



CITY OF ALBANY, OREGON  
PUBLIC WORKS – OPERATIONS DIVISION

# INVITATION TO BID

## Water Treatment Chemicals

**Issue Date:** Monday, January 20, 2020

**Due Date:** Tuesday, February 18, 2020, 2:00 p.m. (Pacific Time)

**Public Works Operations Director** ..... **Chris Bailey**  
**Acting Water Treatment Plant Supervisor** ..... **Chuck Leffler**  
**Purchasing Coordinator** ..... **Diane M. Murzynski, CPPO, CPPB**

**For more information regarding this Invitation to Bid,  
contact Diane Murzynski at 541-917-7522.**

CITY OF ALBANY

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## BIDDER'S SUBMITTAL CHECKLIST

Bids must be submitted by the time designated in the advertisement for the Invitation to Bid at the City Hall Parks & Recreation Department/Information counter and marked received by City staff indicating the time and date as shown on the City Bid Clock in the Parks & Recreation Department. Any bids submitted after the designated closing time or to any other location will be determined nonresponsive and will not be opened.

If the Bidder submits a proposal via a delivery service (FedEx, UPS, USPS, etc.), the required sealed envelope must be enclosed in the delivery service packaging and the Project Title of the bid should be written on the outside delivery service packaging. The City is not responsible for late or mishandled delivery, regardless of the method of delivery.

Bids should be delivered to and stamped received by the Parks & Recreation Department Counter staff at City Hall to be considered Responsive. Bidder is solely responsible for the bid to be delivered to the correct location by the correct time.

Failure to include any signed Addendums could result in the disqualification of your bid.

All bids should include the following submittals to be considered responsive:

- Proposal and Cost Worksheet (*Exhibit A*)
- Employee Drug Testing Program Certification (*Exhibit B*)
- Employee Background Check Program Certification (*Exhibit C*)
- Signed Addenda (if applicable)



## CITY OF ALBANY, OREGON INVITATION TO BID (ITB) Water Treatment Chemicals

**Bids due by 2:00 p.m. (Pacific Time), Tuesday, February 18, 2020**

Notice is hereby given that the City of Albany, Oregon (City) is requesting bids from Vendors to provide the City of Albany with water treatment chemicals over a two-year term, beginning March 2020, with the option to renew the contract up to an additional three, one-year terms, upon mutual agreement by both parties.

Contract bid documents are available for review in the Finance Department, City Hall, 333 Broadalbin Street SW, Albany, Oregon, 97321, phone 541-917-7522, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m.; or downloaded from the City of Albany website at <http://www.cityofalbany.net/finance/purchasing/bids>; or a printed set may be purchased for \$35.

The City will post all addenda on the City website. Prospective Bidders are solely responsible for checking the website to determine whether any addenda have been issued. All questions regarding this solicitation must be submitted to Diane Murzynski, [diane.murzynski@cityofalbany.net](mailto:diane.murzynski@cityofalbany.net); inquiries concerning bid specifications should be directed to Chuck Leffler, [chuck.leffler@cityofalbany.net](mailto:chuck.leffler@cityofalbany.net).

Time is of the essence to establish a contract with a Vendor who can provide water treatment chemicals to the City of Albany. Sealed bids must be received by the City of Albany, at the Parks & Recreation Counter, not later than 2:00 p.m. (Pacific Time), Tuesday, February 18, 2020, at which time said bids will be publicly opened and read in the Santiam Room, at City Hall. Bids shall be addressed to the City of Albany, Finance Department, Attn: Diane Murzynski, CPPO, Purchasing Coordinator, 333 Broadalbin Street SW, Albany, OR 97321. The outside of the envelopes shall plainly identify: (1) the name of the bid, (2) the bid closing date and time, and (3) the name and address of the Bidder. Electronic bids will not be accepted. Bids received after the designated time and date will not be opened.

Bid totals will be posted on the City's website at <http://www.cityofalbany.net/finance/purchasing/bids>. The City may reject any bid not in compliance with all prescribed solicitation procedures and requirements and other applicable law, and may reject any or all bids in whole or in part when the cancellation or rejection is in the best interest of the City, and at no cost to the City. Prices quoted shall be firm offers, irrevocable, valid and binding for a period of thirty (30) calendar days after the closing date.

DATED THIS 20TH DAY OF JANUARY 2020.

A handwritten signature in cursive script that reads "Diane M. Murzynski".

Diane M. Murzynski, CPPO, CPPB  
Purchasing Coordinator

Publish: Albany Democrat-Herald, Monday, January 20, 2020  
Daily Journal of Commerce, Monday, January 20, 2020

## SECTION 1 – INSTRUCTIONS TO BIDDERS

### 1.1 ISSUING OFFICE AND SUBMITTAL LOCATION

The City Purchasing Coordinator will issue the Invitation to Bid (ITB) document and will be the sole point of contact for the City for questions, concerns, and protests.

#### Submittal Address & Process Questions:

City of Albany  
Finance Department  
Diane Murzynski, CPPO, Purchasing Coordinator  
333 Broadalbin Street SW  
Albany, OR 97321  
diane.murzynski@cityofalbany.net  
541-917-7522

#### Technical Questions:

Chuck Leffler  
Acting Water Treatment Plant Supervisor  
Public Works Operations  
Chuck.leffler@cityofalbany.net

Telephone, facsimile, or electronically transmitted bids will not be accepted. Bids received after the specified date and time will not be opened. Bidders submitting bids are solely responsible for the means and manner of their delivery.

### 1.2 ITB SCHEDULE

The City anticipates the following general timeline for receiving bids and selecting Vendor(s) to supply chemicals for City Water Treatment Plants. The timeline listed below may be changed if it is in the City's best interest to do so.

ITB Advertised	January 20, 2020
Solicitation Changes or Protests	January 30, 2020, 2:00 p.m.
Last Date for Addenda	February 13, 2020, 12:00 p.m.
Bid Closing Date	February 18, 2020, 2:00 p.m.
Notice of Intent to Award	February 19, 2020
City Council Meeting	February 26, 2020
Contract Award	March 2020

### 1.3 CHANGES TO THE SOLICITATION BY ADDENDA

The City of Albany reserves the right to make changes to the ITB by written addenda. Prospective Bidders are solely responsible for checking the website to determine whether any addenda have been issued. A Prospective Bidder may request a change in the ITB by submitting a written request to the address set forth above. The request must specify the provision of the ITB in question and contain an explanation for the requested change.

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

1. All addenda, clarification, and interpretations will be posted on the City of Albany's website at [City of Albany Bids, ITBs, RFQs](#).
2. No addenda will be issued later than the date set in the ITB Schedule, except an addendum, if necessary, postponing the date for receipt of bids, withdrawing the invitation, modifying elements of the bid resulting from a delayed process, or requesting additional information, clarification.

3. Each Bidder shall ascertain, prior to submitting a bid, that the Bidder has received all addenda issued, and receipt of each addendum shall be acknowledged in the appropriate location on each addendum and included with the bid submittal.

#### **1.4 PROTEST OF SOLICITATION DOCUMENT AND PROCUREMENT PROCESS**

A protest of any provision in this ITB must be made in writing and directed to the Purchasing Coordinator at the address listed in the ITB and shall be received no later than the date listed in the ITB Schedule. Any protest must address the requirement, provision or feature of this ITB or its attachments, that the potential Bidder believes is ambiguous, unclear, unfair, contrary to law or likely to limit competition. Such submittals will be reviewed upon receipt and will be answered in writing. In addition to the information required by ORS 279B.405(4), a prospective Bidder's written protest shall include a statement of the desired changes to the procurement process or the solicitation document that the prospective Bidder believes will remedy the conditions upon which the prospective Bidder based its protest. No such protests or requests will be considered if received after the deadline. No oral, telegraphic, telephone protests or requests will be accepted.

#### **1.5 TRADE SECRETS AND PUBLIC RECORDS LAW**

All information submitted by Bidders shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the bids for which Bidder requests exception from disclosure consistent with Oregon Law. All requests shall be in writing, noting specifically which portion of the bid the Bidder requests exception from disclosure. Bidder shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the City of Albany as a result of this ITB. Bidder should not mark the whole bid document "confidential".

If a bid contains any information that is considered a trade secret under ORS 192.501(2), Bidders must mark each sheet of such information with the following legend: "This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance". Therefore, non-disclosure of City documents or any portion of a City document submitted as part of a bid may depend upon official or judicial determination made pursuant to the Public Records Law.

In order to facilitate public inspection of the non-confidential portion of the bid, material designated as confidential shall accompany the Bid, but shall be readily separable from it. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary. Any bid marked as a trade secret in its entirety will be considered nonresponsive.

#### **1.6 CANCELLATION**

ORS 279B.100 provides for cancellation, rejection, or delay of bids when the cancellation or rejection is in the best interest of the city as determined by the city. The City of Albany reserves the right to cancel award of this contract at any time before execution of the contract by both parties if cancellation is deemed to be in the City of Albany's best interest. In no event shall the City of Albany have any liability for the cancellation of award.

#### **1.7 CONDITIONS OF SUBMITTAL**

1. The Bidder and each person signing on behalf of any Bidder certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or in part by the City of Albany, has a direct or indirect financial interest in the bid, or in the services to which it relates, or in any of the profits thereof other

than as fully described in the Bidder's response to this solicitation.

2. The Bidder has examined all parts of the ITB, including all requirements and contract terms and conditions thereof, and, if its bid is accepted, the Bidder shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Bidder.
3. The Bidder, if an individual, is of lawful age; is the only one interested in this bid; and that no person, firm, or corporation, other than that named, has any interest in the bid, or in the proposed contract.
4. The Bidder has examined the scope of services and conditions thoroughly and can provide the appropriate insurance, deposits, and bonds, as set forth in this ITB, if required.
5. The Bidder has demonstrated quality experience providing the required goods and services.
6. The Bidder will comply fully with the scope of services for the agreed contract.
7. The Bidder can meet any and all registration and certification requirements as set forth and required in the Oregon Revised Statutes and this ITB.

#### **1.8 BIDDER REQUESTS INTERPRETATION OF ITB DOCUMENTS**

1. Bidders shall promptly notify the City of Albany of any ambiguity, inconsistency or error, which they may discover upon examination of the bid documents.
2. Bidders requiring clarification or interpretation of the bid documents shall make a written request to the Purchasing Coordinator at the submittal location listed above.
3. The City of Albany shall make interpretations, corrections, or changes of the bid documents in writing by published addenda. Interpretations, corrections, or changes of the bid documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections, and changes.
4. Should any doubt or difference of opinion arise between the City of Albany and a Bidder as to the items to be furnished hereunder or the interpretation of the provisions of this solicitation, the decision of the City of Albany shall be final and binding upon all parties.
5. To the maximum extent allowed by law, the City may waive bid irregularities or strict compliance with any requirement herein if it concludes such action to be in its best interest.

#### **1.9 LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS**

Bids received after the scheduled closing time for filing bids, as set forth in the Invitation to Bid will be rejected and will not be opened. A Bidder's requests for modification of a bid, or withdrawal of a bid, received after closing date and time is late. The City shall not consider late bids, late requests for modifications or late withdrawals.

#### **1.10 MODIFICATION OR WITHDRAWAL OF BID**

A Bidder may modify their bid, in writing, prior to closing date and time. The Bidder shall initial and submit any correction or erasure to its bid prior to the opening, in accordance with the instructions for submitting a bid set forth in this solicitation document. Any modification must include the Bidder's statement that the modification amends and supersedes the Bidder's prior bid. The Bidder shall mark the submitted modification with the following: (1) Bid Modification, and (2) Project Name.

A Bidder may withdraw their bid, by written notice submitted on the Bidder's letterhead, signed by the Bidder's authorized representative, delivered to the individual and location specified in this solicitation document for the receipt of bids. To be effective, the withdrawal must be received prior to closing date and time. The Bidder or Bidder's authorized representative may withdraw a bid by appearing in person before the Procurement Coordinator prior to closing date and time, with presentation of appropriate identification and evidence of authority to make the withdrawal satisfactory to the Procurement Coordinator. The Bidder shall mark a written request to withdraw a bid as follows: (1) Bid Withdrawal, and (2) Project Name. The City may return the unopened bid that has been withdrawn to the Bidder or the Bidder's authorized representative, after voiding any date and time stamp mark.

### **1.11 REJECTION OF BIDS**

The City of Albany reserves the right to reject any or all bids received as a result of this request. Bids may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Bidder to adhere to one or more of the provisions established in this ITB.
2. Failure of the Bidder to submit a bid in the format specified herein.
3. Failure of the Bidder to submit a bid within the time requirements established herein.
4. Failure of the Bidder to adhere to ethical and professional standards before, during, or following the bid process.
5. Failure of the Bidder to submit a bid in compliance with the product specifications, functionality, or design specification requirements.

The City of Albany may reject any bid not in compliance with all prescribed public procurement procedures and requirements and may reject for good cause any or all bids upon a finding of the City of Albany that it is in the public interest to do so.

### **1.12 ALTERNATE BIDS**

Bids which contain conditions which will alter or modify the bid form, specifications, or other bid documents shall not be considered as responsive bids and are unacceptable.

### **1.13 FEDERAL EXCISE TAXES**

Prices bid shall exclude federal excise taxes from which municipal agencies are exempt.

### **1.14 DURATION OF BID**

Bid prices, terms and conditions shall be firm for a period of at least thirty (30) days from the deadline for receipt of submittal. The successful bid shall not be subject to future price escalation or changes of terms if accepted during the thirty (30) day period. Price decreases or changes in terms by others after the acceptance of a bid will not be considered.

### **1.15 AFFIRMATIVE ACTION**

By submitting a bid, the Bidder agrees to comply with the Fair Labor Standard Act (FLSA), Title VII of the Civil Rights Act of 1964, Executive Order 11246 (as amended), Fair Employment Practices, Equal Employment Opportunity Act, Section 503 of the Rehabilitation Act of 1973, as amended; Vietnam Era Veterans' Readjustment Assistance Act of 1974; Americans with Disabilities Act; Age Discrimination in Employment Act of 1967 (ADEA); Oregon Revised Statutes (ORS); and all applicable requirements of federal, state and local civil rights and rehabilitation statutes, rules and regulations if awarded a contract by the City.

### **1.16 SUBCONTRACTS AND PROCUREMENT OF MATERIALS AND EQUIPMENT**

In all solicitations by competitive bidding or proposals for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the successful Bidder of the successful Bidder's obligations under this contract, Title VII of the Civil Rights Act of 1964, and other federal nondiscrimination laws.

### **1.17 CERTIFICATION OFFICE FOR BUSINESS INCLUSION AND DIVERSITY (COBID)**

The Oregon Business Development Department, through the Certification Office for Business Inclusion and Diversity, is the sole agency that may certify enterprises and businesses as disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses that are eligible to perform public contracts in this state. Bidder agrees not to discriminate against 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 enterprise certified under ORS 200.055 in awarding subcontracts as required by ORS 279A.110.

### **1.18 PAY EQUITY COMPLIANCE**

As required by ORS 279B.235, Contractor must comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character based on an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles the City to terminate this Contract for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor 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.

### **1.19 COST OF ITB AND ASSOCIATED RESPONSES**

This ITB does not commit the City of Albany to pay any costs incurred by any Bidder in the submission or presentation of a Bid, or in making the necessary studies for the preparation thereof. Responses to this solicitation are purely voluntary. Bidders shall not include any such expenses as part of their Proposal.

### **1.20 INDEPENDENT CONTRACTOR (ORS 670.600)**

The Bidder shall provide all labor, equipment, material, and supervision necessary to perform the scope of services described in this ITB. The parties intend that Bidder, in performing the services specified in this contract, shall act as an independent contractor and shall have the control of the work and the manner in which it is performed. Bidder is not considered an agent or employee of the City of Albany and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits the City of Albany provide its employees.

### **1.21 BID DISCREPANCIES**

Discrepancies between the multiplication of units in work and unit prices 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. Unless otherwise specified, Bidders shall bid on all bid items included in this solicitation document and the low Bidder shall be determined as noted in the Award Section. Except as provided herein, bids which are incomplete, fail to reply to all items required in this solicitation document, or found to be in error after clarification has been requested and before contract execution, will be rejected.

### **1.22 IDENTICAL BIDS**

If the City receives Bids identical in price, fitness, availability and quality and chooses to award a contract, the City shall award the contract in accordance with ORS 279A.120 and OAR 137-046-0300. Tiebreaker preference for identical offers are awarded on the following order of precedence: 1) Goods and services manufactured, produced or to be performed in Oregon, and 2) Drawing lots among the identical Offers. The City shall provide the Bidders who submitted the identical bids notice of the date, time and location of the drawing of lots and an opportunity for the Bids to be present when the lots are drawn.

### **1.23 COMPLIANCE WITH STATE OF OREGON LAWS**

By submitting a response to this solicitation, Bidder agrees that any terms and conditions stated within any Agreement awarded as a result of this solicitation shall include the following laws of the State of Oregon, and are hereby incorporated by reference into the Agreement: ORS 279B.220, 279B.225, 279B.230, and 279B.235.

## **1.24 SAFETY DATA SHEETS**

Bidder shall furnish Safety Data Sheets per OAR 437, Division 155, for all chemical items, if applicable, furnished to the City.

## **1.25 PROTEST OF NOTICE OF INTENT TO AWARD**

A Bidder may protest the award of a contract or the intent to award such a contract, whichever occurs first, if the following conditions are satisfied: (1) The Bidder must be adversely affected because the Bidder would be eligible to be awarded the contract in the event the protest is successful; (2) The reason for the protest is that all the lower bids or higher ranked Bids are nonresponsive; (3) The City has failed to conduct the evaluation of Bids in accordance with the criteria or processes described in the Solicitation Document; (4) The City has abused its discretion in rejecting the protestor's bid as nonresponsive; (5) The City's evaluation of the Bids or the subsequent determination of award is otherwise in violation of ORS 279A or 279B. The Bidder must deliver the written protest to the Purchasing Coordinator within seven (7) days after issuance of the notice of intent to award the contract or if no notice of intent to award is issued, within forty-eight hours after award. A Bidder's written protest shall specify the grounds for protest to be considered by the City pursuant to ORS 279B.410(2). A Bidder's written protest shall specify the grounds for protest. The City shall not consider a Bidder's contract award protest submitted after the above timeline.

## **1.26 OBLIGATION TO AWARD**

The City's obligation to award this bid is contingent upon appropriation or approval of funds.

## **1.27 AGREEMENT**

The successful Bidder will be required to sign an agreement to deliver to the City at the prices bid for a period of two years, with an option to extend for three additional one-year terms, beginning March 2020 meeting the specifications and conditions set forth herein. It is the City's intent to award an agreement in substantially the form of the agreement attached to this bid document. Bidders may submit an alternative agreement for City's review. The City, at its sole determination, may approve the Bidder's offered agreement as is, require modifications, or reject the Bidder's agreement and require the City's agreement be executed for the purpose of this bid.

## **1.28 RECIPROCAL PREFERENCE LAW**

Oregon's reciprocal preference law, ORS 279A.120 and ORS 279A.125, requires public contracting agencies, in determining the lowest responsible Bidder, to add a percent increase to each out-of-state Bidder's bid price which is equal to the percent of preference given to local Bidders in the Bidder's home state. The list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) will be used to determine whether the nonresident Bidder's state gives preference to in-state Bidders and the amount of such preference. For details, check Oregon's Reciprocal Preference Law website at: <https://www.naspo.org/reciprocity1>.

## **1.29 COOPERATIVE PURCHASING**

Pursuant to ORS 279A.200 to 279A.225, other public agencies may use the purchase agreement resulting from this invitation to bid unless Bidder expressly notes on the proposal form that the prices quoted are available to the City only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with the successful Bidder; the City accepts no responsibility for performance by either the successful Bidder or such other agency using this agreement. With such condition, the City consents to such use by any other public agency.

## **SECTION 2 – GENERAL PROVISIONS**

### **2.1 WORKERS' COMPENSATION LAW**

All subject employers working under this contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

### **2.2 PURPOSE AND USE OF CITY REQUIREMENTS CONTRACT**

The City appreciates the contractual relationship established to provide citizens of the City of Albany with goods and services that meet the annual operating requirements of the City. The terms, conditions, and pricing of contracts between City and successful Bidders shall extend solely to those transactions between City and successful bidders and shall not be extended to any individual City employee for the City employees' personal benefit. City employees shall not receive any discounts, favoritism, or other benefits either because of the contractual relationship between City and successful Bidders, or as a result of the employees' position as a City employee, except for those discounts or other benefits that are available to the general public at large. Successful Bidders are encouraged to report any City employee using his or her status as a City employee to request or otherwise receive any discount, favoritism, or other benefit that is not otherwise available to the general public by notifying the Purchasing Coordinator in writing.

### **2.3 ROYALTIES AND PATENTS**

Successful Bidders shall pay all royalty and license fees. Successful Bidders shall defend all suits or claims for infringement of any patent and shall hold the City harmless from loss of account thereof.

### **2.4 QUALITY**

All chemicals provided under the terms of this contract must meet ANSI/NSF Standard 60 and be of sufficient quality, when delivered, as to be suitable for the purpose or use for which they are being purchased. Chemicals found to be unsuitable for their intended purpose as a result of lack of quality, or premature deterioration of product quality, shall be returned to the supplier at no cost to the City. If an item provided to the City is used for its intended purpose and its lack of adequate quality results in operating problems, the cost of remedying the problems shall be borne by the successful Bidder.

### **2.5 QUANTITIES**

The quantities indicated in the ITB are the City's estimated requirements based on previous usage and are in no way binding upon the City. The City reserves the right to increase or decrease each item. Items listed within this solicitation document shall be ordered on an "as needed basis" throughout the terms of the contract. The failure of the successful Bidders to make delivery of a product meeting the specifications and conditions set forth herein shall be a violation of this contract, giving the City the right to cancel the contract and purchase elsewhere with recourse to the successful Bidders.

### **2.6 FORFEITURE OF CONTRACT**

This Contract may be canceled at the election of the City for any willful failure or refusal to faithfully perform the contract according to its terms as herein provided.

### **2.7 FIXED PRICE CONTRACT WITH ECONOMIC PRICE ADJUSTMENT (FPEPA)**

The resulting contract(s) of this Invitation to Bid will be a fixed price contract(s) with an economic price adjustment. Any change in fees are subject to a maximum increase in any one year for the period ending two (2) months prior to the first day of the renewal Contract Year, or three percent (3%), whichever is lower. The West Regional CPI-W, All Items, will be applied to the unit price bid. Future economic price increases will utilize <https://www.bls.gov/cpi/latest-numbers.htm>. Successful Bidders will be notified in writing a minimum of 30 days prior to the contract renewal date for price adjustment consideration.

## **SECTION 3 – SPECIAL CONDITIONS**

### **3.1 TYPE OF CONTRACT**

This is a Requirements Contract and is a non-exclusive, two-year contract (service provided routinely throughout year) with renewal provisions (see Renewal below) and Economic Price Adjustment, (See General Requirements, Section 2).

### **3.2 CONTRACT TERM**

This contract shall commence March 2020 and continue for approximately two years, through February 2022, and upon renewal (see Renewal) shall continue for each additional consecutive year (up to three additional terms) until canceled or expiration of the contract term.

### **3.3 CONTRACT ADMINISTRATION**

The Contract Administrator for this contract shall be Chuck Leffler, or designee.

### **3.4 ORDERING**

Ordering will be conducted by the Contract Administrator, either by oral or written calls on an “as needed basis” against contract(s) awarded by this ITB.

### **3.5 TELEPHONE ORDERS**

Suppliers outside the Albany, Oregon area shall accept long distance telephone orders on a collect basis or provide the City with a toll-free number.

### **3.6 INVOICING AND PAYMENTS**

All notices, invoices, and payments shall be made in writing and invoiced in U.S. Dollars and reflect the same Unit of Measure (UOM) for the chemical as indicated on the Proposal and Cost Worksheet. Supplier must send invoices that align with the UOM on the cost worksheet. For example, if the UOM bid was in gallons and pounds is used on the Bill of Lading, the UOM must be converted by the Supplier on the invoice to reflect gallons. (Wet products must reflect gallons and dry products must reflect pounds.)

Invoices should reflect the Unit Price bid limited to two decimal places. Supplier shall provide unit cost prices rounded to the nearest hundredth.

All notices, invoices, and payments shall be made in writing and may be given by personal delivery, email, or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

City of Albany  
Attn: Accounts Payable  
P.O. Box 490  
Albany, Oregon 97321  
[accountspayable@cityofalbany.net](mailto:accountspayable@cityofalbany.net)

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery.

### **3.7 DELIVERY**

Delivery will, in most instances, be made within five (5) City business days after a call is made upon the successful Bidder. Exceptions to this condition shall only be made when a request by the successful Bidder is made and approved by the Contract Administrator. If a request is made and approved verbally, confirmation of both the request by the successful Bidder and approval by the Contract Administrator shall be made in writing.

Supplier must ensure the delivery of chemical(s) are in accordance with this timeline, “**five business days**”, unless approved by the City Representative. Provider acknowledges chemical deliveries are time sensitive and will be responsible for all aspects of the delivery prior to City acceptance and liability passing to the City. This includes date delivered, chemical unloading, and Third-Party Delivery service being compliant with these Contract Documents. The City reserves the right to order from another Supplier should the Chemical Provider not be able to deliver the chemical order timely. If the City must order from another Supplier to provide continuity of City services to citizens, the successful Bidder may be billed for the increase in unit cost for the unanticipated emergency chemical order.

The Supplier’s driver shall provide one copy of the delivery statement, Bill of Lading, certified weight statement and applicable Safety Data Sheets to the City’s operator prior to connection. The delivery statement must include verification of chemical concentration.

The Supplier shall provide all necessary trained and qualified personnel to be in continuous attendance during the transfer of chemical. The City will provide one operator to act as observer during the delivery and transfer who will assure City protocol is followed. The chemical transfer must meet the City’s receiving tanks specifications as provided when contract is awarded. The Supplier’s driver is responsible for cleanup of spilled material. Cleanup must be conducted in conformance with the City’s safety procedures and conform with applicable EPA, regional, and/or local regulations and ordinances, as well as to any safety procedures and regulations the product manufacturer recommends. The City has wash-down water available for use by the driver at no cost. Any neutralizing agents, special equipment, or chemicals required for cleanup must be furnished by the Supplier.

### **3.8 LOCATION OF DELIVERY AND RESTRICTIONS**

Delivery will be made to the City of Albany Vine Street Water Treatment Plant, “**Vine**”, 300 Vine Street SW, Albany, OR 97321, or Albany-Millersburg Joint Water Treatment Plant, “**AM**”, 33883 Berry Drive NE, Albany, OR 97322, between the hours of 7:30 a.m. to 4:00 p.m. as directed by the Contract Administrator.

The Vine Street WTP delivery site is in a residential area and access may be difficult for large equipment. The Albany-Millersburg Joint WTP has less restrictive access. The successful Bidder(s) must be aware of site constraints at all locations and deliver materials only in equipment that is compatible with the access conditions. Compressors, blowers, pumps, or other auxiliary equipment needed to off-load bulk materials must be provided by the carrier and must be equipped with mufflers or other noise suppression. Should the successful Bidder require a Third-Party Delivery Service, the Supplier is required to convey to the Third-Party Delivery Service applicable delivery instructions, including site restrictions, unloading requirements and delivery date required.

**AM – All chemical deliveries should be off loaded in a containment area that is isolated prior to delivery. If the truck or trailer encounters a problem, it will be contained within an area that has a closed drain for procedures to be performed to treat a possible spill. Supplier should contact City Representative at the Plant a minimum of 30 minutes prior to delivery.**

**Vine – Has two designated areas for chemical delivery. Area 1 – Fluoride will be off loaded off 4<sup>th</sup> Street by the City using a forklift. Area 2 - Supplier should deliver Hypochlorite by backing in first gate off 4<sup>th</sup> Street. Supplier should contact City Representative at the Plant a minimum of 30 minutes prior to delivery.**

### **3.9 RENEWAL**

If the City determines that it is in the City's best interest, the City may elect to extend the contract for up to three additional, one-year renewal periods subject to the following conditions:

- a. Approval by the City and budget approval.
- b. Service has been determined, by the Contract Administrator, to be satisfactory.
- c. Bid price remains firm for the additional year; adjusted in “Year Three”, as defined in Section 2 Fixed Price Adjustment, and allowed for under the terms of the Contract.
- d. Agreement to extend the contract in writing by the successful Bidder after a minimum thirty (30) calendar day notice by the City prior to the expiration of the Contract.

## SECTION 4 – TECHNICAL SPECIFICATIONS

### 4.1 GENERAL

All chemicals furnished under these specifications for the City of Albany shall comply with the provisions herein. Suppliers may bid on one or all items and the City of Albany reserves the right to accept bids for each Item bid as separate and distinct bids. The materials shall be in accordance with the specifications proposed below by the City of Albany. Prices bid shall be the gross price of the material delivered F.O.B. Destination – Albany, Oregon.

The bid prices will be based on estimated quantities as shown in the Quantity Section of the Cost Worksheet. Prices shall include delivery and any other charges or provisions anticipated by the Supplier and not shown in these specifications. The estimated quantities are given for informational and bidding purposes based on prior actual annual quantities. However, Supplier should not consider these estimates to be a guarantee of a minimum or maximum amount, nor entitle the Supplier to an adjustment to the unit price bid or to other compensation.

### 4.2 MULTIPLE CHEMICAL BID AWARDS

The water treatment chemicals required in this ITB will supply chemicals for two Water Treatment Plant (WTP) facilities: 1) Vine Street Water Treatment Plant, 300 Vine Street, Albany, OR 97321; and 2) Albany-Millersburg Joint (AMJ) Water Treatment Plant, 33883 Berry Drive NE, Albany, OR 97322. Some orders may be split between the addresses.

The chemicals described on the Cost Worksheet, Items 1 through 2, represent requirements of the Vine Street WTP. The chemicals described as Items 3 through 4, represent requirements of the Albany-Millersburg Joint WTP.

Bidders are NOT required to bid on all Items. If Bidder is submitting a “NO BID”, Bidder should indicate it by checking the box in the appropriate Item column. Award of bid will be made per Item, to the lowest, responsive, responsible Bidder. This may result in multiple chemical contract awards to the low Bidder of each chemical category.

Chemicals bid must adhere to product specifications defined below. City reserves the right to cancel any bid award whereby the product bid does not comply with the product specification and intended use. City prefers domestically made products.

### 4.3 CHEMICAL SPECIFICATIONS

#### **ITEM 1: *Sodium Hypochlorite (12.5 percent) in 300-gallon totes***

The Sodium Hypochlorite shall be guaranteed to meet AWWA Standard B300, latest edition. The Sodium Hypochlorite shall be liquid, filtered and have 12.5 percent of available chlorine by weight. Payment of bulk deliveries shall be made for amounts delivered and determined by certified scale certificates.

This bid is for approximately 15,000 gallons to be delivered and shall be shipped in 300-330-gallon tote bins. Individual orders shall be for approximately 300 gallons.

#### **ITEM 2: *Sodium Fluorosilicate***

The Sodium Fluorosilicate shall be guaranteed to meet AWWA Standard B-702, latest edition. The Sodium Fluorosilicate shall be granulated and shall be in 50-pound bags net weight.

The bid is for approximately 6,300 pounds Sodium Fluorosilicate to be delivered. Individual orders shall be approximately 2,000 pounds of material.

**ITEM 3: *Sodium Fluorosilicate***

The Sodium Fluorosilicate shall be guaranteed to meet AWWA Standard B-702, latest edition. The Sodium Fluorosilicate shall be granulated and shall be in 50-pound bags net weight.

The bid is for approximately 27,000 pounds Sodium Fluorosilicate to be delivered. Individual orders shall be for approximately 4,000 pounds of material.

**ITEM 4: *Liquid Sodium Bisulfite (38 percent)***

The Sodium Bisulfite shall be guaranteed to meet AWWA Standard B601, latest edition. The manufacturer shall provide a certified analysis of the liquid Sodium Bisulfite. The Sodium Bisulfite content in the liquid products shall be 38 percent by weight expressed as  $\text{NaHSO}_3$ . Specific gravity shall be between 1.2 and 1.4. Delivery shall be in a stainless-steel tank in approximately 1,000-gallons lots.

This material shall be certified as suitable for contact with, or treatment of, drinking water by an accredited certification organization in accordance with ANSI/NSF Standard 60, Drinking Water Chemicals - Health Effects. Payment of bulk deliveries shall be made for amounts delivered and determined by certified scale certificates.

The bid is for approximately 3,500 gallons of liquid Sodium Bisulfite to be delivered. Individual orders shall be for 1,000 gallons.

**EXHIBIT A – PROPOSAL AND COST WORKSHEET (REVISED 2-12-2020)**

Item	Estimated Quantity	Unit of Measure (UOM)	Description	Unit Price	“No” Bid	Extended Amount
Item 1	15,000	Gallons	12.5% Sodium Hypochlorite in 330-gallon totes - filtered		<input type="checkbox"/>	
Item 2	6,300	Pounds	Sodium Fluorosilicate		<input type="checkbox"/>	
<b>Section 1 - Vine Street WTP (Items 1 &amp; 2)</b>						
Item 3	27,000	Pounds	Sodium Fluorosilicate		<input type="checkbox"/>	
Item 4	3,500	Gallons	38% Liquid Sodium Bisulfite		<input type="checkbox"/>	
<b>Section 2 - AM WTP (Items 3 &amp; 4)</b>						

**NOTE:** Subject to change if addition or extensions are in error.

**Unit Price bid is limited to two decimal places. Supplier shall provide unit cost price rounded to the nearest hundredth.**

Items 1-2 are chemicals needed for the Vine Street WTP and Items 3-4 are chemicals required for the Albany-Millersburg Joint WTP. Technical Specifications are described in Section 4 of this ITB. Order may be split between site locations.

The City requests your best bid, F.O.B. Destination – Albany, Oregon.

All offers are bid in U.S. Dollars.

Bid award will be made per Item number, based on low bid. Award will be made to the lowest, responsive, responsible Bidder “per Item”. The results could be an award of bid to multiple suppliers for the different chemicals requested above.

**If submitting a “NO BID”, please check the box in the appropriate Item row.**

**Residency Information - Oregon Reciprocal Preference Law**

“Resident Bidder” means a Bidder that has paid unemployment taxes or income taxes in the State of Oregon during the 12-calendar months immediately preceding submission of a bid, has a business address in the State of Oregon, and has stated in the bid that the Bidder is a “Resident Bidder” as defined in ORS 279A.120(1).

Bidder shall check one:

- a. Bidder is a  Resident Bidder  Non-Resident Bidder.
- b. If a Resident Bidder, enter your Oregon business address:

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- c. If Non-Resident Bidder, enter state of residency: \_\_\_\_\_

**Unforeseen Situation/Emergency Use:** In the event of an unforeseen situation or emergency, the City may request the Successful Bidder to provide delivery of contracted items within a short time frame at contracted prices. Please indicate below if your company would be willing to provide delivery in a short time frame:

- \_\_\_\_\_ Yes, my company is willing to provide delivery in a short time frame for an unforeseen situation or emergency. Please indicate the time frame:  
 \_\_\_\_\_ hours                      \_\_\_\_\_ days
- \_\_\_\_\_ No, my company is not willing to provide delivery in a short time frame for an unforeseen situation or emergency.

**Contractor Disclosure Requirement:** Bidder should provide answers to the following four questions with their Bid. All Bidders must submit answers to these four (4) questions prior to contract award:

1. Within the last five years, have you, your company, or any officers, agents or employees working for you or your company been found by any agency or court to be in violation of any governmental environmental rule, regulation, ordinance or statute, whether local, state, or federal. Include any resolution or settlement of any allegation of such a violation by civil compromise, settlement, consent decree, Mutual Agreement and Order (MAO), or otherwise. If so, please explain in detail.  
 \_\_\_\_\_  
 \_\_\_\_\_
2. Within the last five years, have you, your company or any officers, agents or employees working for you or your company been convicted or found at fault for any personal injury or property damage as a result of a product liability claim relating to any product that will be provided under this solicitation. If so, please explain in detail.  
 \_\_\_\_\_  
 \_\_\_\_\_
3. Within the last five years, have you, your company or any officers, agents or employees working for you or your company been found in violation of any rule, regulation, ordinance or statute, whether local, state or federal, respecting wages, prevailing wages requirements, or conditions of employment. If so, please explain in detail.  
 \_\_\_\_\_  
 \_\_\_\_\_
4. Within the last five years, have you, your company or any officers, agents or employees working for you or your company been debarred, suspended, proposed for debarment, declared ineligible or



**EXHIBIT B – EMPLOYEE DRUG TESTING PROGRAM CERTIFICATION**

Bidders shall demonstrate and disclose to the City of Albany that he/she has an Employee Drug Testing Program in place before a public contract can be awarded.

Therefore, by signing this Certification, the Proposer does hereby certify and confirm that, as the proposed Contractor for the City of Albany’s **WATER TREATMENT CHEMICALS** that he/she has an Employee Drug Testing Program in place.

**CONTRACTOR:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**EXHIBIT C – EMPLOYEE BACKGROUND CHECK PROGRAM CERTIFICATION**

Bidders shall demonstrate and disclose to the City of Albany that he/she has an Employee Background Check Program in place before a public contract can be awarded.

Therefore, by signing this Certification, the Proposer does hereby certify and confirm that, as the proposed Contractor for the City of Albany’s **WATER TREATMENT CHEMICALS**, that he/she has an Employee Background Check Program in place.

**CONTRACTOR:** \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## EXHIBIT D – **SAMPLE CONTRACT**

### STANDARD TERMS AND CONDITIONS – REQUIREMENTS CONTRACT TO SUPPLY WATER TREATMENT CHEMICALS TO THE CITY OF ALBANY, OREGON

#### **ARTICLE I: SCOPE**

For consideration set forth in Article V of this Agreement, the firm of \_\_\_\_\_, hereinafter referred to as CONTRACTOR, agrees to supply **Water Treatment Chemicals**, as defined in the Invitation to Bid and the Contractor's Proposal and Cost Worksheet, to the City of Albany, Oregon, a municipal corporation, hereinafter referred to as CITY.

The term of this contract shall be for two (2) years, beginning March 2020 through February 2022, with an option to extend the contract for three (3) additional one-year periods, with the total term not to exceed five (5) years.

This Agreement incorporates all these Standard Terms and Conditions, the promises, representations, and obligations set forth in the following Order of Precedence: Contract Amendments, City Standard Terms and Conditions, Addenda and Clarifications, Invitation to Bid, including Exhibits and Attachments, and Contractor's Proposal and Cost Worksheet.

The CITY shall assist the CONTRACTOR by providing any and all information within its possession or control that may be reasonably helpful in the performance of the services provided herein. In the event of a conflict between the attachment(s) and this document, the terms of this document shall control. Unless modified in writing as set forth in Article IV by the parties hereto, the duties of the CONTRACTOR and the CITY shall not be construed to exceed those services and duties specifically set forth in this Agreement.

In consideration of the mutual promises contained herein, it is agreed to as follows, and is effective upon its execution by and between both parties hereto.

#### **ARTICLE II: RESPONSIBILITIES OF CONTRACTOR**

- A. Notice to Proceed. CONTRACTOR will not begin work on any of the duties and services listed in Article I until execution of the contract and receipt of a Notice to Proceed from City. Authorization to proceed on additional services not defined in Article I shall be in the form of an amendment as defined in Article IV.
- B. Scope of Service. CONTRACTOR agrees to provide services as defined in the Contract Document to the satisfaction of the City.
- C. Level of Competence. CONTRACTOR is employed to render services to the City and shall be responsible, to the level of competence presently maintained by other providers in good standing and engaged in the same type of service and other work products furnished under this Agreement. CONTRACTOR will demonstrate the ability to meet or exceed all federal, state and local laws, codes and regulations.
- D. Lead Contractor. \_\_\_\_\_ shall serve as the lead Contractor to the City of Albany for the services described under the terms of this Agreement. Any change in the designation of this role must be approved by the City.
- E. Documents/Work Products Produced. CONTRACTOR agrees that all documents and work products produced by CONTRACTOR in the fulfillment of its obligations under this Agreement, and all information, documents and material, gathered or compiled in meeting those obligations, shall be

considered property of the CITY, with an unlimited, royalty free license for CITY use, and shall be provided to the CITY upon completion of this Agreement or termination of the Agreement pursuant to Article XI.

- F. Compliance with Contract Laws. CONTRACTOR covenants and agrees to comply with all obligations and conditions applicable to public contracts of this type pursuant to ORS Chapter 279 A and B, as though each obligation or condition were fully set forth herein. In addition, CONTRACTOR covenants and agrees that in the performance of its duties hereunder, it will comply with all other state and federal requirements applicable to contracts of this type. If any provision of this Agreement shall be deemed to be not in compliance with any statute or rule of law, such provision shall be deemed modified to ensure compliance with said statute or rule of law.
- G. Oregon Workers' Compensation Law. CONTRACTOR, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, **unless such employers are exempt under ORS 656.126. CONTRACTOR shall ensure that each of its subcontractors complies with these requirements.**
- H. Record Retention and Review. The CONTRACTOR shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject during regular business hours of the CONTRACTOR to inspection, review, or audit by personnel duly authorized by the City upon reasonable advance written notice from the City to the CONTRACTOR. The CONTRACTOR will retain all records related to this Agreement for six (6) years following the date of final payment or completion of any required audit, whichever is earlier, and make them available for inspection by persons authorized under this provision. The CONTRACTOR shall be responsible for any audit exceptions or disallowed costs incurred by the CONTRACTOR or any of its subcontractors.
- I. Oregon Identity Theft Protection Act. CONTRACTOR, and its subcontractors to comply with the Oregon Identity Theft Protection Act (OITPA), ORS Sections 646A.600 through 646A.628.
- J. Taxpayer Identification Number. CONTRACTOR agrees to complete a Request for Taxpayer Identification Number and Certification (W-9) as a condition of the City's obligation to make payment. If the CONTRACTOR fails to complete and return the W-9 to the CITY, payment to CONTRACTOR may be delayed, or the CITY may, in its discretion, terminate the Contract.
- K. ACH Direct Payment Authorization. The City prefers to pay CONTRACTOR invoices via electronic funds transfers through the Automated Clearing House (ACH) network. To initiate this more timely, efficient, and secure payment method, CONTRACTORS must complete the City's ACH Vendor Direct Payment Authorization Form. The form is available on the City website at <https://www.cityofalbany.net/departments/finance/purchasing>. Information provided on the form is exempt from public records disclosure under ORS 192.501(27).
- L. Pay Equity Compliance. **As required by ORS 279C.520, CONTRACTOR shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. Contractor's compliance with this section constitutes a material element of this Agreement and a failure to comply constitutes a breach that entitles the City to terminate this Agreement for cause.**
- M. Preference for Recycled Materials. **As required by ORS 279A.125, CONTRACTOR will use where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent.**
- N. Compliance with Tax Laws. **CONTRACTOR represents and warrants that he/she has complied with the tax laws of the state and political subdivisions of this state including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318.**

### **ARTICLE III: RESPONSIBILITY OF CITY**

- A. Authorization to Proceed. CITY shall authorize CONTRACTOR upon execution of the contract to start work on any of the services listed in Article I.
- B. Access to Records, Facilities and Property. CITY shall comply with reasonable requests from CONTRACTOR for inspection or access to City's records, facilities, and properties by providing any and all information within its possession or control that may be reasonably helpful in the performance of the services provided herein.
- C. Timely Review. CITY shall examine all studies, reports, specifications, proposals, and other documents presented by CONTRACTOR, obtain advice of an attorney, accountant, auditor, and other contractors as CITY deems appropriate for such examination and render in writing decisions pertaining thereto in a timely manner so as not to unreasonably delay the services of CONTRACTOR.

### **ARTICLE IV: MODIFICATIONS**

CITY or CONTRACTOR shall not make modifications in the attached Agreement or these Standard Terms and Conditions except in writing as an amendment to the agreement. Said modifications shall be agreed to by both parties, with scope of work, schedule, and compensation to be negotiated at the time the modification is proposed by either party. Modifications that do not meet these requirements shall not be binding, and no further compensation will be allowed for any work performed.

### **ARTICLE V: COMPENSATION**

CITY agrees to pay for the goods and services procured in Article I in accordance with the compensation provisions described in this Agreement and the deliverables set forth in the Proposal and Cost Worksheet.

**Invoices shall be directed to the City of Albany, Attention: Accounts Payable, P.O. Box 490, Albany, OR 97321. Invoices shall be emailed to: [accountspayable@cityofalbany.net](mailto:accountspayable@cityofalbany.net).**

The CITY shall remit payment within thirty (30) days of receipt of a monthly billing from the CONTRACTOR. If payment is not made within 30 days, interest on the unpaid balance will accrue beginning on the 31st day at the rate of one percent (1%) per month or the maximum interest rate permitted by law, whichever is less. Such interest is due and payable when the overdue payment is made, unless delay in payment is due to a contested billing. CITY has the right to appeal or ask for clarification on any CONTRACTOR billing within 30 days of receipt of billing. Until said appeal is resolved or clarification is accepted, no interest will accrue on that portion of the billing. In the event of a contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with this Article V.

Notwithstanding anything in this Agreement to the contrary, the City's obligation to pay money beyond the current fiscal year shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose; provided, however, that the City Manager or other officer charged with the responsibility for preparing the City's annual budget shall include in the budget for each fiscal year the amount of the City financial obligation payable in such year and the City Manager or such other officer shall use his/her best efforts to obtain the annual appropriations required to authorize said payments.

### **ARTICLE VI: INDEMNIFICATION**

The CONTRACTOR agrees to indemnify, defend, and hold harmless the CITY, its agents, officers and employees, from and against any and all liability, claims, suits, loss, damages, costs, and expenses arising out of or resulting from the negligent or intentional acts, errors, or omissions of the CONTRACTOR, its officers, employees, or agents.

### **ARTICLE VII: INSURANCE**

Before the Agreement is executed and work begins, the CONTRACTOR shall furnish the CITY a Certificate of Insurance for the coverage and limits set out below which is to be in force and applicable to the project for

the duration of the contract. The issuing insurance companies must have a minimum current A.M. Best rating of A- VII or approved by the CITY. The Certificate must state that any insurance coverage shown cannot be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days prior written notice has been given to the CITY. Required insurance coverage(s) must continue in effect throughout the term of the contract, or until final acceptance of the entire project, or through the products-completed operations required period.

#### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. **Commercial General Liability:** Insurance Services Office (ISO) form CG 0001 with an edition date of 10-2001 or later, providing Commercial General Liability – Occurrence Form. With CG 25 03 (Amendment Aggregate Limits of Insurance per Project) or equivalent attached.
2. **Automobile Liability:** Insurance Services Office (ISO) form CA 0001, providing Business Automobile Coverage on owned, non-owned and hired vehicles.
3. **Workers' Compensation Insurance:** Insurance as required by Oregon Revised Statutes and including Employers Liability Insurance.
4. **Pollution Liability:** Insurance covering CONTRACTOR'S or appropriate subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by CONTRACTOR, all arising out of the goods delivered or services (including transportation risk) performed under this contract is required.

#### **B. Minimum Limits of Insurance**

CONTRACTOR shall maintain limits no less than:

1. **Commercial General Liability:**  
\$2,000,000 Each Occurrence  
\$2,000,000 Personal Injury  
\$3,000,000 General Aggregate  
\$3,000,000 Products/Completed Operations Aggregate

The General Aggregate and Products/Completed Operations Aggregate shall apply separately on a "per project basis".

2. **Automobile Liability:** \$2,000,000 Each Occurrence
3. **Employers Liability:**  
\$1,000,000 Each Accident  
\$1,000,000 Disease Aggregate  
\$1,000,000 Disease Each Employee
4. **Pollution Liability:**  
\$2,000,000 Per Occurrence  
\$2,000,000 Annual Aggregate

#### **C. Deductibles and Self-Insured Retentions**

Any deductible or self-insured retention must be declared to and approved by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductible or self-insured retention as respects the CITY, its officers, employees and agents; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

#### **D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Clause - The Commercial General Liability insurance coverage required for performance of this contract shall be endorsed to name City of Albany and its officers, agents and

employees as Additional Insured on any insurance policies required herein with respect to CONTRACTOR'S or any subcontractor's activities being performed under the Agreement. The Certificate of Insurance must include the endorsement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, employees, or agents.
3. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive by endorsement, all rights of subrogation against the City of Albany, its officers, employees, and agents for losses arising from work performed by the CONTRACTOR for the CITY.

#### **ARTICLE VIII: ASSIGNMENT**

This Agreement is to be binding upon the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. No assignment of this Agreement shall be effective until the assignee assumes in writing the obligations of the assigning party and delivers such written assumption to the other original party to this Agreement.

Use of subcontractors by the CONTRACTOR or subsidiary or affiliate Firms of the CONTRACTOR for technical or professional services shall not be considered an assignment of a portion of this Agreement, and the CONTRACTOR shall remain fully responsible for the work performed, whether such performance is by the CONTRACTOR or subcontractors. No subcontractors shall be used without the written approval of the CITY. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and CONTRACTOR.

#### **ARTICLE IX: INTEGRATION**

These terms and conditions and the attachments represent the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The agreement may not be modified or altered except in writing as specified in Article IV.

#### **ARTICLE X: SUSPENSION OF WORK**

The CITY may suspend, in writing, and without cause, all or a portion of the work under this Agreement. The CONTRACTOR may request that the work be suspended by notifying the CITY, in writing, of circumstances that are interfering with the progress of work. The CONTRACTOR may suspend work on the project in the event the CITY does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. In the event that the period of suspension exceeds 90 days, the terms of the Agreement are subject to renegotiation and both parties are granted the option to terminate work on the suspended portion of the project, in accordance with Article XI.

#### **ARTICLE XI: EARLY TERMINATION OF WORK**

- A. The CITY may terminate this Agreement for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the CITY.
- B. Either party may terminate this Agreement in the event of a material breach by the other party that is not cured. Before termination is permitted, the party seeking termination shall give the other party written notice of the breach, its intent to terminate, and fifteen (15) calendar days to cure the breach. If the breach is not cured within 15 calendar days, the party seeking termination may terminate immediately by giving written notice that the Agreement is terminated.
- C. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

## **ARTICLE XII: REMEDIES AND PAYMENT ON EARLY TERMINATION**

- A. If the City terminates pursuant to Article XI(A), the CITY shall pay the CONTRACTOR for work performed in accordance with the Agreement prior to the termination date. No other costs or loss of anticipated profits shall be paid.
- B. If the City terminates pursuant to Article XI(B), the City is entitled all remedies available at law or equity. In addition, CONTRACTOR shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.
- C. If the CONTRACTOR justifiably terminates the Agreement pursuant to Article XI(B), the CONTRACTOR'S only remedy is payment for work prior to the termination. No other costs or loss of anticipated profits shall be paid.
- D. If the City's termination under Article XI(B) above was wrongful, the termination shall be automatically converted to one for convenience and the CONTRACTOR shall be paid as if the Agreement was terminated under Article XI(A).
- E. In the event of early termination, the CONTRACTOR'S work product before the date of termination becomes property of the City.
- F. In the event of termination, CONTRACTOR shall perform such additional work as is necessary for the orderly filing of documents and closing of the project. The time spent on such additional work shall not exceed 10 percent (10%) of the time expended on the terminated portion of the project prior to the effective date of termination. CONTRACTOR shall be compensated for work actually performed prior to the date of termination plus work required for filing and closing as described in this Article.
- G. Upon termination, CONTRACTOR shall provide to the City all work products, material, documents, etc., gathered or compiled, related to the project, whether in CONTRACTOR'S possession at the time of termination or received later.

## **ARTICLE XIII: NOTICES**

All notices and demands of a legal nature that either party may be required or may desire to serve upon the other party shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, email followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

### **City:**

M. Sean Kidd  
City Attorney  
260 Ferry Street SW, Suite 202  
Albany, Oregon 97321

### **With copy to:**

City of Albany  
Attn: Peter Troedsson, City Manager  
P.O. Box 490  
Albany, Oregon 97321

## **ARTICLE XIV: FORCE MAJEURE**

Neither the CITY nor the CONTRACTOR shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

## **ARTICLE XV: DISPUTE COSTS**

In the event either party brings action to enforce the terms of this Agreement or to seek damages for its breach or arising out of any dispute concerning the terms and conditions hereby created, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs, and expenses, including expert witness fees, incurred therein, including such costs and fees as may be required on appeal.

**ARTICLE XVI: CONFLICT AND SEVERABILITY**

In the event of any inconsistency between the terms of this Agreement and the terms listed in any additional attachments to this Agreement, the terms of this Agreement shall control. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

**ARTICLE XVII: CONSTRUCTION**

The Parties acknowledge that the parties and their Counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

**ARTICLE XVIII: NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

During the term of this Agreement, the CONTRACTOR agrees as follows: The CONTRACTOR will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**ARTICLE XIX: COURT OF JURISDICTION**

The laws of the state of Oregon shall govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in the Circuit Courts in and for Linn County, Oregon.

**ARTICLE XX: EFFECTIVE DATE**

The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Agreement. If a party signs but fails to date a signature the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this Agreement and the other party may inscribe that date as the date associated with the signing party's signature; provided, however, if only one party dated this Agreement, then such date is the date of this Agreement.

**ARTICLE XXI: ELECTRONIC SIGNATURES**

Any signature (including any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record) hereto or to any other certificate, agreement or document related to this transaction, and any contract formation or record-keeping through electronic means shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law.

**ARTICLE XXII: COOPERATIVE PROCUREMENT**

Pursuant to ORS 279A.205 thru 279A.215, other Public Agencies and members of the Oregon Cooperative Purchasing Program (ORCPP) may use the purchase agreement resulting from this advertised, competitive procurement process unless CONTRACTOR expressly notes in the submittal Response that the prices quoted are available to the City only. The condition of such use by other Agencies is that any such Agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with the CONTRACTOR; the City accepts no responsibility for performance by either the successful CONTRACTOR or such other Agency using this Agreement. With such condition, the City consents to such use by any other Public Agency.

**CONTRACTOR:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_

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

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

\_\_\_\_\_

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

Fax: \_\_\_\_\_

\_\_\_\_\_

Tax Identification No.

**CITY OF ALBANY, OREGON:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chris Bailey  
Public Works Operations Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
M. Sean Kidd, City Attorney