Oregon municipal corporation

Signature: _____

Signature: _____

Print: Steve Dahl

Print: _____

Title: City Administrator

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

City Attorney

ATTACHMENT A
STATEMENT OF WORK

EXHIBIT B

INSURANCE REQUIREMENTS

Contractor and its subcontractors shall maintain insurance acceptable to the City in full force and effect throughout the term of this Contract. It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance provided by Contractor. The policy or policies of insurance maintained by Contractor and its subcontractors shall provide at least the following limits and coverage:

TYPE OF INSURANCE	LIMITS OF LIABILITY		REQUIRED FOR THIS CONTRACT
General Liability	Each occurrence	\$1,000,000	<u>YES/NO</u>
	General Aggregate	\$2,000,000	
	Products/Comp Ops Aggregate	\$2,000,000	
	Personal and Advertising Injury	\$1,000,000 w/umbrella or \$1,500,000 w/o umbrella	
Please indicate if Claims Made or Occurrence			
Automobile Liability	Combined Single – covering any vehicle used on City business	\$2,000,000	<u>YES/NO</u>
Workers' Compensation	Per Oregon State Statutes If workers compensation is not applicable please initial here _____. State the reason it is not applicable: _____		<u>YES/NO</u>

Professional Liability	Per occurrence	\$500,000	<u>YES/NO</u>
	Annual Aggregate	\$500,000	

Contractor’s general liability and automobile liability insurance must be evidenced by certificates from the insurers. The policies shall name the City, its officers, agents and employees, as additional insureds and shall provide the City with a thirty (30)-day notice of cancellation.

Workers’ compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured but must list the City as a certificate holder and provide a thirty (30)-day notice of cancellation to the City.

Professional liability insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured.

Certificates of Insurance shall be forwarded to:

City of Dundee
 Attn: City Administrator
 520 SW 5th Street
 P.O. Box 220
 Dundee, Oregon 97115

Contractor agrees to deposit with the City, at the time the executed Contract is returned, Certificates of Insurance and Binders of Insurance if the policy is new or has expired, sufficient to satisfy the City that the insurance provisions of this Agreement have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the City during the entire term of this Agreement. Such certificates and/or binders must be delivered prior to commencement of the Work.

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

EXHIBIT C
STANDARD PUBLIC IMPROVEMENT CONTRACT TERMS AND CONDITIONS

1. Prevailing Wage.

a. As further provided in Exhibit D, Contractor shall comply with ORS 279C.800 – 279C.870 regarding the payment of state prevailing wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq), that must be paid to workers in each trade or occupation that the contractor or subcontractor or other person who is a party to the contract uses in performing all or part of the contract.

b. Workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage.

2. Public Works Bond. Contractor shall:

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

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

c. Every subcontract that a contractor or subcontractor awards in connection with a public works contract between a contractor and a public agency must require any subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the public works project, unless the subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9).

3. Two-Year Warranty

a. In addition to and not in lieu of any other warranties required under the Contract, Contractor shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City and at no cost to the City, any and all defects, breaks, or failures of the work occurring within two years following the date of completion due to faulty or inadequate materials or workmanship. Contractor shall repair damage or disturbances to other improvements under, within, or adjacent to the work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing its duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year warranty period shall, with relation to such required repair, be extended two years from the date of completion of such repair.

b. If Contractor, after written notice, fails within ten days to proceed to comply with the terms of this section, City may have the defects corrected, and the Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of

repairs. Failure of the City to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.

4. Drug Testing.

a. Contractor shall demonstrate to the City that it has a drug-testing program in place for its employees pursuant to ORS 297C.505(2).

5. Construction Contractor's Board. The Contractor, hereby certifies that the Contractor is licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 and, further, that all subcontractors performing work as described in ORS 701.005(2) (i.e., construction work) will be licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract. 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), (8) or (9). The Contractor shall 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(7), (8) or (9).

6. Oregon Statutory Provisions.

a. **Conditions concerning payment, contributions, liens, withholding, drug testing.** In accordance with ORS 279C.505, Contractor shall: (a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; (c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; (d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167; and (e) Demonstrate an employee drug testing program is in place in accordance with Section 30.

b. **Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.** In accordance with ORS 279C.510, contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. To the extent applicable to scope of work, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

c. **Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.** (i) In accordance with ORS 279C.515, if the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the proper officer that represents the state or a county, school district, municipality or municipal corporation or a subdivision of the state, county, school district, municipality or municipal corporation may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. (ii) If the contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting

agency or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived (iii) If the contractor or a subcontractor fails, neglects or refuses to pay a person that provides 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. (iv) Paying a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to an unpaid claim.

d. **Condition concerning hours of labor.** In accordance with ORS 279C.520, (1)(a) a contractor may not employ an employee 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 otherwise, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the contractor shall pay the employee at least time and a half pay for: (i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or (ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and (B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540. (b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause. (c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) A contractor shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins 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 contractor may require the employees to work.

(3) Contractor shall pay employees at least time and a half pay for work the employees perform under the public contract on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) Contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public 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 contractor may require the employees to work.

e. **Condition concerning payment for medical care and providing workers' compensation.** In accordance with ORS 279C.530, 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. ii. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

f. **Contractor's relations with subcontractors** In accordance with ORS 279C.580, contractor shall include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract the following: (a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the contracting agency pays to the contractor under the public improvement contract. (b) A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor. (c) A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor: (A) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and (B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure. (d) An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the contracting agency, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty: (A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and (B) Is computed at the rate specified in ORS 279C.515 (2). ii. In each of the contractor's subcontracts, Contractor shall require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (i) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.