

## EMERGENCY COMMUNICATIONS OF SOUTHERN OREGON

### Request for Proposals

#### COMMUNICATION FACILITIES PROJECTS

Emergency Communications of Southern Oregon (ECSO) is conducting a formal selection procedure for a contractor or contractors to construct eight Communication Facilities Projects. ECSO plans to award to one or more proposers selected from those Proposers submitting proposals that represents the best overall value to ECSO, considering price and other identified evaluation factors. Proposers may submit a proposal for one or more Projects.

Copies of the Request for Proposals, contract terms, conditions and specifications may be downloaded at: <https://ecso911.com/> . The full Request for Proposals may be obtained from:

Jody Hathaway, ECSO Radio Project Manager  
Emergency Communications of Southern Oregon  
400 Pech Road  
Central Point, OR 97502  
(541) 774-5061  
[Jody.Hathaway@ECSO911.com](mailto:Jody.Hathaway@ECSO911.com)

A mandatory pre-proposal meeting will be held at ECSO, 400 Pech Road, Central Point, OR at 2:00 p.m., December 5, 2023. The purpose of the meeting is to answer questions about the Project. Meeting attendance is mandatory.

Proposals must be received no later than January 4, 2024, at 3:00 p.m. Pacific Standard Time. Proposals not received by that time will be rejected as non-responsive and returned unopened. Proposals must be submitted in sealed envelopes and plainly marked on the outside, "Request for Proposals Communication Facilities Projects; Attention: Jody Hathaway, Project Manager." Proposals may be submitted by mail or in person to Emergency Communications of Southern Oregon, 400 Pech Road, Central Point, OR 97502. Faxed and emailed Proposal will be rejected as non-responsive. A public opening will follow immediately at Emergency Communications of Southern Oregon. ECSO reserves the right to award one to all eight Communication Facilities Projects to any one Proposer, based on individual Proposal or aggregate Proposal amounts.

No prequalification will be required for submittal of a Proposal. This Contract will be for a public work, subject to ORS 279C.800 to 279C.870.

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## SECTION I - INTRODUCTION

### 1. INTRODUCTION:

This Request for Proposal (RFP) is issued pursuant to Emergency Communications of Southern Oregon (ECSO Rule) Public Contracting Rules 137-049-0650.

### 2. DEFINITIONS:

The term "ECSO," "Owner," or "Agency" throughout this document means Emergency Communications of Southern Oregon.

"Closing" means the Proposal submittal deadline.

"Proposer" means the person or firm submitting a Proposal in response to this RFP.

### 3. RFP REVIEW:

Proposers must carefully review this RFP and are responsible for knowing and understanding all terms and conditions. Any defects, ambiguities, omissions, or errors must be brought to ECSO's attention pursuant to Section III.4, RFP Protest and Request for Change.

### 4. BACKGROUND:

The Project encompasses eight separate projects at various ECSO facilities, which includes construction of towers, generators, shelters and communications facilities. The Projects will occur at the following ECSO sites: Soda Mountain, Mt. Isabel, Rustler Peak, John's Peak, Shady Cove, Table Mountain, Tallowbox and Flounce Rock. See, Attachment A; Individual Scope of Services.

### 5. PROJECT SCOPE AND OBJECTIVES:

The estimated cost for these Projects is not known at this time. ECSO reserves the right to add to or change the Scope of Work (set forth in Attachment A) for the individual Projects as the Projects progress.

### 6. CONTRACT:

Submittal of a Proposal indicates a Proposer's intent to be bound by the terms of the contract attached to this RFP as Attachment D.

### 7. ECSO REPRESENTATIVE:

ECSO Representative for the Project is Jody Hathaway, ECSO Radio Project Manager, Emergency Communications of Southern Oregon, 400 Pech Road, Central Point, OR 97502, (541) 774-5062, [Jody.Hathaway@ECSO911.com](mailto:Jody.Hathaway@ECSO911.com), or designee.

**8. RFP SCHEDULE:**

While ECSO reserves the right to deviate from this schedule, milestones for the selection process are set forth below and will be followed to the extent reasonably possible\*.

<b>Milestone</b>	<b>Date</b>
Deadline for Questions	December 11, 2023
Deadline for Addenda	December 18, 2023
Mandatory Pre-Proposal Meeting	December 5, 2023 at 2:00 p.m.
Closing (Proposal Submittal Deadline)	January 4, 2024
Notice of Intent to Award	January 17, 2024
ECSO Review and Approval of Contract*	February 20, 2024
Notice to Proceed	February 21, 2024

\* ECSO reserves the right to interview one or more of the Proposers before finalizing selection

**SECTION II – STATEMENT OF WORK**

**1. PURPOSE AND INTRODUCTION:**

- a. The purpose of this RFP is to establish an initial contract with one or more selected Proposers, establish conditions for the desired work, and delineate the conditions under which construction can be initiated and completed. The Project summary is set out below and the Project components are described in full, in Attachment A. The selected Contractor(s) shall provide all designs, labor, materials, plant, equipment, transportation and other facilities and services as necessary and/or required to execute all of the Work.
- b. Throughout the Communication Facilities Projects, ECSO seeks innovative approaches that will meet ECSO’s objectives, avoid emergency service interruption, and also assist ECSO with its cost saving goals.

**2. GENERAL REQUIREMENTS:**

- a. Technical Specifications: All work in the Scope of Work shall conform to all local and federal building codes and the technical standards per the construction documents and drawings. All work must be completed consistent with best industry practices.
- b. Safety and Security Requirements:
  - i. Background Checks/Badging: All workers on site shall be required to have passed a background check, and shall at all time wear a badge provided by the prime contractor.
  - ii. Site Fencing & Signage: Upon award of the contract, the contractor shall provide a site fencing and staging plan to ECSO representative for approval.
  - iii. Safety Plan: Upon award of the contract, the contractor shall provide a written safety plan to ECSO for approval.

- c. Supervision: The prime contractor shall have a representative onsite at all times during construction operations. This person shall be responsible for overseeing the site safety and quality control plans.
- d. Quality Control: Upon award of the contract, the contractor shall provide a written quality control plan to ECSO representative for approval.
- e. Schedule Requirements: Upon award of a contract, the Contractor shall provide a detailed Project schedule for each Project awarded to ECSO representative for approval. The Project milestones are currently anticipated as follows, to be finalized upon contract award.

**Shady Cove Milestone**

	<u>Date</u>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	March 1, 2024
Substantial Completion	May 1, 2024
Final Completion	No later than July 1, 2024

**Flounce Rock Milestone**

	<u>Date</u>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	March 1, 2024
Substantial Completion	May 1, 2024
Final Completion	No later than June 28, 2024

**Tallowbox Milestone**

	<u>Date</u>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	April 1, 2024
Substantial Completion	June 1, 2024
Final Completion	No later than July 15, 2024

**John’s Peak Milestone**

	<u>Date</u>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	March 1, 2024
Substantial Completion	May 1, 2024
Final Completion	No later than June 30, 2024

**Table Mtn. Milestone**

	<u>Date</u>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	April 1, 2024
Substantial Completion	May 31, 2024
Final Completion	No later than June 15, 2024

<b><u>Mt. Isabel Milestone</u></b>	<b><u>Date</u></b>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	April 1, 2024
Substantial Completion	June 15, 2024
Final Completion	No later than August 1, 2024

<b><u>Soda Mtn Milestone</u></b>	<b><u>Date</u></b>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	May 1, 2024
Substantial Completion	June 15, 2024
Final Completion	No later than August 1, 2024

<b><u>Rustler Peak Milestone</u></b>	<b><u>Date</u></b>
Commencement of Preconstruction Services	Upon issuance of Notice to Proceed (on or about February 21, 2024)
Construction Start	April 1, 2024
Substantial Completion	May 15, 2024
Final Completion	No later than July 15, 2024

**3. PROJECT SPECIFIC REQUIREMENTS:**

Proposals must include all construction materials, construction services and work, quality control, internal Project management services and other related services. ECSO will require a complete set of as-built construction drawings upon completion of construction in electronic PDF format.

**SECTION III – INSTRUCTIONS TO PROPOSERS**

**1. PRE-PROPOSAL CONFERENCE:**

A mandatory pre-proposal meeting will be held at ECSO, 400 Pech Road, Central Point, Oregon, at 2:00 p.m., December 5, 2023. Statements made by ECSO’s representative at the pre-proposal conference are not binding on ECSO, unless ECSO confirms such statements with a Written Addendum.

**2. PROPOSALS:**

- a. All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP.
- b. Proposals carrying orders or qualifications may be rejected as irregular.
- c. All Proposals shall be signed in ink in the blank spaces provided on the accompanying attachments. If the Proposal is made by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is made by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the Proposer.

### **3. SUBMISSION OF PROPOSALS:**

One original and three copies of each Proposal must be submitted as set forth on the cover page of this RFP. If the Proposal is forwarded by mail, the sealed envelope containing the Proposal and marked as directed above, must be enclosed in another envelope addressed as set forth on the cover page to this RFP. No responsibility will attach to any official of ECSO for the premature opening of, or the failure to open, a Proposal not properly addressed and identified. Proposals will be opened and recorded immediately following closing.

### **4. RFP PROTEST, REQUEST FOR CHANGE, AND CLARIFICATIONS:**

Proposers may submit a written protest of anything contained in this RFP and may question or request a change to any provision, specification or Contract term contained in the RFP, no later than twenty (20) calendar days prior to the date Proposals are due. ECSO Rule 137-049-0260. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. ECSO will not consider any protest or request for change that is submitted after the submission deadline. Protests shall be delivered to ECSO by email [Jody.Hathaway@ECSO911.com](mailto:Jody.Hathaway@ECSO911.com), or hand delivered to Emergency Communications of Southern Oregon, 400 Pech Road, Central Point, OR 97502. Any changes to this RFP will be made via Addendum.

Interpretations or clarifications considered necessary in response to such questions and request will be issued by Addendum. Only answers issued by Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect.

### **5. WITHDRAWAL OF PROPOSALS:**

Any Proposal may be withdrawn prior to opening, pursuant to ECSO Rule 137-049-0320(2). Submitted Proposals shall be valid for at least thirty (30) days from RFP closing.

### **6. MODIFICATION:**

Any Proposer may modify its Proposal by registered communication at any time prior to the scheduled closing time for receipt of Proposals, provided such communication is received prior to the closing time and subject to ECSO Rule 137-049-0320(1).

### **7. COLLUSION:**

Any evidence of collusion between Proposers may constitute a cause for rejection of any Proposals so affected. ECSO reserves the right to accept or reject any or all Proposals. Only one Proposal will be accepted from any one firm or association.

**8. ADDENDA:**

Statements by ECSO staff or its representatives are not binding on ECSO, unless confirmed by written addendum. Addenda will issue and Proposers shall receive addenda per ECSO Rule 137-049-0250, and as follows: ECSO will not mail notice of addenda, but will publish notice of any addenda at OregonBuys.gov/bs0. Proposers should frequently check OregonBuys’s website until closing (i.e., at least once weekly until the week of closing, and at least once daily the week of the closing period).

Failure of any Proposer to receive any such addenda shall not relieve such Proposer from any obligation under this RFP. All addenda so issued shall become as much a part of the RFP, as if bound herein and Proposers shall acknowledge all addenda in submitted Proposals.

**9. NONDISCRIMINATION:**

Submittal of a Proposal in response to this RFP evidences Proposer’s certification that, in performing the work called for by this RFP and in securing and supplying materials, Proposer has not and will not discriminate against: 1) any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap; and 2) a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by, or that employs a veteran as defined in ORS 408.225.

**10. PREPARATION OF PROPOSALS:**

Proposers are expected to examine the specifications, schedules and all instructions, and are responsible for all costs associated with responding to this RFP. ECSO is not responsible for any Proposer expenses associated with this RFP.

**11. ECSO FURNISHED PROPERTY:**

No material, labor or facilities will be furnished by ECSO unless otherwise provided for in this RFP. No employee or elected official of ECSO shall be permitted to receive any share or part of this contract or any benefit that may arise therefrom.

**12. NOTICE OF INTENT TO AWARD:**

ECSO shall provide a written Notice(s) of Intent to Award at least seven (7) days before awarding the Contract.

**13. PROTEST OF AWARD:**

The award by the ECSO Board of the contract(s) shall constitute a final decision of ECSO to award the contract, if no written protest of the award is filed pursuant to ECSO Rule 137-049-0450 with ECSO within seven (7) calendar days from the notice of intent to award. If a timely protest is filed, the award is a final decision of ECSO only upon issuance of a written decision resolving the protest and affirming or modifying the award. Any modification shall be accompanied by a notice providing for additional protests. The award and any written decision denying a protest shall be sent to every Proposer who

provided an address. ECSO will not entertain a protest submitted after the time period established in this RFP.

#### **14. CONFIDENTIALITY OF PROPOSALS:**

ECSO is subject to the Oregon Public Records Law (ORS 192.410 to 192.505), which requires ECSO to disclose all records generated or received in the transaction of ECSO business, except as expressly exempted in ORS 192.501, 192.502, or other applicable law.

#### **15. RESERVED RIGHTS:**

ECSO reserves the right:

- a. To reject any Proposal not in compliance with all prescribed public solicitation procedures and requirements.
- b. To reject for good cause any or all Proposals or terminate the RFP upon ECSO's written finding that it is in the public interest to do so.
- c. To reject any and all Proposals not meeting or differing from the specifications set forth herein.
- d. To waive any or all informalities, deficiencies or irregularities in a Proposal and accept and review a non-conforming Proposal.
- e. To consider the competency and responsibility of Proposers in making any awards.
- f. In the event that two or more Proposals are identical in price, fitness, availability and quality, award shall be made in accordance with ECSO Rule 137-046-0300.
- g. In the event any Proposer or Proposers to whom a contract is awarded shall default in executing said formal contract or in furnishing a satisfactory performance bond within the time and manner herein after specified, to re-award the contract to another Proposer or Proposers.
- h. To hold the three most responsive Proposals under consideration until the final award(s) are made, provided that ECSO shall award the contract(s) within 30 days after the Proposal opening date.
- i. To cancel, withdraw, postpone or extend this RFP, in whole or in part, at any time prior to the execution of the Construction Projects Contract(s), without incurring any obligations or liabilities.
- j. ECSO reserves the right to seek clarifications of submitted Proposals, which may or may not affect the evaluation scoring criteria.
- k. ECSO reserves the right to negotiate one or more final Contract(s) that are in the best interest of ECSO.



**16. RECYCLABLE PRODUCTS:**

Proposers shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document, provided said recycled materials meet all applicable standards. Preference for such recycled materials shall be given pursuant to ECSO Rule 137-046-0320.

**17. ASBESTOS ABATEMENT LICENSE:**

No asbestos abatement license is required of Proposers for this work under ORS 468A.710.

**18. NEGOTIATION:**

ECSO may negotiate specification modifications and the contract price, including any proposed partnership arrangements, as permitted by ECSO's Rule 137-049-0650.

**19. BONDS: PERFORMANCE, PAYMENT AND PUBLIC WORKS:**

Pursuant to ECSO Rule 137-049-0460 and ORS 279C:

- a. Performance and Payment Bonds. Pursuant to ORS 279C.380, the Contractor shall furnish bonds in the form attached as Attachment E, covering the faithful performance of the Contract and payment of obligations arising thereunder. Bonds are to be obtained through a company that is authorized and licensed by the Oregon Insurance Commissioner. The bonding company shall be listed on the most current US Government Treasury list, Department Circular 570 or approved prior to Contract execution by ECSO. The cost of the Bond shall be included in the Contract Sum. The amount of each Bond shall be equal to 100 percent of the Contract Sum. Failure to adhere to these requirements may be grounds for rejection of an intended Awardee.
- b. Public Works Bond.
  - i. Contractors who work on public works projects, subject to the PWR law, are required to file a \$30,000 Public Works Bond to be used exclusively for unpaid wages determined to be due by BOLI. Proof of this bond in effect shall be provided to ECSO prior to Contract signing, after the award of this RFP.
  - ii. General Contractors are required to verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.
  - iii. Certain exemptions from the bond requirements exist for certified disadvantaged, minority, women or emerging small business enterprises. It is the Contractor's responsibility to notify ECSO if an exemption applies to the Contractor.
  - iv. The Public Works Bond shall be furnished by a surety company authorized to do business in Oregon
- c. Time for Submission. The apparent successful Proposer(s) shall promptly furnish the required performance security upon ECSO's request. If a Proposer fails to furnish the security as requested, ECSO may reject the Proposal and award the Contract to the Responsible Proposer(s) with the next lowest Responsive Proposal, and, in ECSO's discretion, the Proposer shall forfeit its Proposal Bond. Terms and requirements of this subsection III.19 are subject to the provisions of

Attachments D and E, as set forth therein, or as subsequently negotiated by ECSO and the selected Proposer.

**20. BOLI/PWR REQUIREMENTS:**

No Proposal will be received or considered by ECSO unless the Proposal contains a statement by the Proposer as part of its Proposal that “Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 3141 *et seq.*”

**21. REGISTRATION REQUIREMENTS:**

ECSO will not receive or consider a Proposal unless Proposer is currently registered and in good standing with the Construction Contractors Board (CCB) as required by ORS 701.055, or licensed by the State Landscape Contractors Board, as required by ORS 671.530, and holds the proper registration for the work contemplated herein, at the time of Proposal submittal. All Subcontractors participating in the Project shall be similarly registered with the CCB at the time they propose to engage in subcontract work. The CCB registration requirements apply to all public works contracts unless superseded by federal law.

**22. CONTRACT TERMS AND CONDITIONS:**

The Proposer understands that neither this RFP, nor any Proposal submitted, shall constitute a contract with ECSO. However, any Proposal submitted shall be a binding offer to contract with ECSO under the terms and conditions of this RFP, the attached contract and the submitted Proposal.

Attachment D (Draft Construction Contracts Agreement) contains the anticipated Agreement. The final Agreement will substantially conform to the draft Agreement contained in Attachment D. Nevertheless, Proposers are advised that ECSO, in its sole discretion, may change the draft Agreement through an RFP Addendum, as negotiated during the evaluation process, or after tentative award and prior to execution.

Proposers may submit proposed changes to the attached Agreement as part of its Proposal. Changes requested by Proposer to the draft Agreement shall be so noted as exceptions. Proposers are on notice that any exceptions taken to the Agreement after the change request date may not be accepted, and may result in a Proposal being declared non-responsive. Proposing a change to the draft Agreement for the purposes of cost savings, while still meeting ECSO’s stated purposes of the Project will be considered by ECSO and may, in ECSO’s sole discretion, be accepted as responsive.

**SECTION IV – PROPOSAL CONTENTS AND FORMAT**

**1. INSTRUCTIONS:**

In addition to Proposal submittal instructions set forth above, Proposers must submit:

- a. Three (3) copies of the Proposal, including content addressing all criteria in Section V.2 of this RFP. One set of Signed Originals shall be included and clearly identified as such.

- b. An explicit statement, identified as an exception, that Proposer is unable or unwilling to meet particular ECSO requirements. An alternative to excepted requirements must be submitted.
- c. A signed Proposer's Response Form, as set forth in Attachment B, and all other required submissions.

## **2. COST ESTIMATES:**

ECSO seeks a responsive Proposer who submits a Proposal that provides sufficient detail to allow ECSO to assess the potential cost of construction for ECSO's Communication Facilities Projects. ECSO expects to negotiate one or more final contract(s) in the form attached as Attachment D. ECSO seeks a response that includes prices and projected costs of the preconstruction and construction phases, in units that can be translated into information that supports the selection of a Proposer, while recognizing that ECSO and the Proposer may not be able to agree on specific construction elements until the full design is accepted. Proposers may provide costs for each Project if individually awarded, and may provide a total cost and associated discount in the event the Proposer is awarded all eight Projects.

## SECTION V – EVALUATION PROCEDURES

### **1. PROPOSAL EVALUATION PROCESS:**

Only those Proposals providing sufficient information for ECSO to evaluate the criteria set forth in Section V.2 will be deemed responsive. Award will be made to the Proposer whose Proposal will best serve the best interests of ECSO, as determined by the highest scoring Proposal.

### **2. CRITERIA FOR EVALUATION:**

ECSO shall recommend to the ECSO Board for contract award the Proposal which is determined to best satisfy the following weighted criteria:

Experience (Up to 30 points available): the Proposer's experience on 5 previous, similar projects.

Proposals should:

- Identify the Project Manager and Project Principal that will be assigned to the project.
- Include resumes for key personnel that will work on the project.
- Provide descriptions of five (5) similar projects completed in the previous five (5) years with references and key personnel listed.
- Provide a description of Proposer's experience.

Comprehensiveness (Up to 30 points available): The degree to which the Proposer presents a complete Proposal, covering preconstruction services as well as purchase, installation and completion of all necessary materials and labor to complete the Project. Proposers should present a description of their approach to the tasks, including descriptions of:

- The Project Team.
- Understanding of the Project and Project issues.
- Detailed Project tasks, scope and material list included in the Proposal.

Cost (Cumulatively, up to 40 points available): ECSO seeks as detailed and accurate presentation of the proposed cost of construction as can be provided.

**3. INTERVIEWS: (Up to 20 points available, if conducted):**

- a. The evaluation committee or the ECSO Board may elect to interview one or more Proposer if the evaluation committee, or the Board, considers it necessary or desirable. The top ranked firm, or firms if the scoring is close, may be invited to interview. Any interviews will be used to supplement and clarify the information contained in the Proposal.
- b. Based upon Proposal scoring, as modified by the interview, and the results of reference checks, the firms will be given final ranking by the evaluation committee. The final ranking will be provided to ECSO for a final decision to award one or more contracts.
- c. Any costs associated with preparing for and attending such interviews, including any presentation materials, will be Proposer's sole responsibility.

**4. SELECTION AND NEGOTIATION:**

All responsive Proposals will be reviewed. If ECSO does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, ECSO reserves the right to begin negotiating terms or modifications to the attached Contract with one or more of the highest-ranked Proposers following the evaluation and interview (if conducted) process.

ECSO shall direct negotiations toward obtaining written agreement(s) on:

- a. The Proposer(s)' performance obligations and performance schedule;
- b. Payment methodology and a maximum amount payable that is fair and reasonable to ECSO as determined solely by ECSO; and
- c. Any other provisions ECSO believes to be in ECSO's best interest to negotiate.

ECSO shall, either orally or in writing, formally terminate negotiations with one or more of the highest ranked Proposers if ECSO and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. ECSO may, thereafter, negotiate with the next ranked Proposer, and if necessary, with the next ranked Proposer, and so on, until negotiations result in a Contract. The Evaluation Committee shall make the initial decision concerning selection of a Contractor and shall issue the notice of intent to award, pending Council final award.

If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, ECSO may cancel this RFP. Nothing in this RFP precludes ECSO from rejecting any and all Proposals or from proceeding with a new procurement method for the same Services.

## **5. ANNOUNCED AWARDEE:**

It is anticipated that a tentative contract awardee will be announced in writing to each Proposer within thirty (30) days from the date of opening. The announcement is for procedural purposes only and does not create any contractual rights in the tentative Awardee. ECSO will not be bound to the tentative contract awardee until a contract has been executed by ECSO, following close of the period for submitting protests, and Board award and authorization for the Director to sign the final contract.

## **SECTION VI – ATTACHMENTS**

- Attachment A: Individual Scopes of Work
- Attachment B: Proposer's Response Form
- Attachment C: Fee AND Hourly Rates and Material Price Sheet
- Attachment D: Construction Projects Agreement
- Attachment E: Payment and Performance Bonds

COMMUNICATION FACILITIES RFP  
ATTACHMENT A

PRELIMINARY SCOPE OF WORK

**Shady Cove, John's Peak, Table Mtn. Tallowbox,  
Flounce Rock, Rustler Peak, Soda Mtn and Mt. Isabel**

**1. SCOPE OF WORK**

The Scope of Work is to place a new tower and generator at John's Peak and Rustler Peak, and to place new prefab shelters and generators at Shady Cove, Table Mtn. Tallowbox, and Flounce Rock; and to construct two BLM communication facilities at Soda Mtn and Mt. Isabel. for ECSO's radio system. This is a performance specification and it is the responsibility of the Contractor to meet these specified requirements and to comply with all governing codes and regulations. ECSO is open to alternative solutions to those outlined to meet the performance specification. The Work is divided into the following elements:

1. **SITE PREPARATION/FOUNDATION CONSTRUCTION:** Including but not limited to providing access, clearing and grading, gravel base, gravel road, fencing, excavation and construction of reinforced concrete bases for, modular building, tower, and generator.
2. **TRANSPORTATION AND INSTALLATION OF COMMUNICATION TOWER:** ECSO will furnish the communications tower from Western Utilities as depicted on the attached shop drawings. Contractor work shall include but not limited to: Transportation of the tower from storage at ECSO add address; the excavation and construction of reinforced concrete base; tower erection; installing antenna mounts, and accessories; furnishing and installing ice bridge from tower to communications shelter for antenna lines. The antenna and feed line work is excluded from this contract.
3. **TRANSPORTATION AND PLACEMENT OF SHELTER:** A 12' W X 16' L, 12' W X 24" L and a 12'W X 20'L concrete modular communications shelter, as well as a generator shelter. Buildings weighs approximately 48,000 to 52,000 lbs each. Contractor work shall include but not limited to: Transportation of the shelter from storage at ECSO *400 Pech Road, Central Point*; the excavation and construction of reinforced concrete foundation for shelter per plans.
4. **INSTALLATION OF AN EMERGENCY GENERATOR:** Contractor shall transport generator from storage at ECSO, 400 Pech Road, Central Point, OR, construct reinforced concrete foundations in accordance with the drawings for the emergency generator and propane fuel tank. Contractor will install, the generator including furnishing and installing all conduit and wire, control wires, and connection to an automatic transfer switch located in the communications shelter. Generator will be provided by ECSO.
5. **ELECTRICAL SERVICE:** Furnish and install electrical service from the utility transformer to the communication shelter in accordance with the utility drawing include with the project drawings. Cost to furnish and install to be separately identified.

6. GROUNDING: Furnish and install site grounding as depicted on the drawings and in accordance with R56 standards for the generator, building, communications tower, and fence. Note: interior shelter grounding not part of this scope.

#### 7. INSPECTIONS

The Agency will provide inspection services to ensure the quality of the overall project. These services include but are not limited to Agency, engineering, civil, and construction material inspections. The Contractor is responsible for coordinating all inspections with the Agency at least five (5) full business days prior to the needed inspection. The Contractor shall also coordinate with any Agency provided 3rd party inspection firms and any jurisdictional required inspection.

#### 8. PERMITS

The following permits have been obtained by the Agency, all other permits are the responsibility of the Contractor. This includes any electrical, mechanical, access permits such as timber company and forest service road use permits. The awarded contractor will be provided a list of property Agency's on the access right of way.

- Agency Obtained Permits
  - Conditional use permit
  - Building Permit
  - Access Easement

#### 9. DELIVERABLES

Successful delivery of each of the individual communications sites in accordance with the applicable design, scope, and standards is required to achieve substantial completion. The contract deliverable is a completed, ready for use by the Agency, communications site that meets the full intent of the design.

#### 10. MATERIALS

The Agency is supplying the Shelter, Tower, Radios, RF feed lines, antennas, and generators. The remaining materials necessary for construction of the sites are the responsibility of the contractor. Installation of radios, RF feed lines, antennas and antenna mounts is not part of this scope.

#### 11. COMMUNICATIONS

Communication during construction shall utilize a request for information (RFI) process for all clarifications of contract direction that is not defined or unclear in the contract documents. In the event that a contract requirement must be changed this shall be done utilizing a Contract

#### 12. REPORTING

The Contractor shall submit a weekly report documenting the progress of construction including photos and a two week look ahead of work to be completed. The look ahead does

not take the place of inspection requests, which have to be stand alone requests. The weekly reports are submitted via email to the Agency and their designees and must have the project name, "weekly report", and week ending date in the subject line. Weekly reports must be submitted in a timely manner no later than 5:00 PM PT on the Monday following the week the work has occurred. Failure to submit weekly progress reports will result in approval delay or rejection of invoices.

### 13. SUBSTITUTIONS

Material substitutions must be reviewed and approved by the Agency and the Engineer of record. This review takes time. Any material substitutions must be submitted to the Agency no less than 20 days prior to the desired use on site.

### 14. POWER RUNS

The contractor is responsible for coordinating the power installation with the local utility, which is believed to be Pacific Power, but will be the responsibility of the contractor to confirm. The contractor is responsible for installing the per code and utility provider requirements. The power runs are to be underground. The power meters are to be located at the communication site.

### 15. ACCESS ROADS

Contractor is responsible for documenting the before construction condition of any existing access roads and the repair to pre-construction conditions of any damage that occurs to the roads because of construction. New access roads are to be constructed per the plans.

## 2. SUBMITTALS

1. GENERAL: Submit to Agency: shop Drawings; product data (Manufacturer's catalog sheets, brochures, diagrams, schedules, performance charts, illustrations, and other standard descriptive data.); and Record Drawings for each site. Shop drawings / product data shall be provided for: Concrete mix design; reinforcing steel; propane tanks; fencing. The Agency will review submittal for design concept and conformance with Contract Documents.
2. SUBSTITUTIONS: Submit to the Agency a complete summary of the deviation from the Contract Documents including Supplemental Drawings and supporting data necessary to fully describe. All costs of substitutions, including but not limited to testing, engineering, and construction

will be at the expense of the Contractor. No deviations from the Contract documents are permitted without written approval from the Agency.

3. CONSTRUCTION SCHEDULE: At the time of the Pre-Construction Conference, provide to the Agency a construction schedule in the form of a gaunt chart describing the anticipated flow of materials and labor for the work of this contract. Update weekly and ensure that the Agency is fully informed in advance of any significant changes.



4. MANUFACTURER'S MATERIAL SAFETY AND DATA SHEETS (MSDS Sheets): Provide information and instructions in conformance with current regulations. Provide notification to employees and on-site public as required.

### **3. SITE CONDITIONS**

1. LAYOUT OF WORK: The contractor shall be responsible for the layout of the work, including all measurements to provide a complete facility to line, grade and dimensions. See Site Drawing.
2. Keep current record of as-built documents. Record location of concealed items and utility lines, field changes in dimension or detail and changes in materials furnished.
3. SITE MAINTENANCE: The Contractor shall, at all times, keep the premises free from accumulations of waste material or rubbish caused by his employees or work and at the completion of the work he shall remove all of his rubbish from and about the structure, all tools, scaffolding, surplus materials, and shall leave his work "broom clean", or its equivalent, unless otherwise specified. In case of dispute, ECSO may remove the rubbish and charge the cost to the Contractor. All waste materials generated by the Contractor shall be removed on a daily basis and disposed of in accordance with applicable Federal, State, and local laws. Prior to Final Completion, Contractor shall make each site clean, neat and ready for operation.

### **4. TEMPORARY FACILITIES AND CONTROLS:**

1. GENERAL: Provide temporary protection as required for personnel and private property.
2. SITE UTILITIES: Temporary power, water and restroom facilities will be the responsibility of the Contractor to provide at no additional cost to the Agency.
3. MATERIALS AND EQUIPMENT STAGING: Provide adequate enclosure during construction to protect materials, construction and equipment from theft, vandalism and weather damage.
4. CONSTRUCTION AIDS AND BARRIERS: Provides barriers to protect new materials, equipment, new work, construction personnel, and the Public according to governing agency requirements.
5. FIRE SAFETY: Take all precautions to prevent the possibility of fire resulting from construction operations. Maintain one or more fire extinguishers on site. Avoid hazardous accumulations of rubbish and unsecured flammable materials. Store volatile wastes in covered metal containers, remove from premises daily and provide adequate ventilation.

### **5. PERFORMANCE OF WORK:**

1. SUPERVISION: The Contractor shall provide competent supervision of the work. A superintendent shall represent the Contractor continuously throughout the project and all communication with him shall be binding upon the Contractor. The supervisor shall be on site at all times during construction requiring coordination among sub-contractors.

2. **WORKMANSHIP:** Skilled, qualified persons fully experienced and familiar with the best current industry practices shall perform the Work.
3. **NON-CONFORMING WORK:** Work not conforming to Contract documents and not acceptable to the Agency shall be removed and replaced at the Contractor's expense. Execute cutting and patching of work as required to remove and replace defective work and work not conforming to Contract documents. Execute cutting, product removal and patching by methods which will prevent damage to other work, will provide proper surfaces to receive installation of repairs and comply with specified tolerances and finishes.
4. **REPAIR OF DAMAGE:** Repair damage, which occurs in connection with the Work of this Contract and restore finishes to specified or original condition.

#### **6. PROJECT CLOSEOUT:**

1. **PROCEDURE:** Contractor's Agency shall submit written certificate that the Contract documents have been reviewed, the project has been inspected, and that the Work or designated area of the Work is completed, noting any exceptions.
2. **INSTRUCTIONAL WALK-THROUGH:** Provide a walk-through for maintenance personnel for the purpose of familiarizing them with building systems and components.
3. **WORK NOT COMPLETED:** If the Agency determines that the work is not complete, he will notify the Contractor in writing, stating the reasons. The Contractor shall remedy the stated deficiencies. The Agency will re-inspect the work at the Contractor's request.
4. **WORK COMPLETE:** If the Agency determines that the work is substantially complete in accordance with the Contract, he will provide a Certificate of Substantial Completion to the Contractor, taking note of any remaining uncompleted work and requesting Final Submittal.
5. **PUNCHLIST INSPECTIONS:** When the site is ready for the Agency to start operations, the Contractor shall notify the agency of being ready for a punch list inspection. The Agency and their representatives will inspect the site and create a punch list to the contractor of contract items that are not in accordance with the plans. If necessary, the Agency will, at the request of the Contractor, make additional inspections until the terms of Final Acceptance and Final Payment are met.
6. **FINAL CLEANING:** Remove grease, dust, dirt, stains, materials, residue, etc. from sight-exposed surfaces. Repair, patch, and touch-up marred surfaces. Maintain in cleaned condition until final acceptance.
7. **FINAL SUBMITTAL:** Deliver Final Inspection, project record documents, guarantees, warranties, and certificates to the Agency upon completion of work including: a. Final Inspection/Certificate of Occupancy: Obtain from the issuing authority, and b. Record Drawings/Record Specifications: As required in subsequent sections.
8. Final statement and application for release of retainage shall include an itemized statement of original sum, additions and deductions from Directives, deductions for previous payments, and sum remaining due on a payment application form.

9. Submit a certified copy of the Final Punchlist from the Agency stating that each item has been completed to his satisfaction. Submit evidence of the change in the insurance coverage for the work. Submit required wage certification.

#### **7. SITE PREPARATION/FOUNDATION CONSTRUCTION:**

This element of the project will include but be limited to the Work required to prepare the site and construct the required foundations for the tower, modular building, generator, and propane tank. The work shall include but not be limited to:

- a) Provide clearing and access to the site as shown on plans Further provide back filling, road repair and any improvement as shown on the plan and described above.
- b) Provide security fence as shown on plans.
- c) Provide double leg ice bridge structure as shown in drawings; ice bridge may require double shielding see drawings for clarification.
- d) All installed gates must swing freely with latch and locks working as intended.
- e) Contractor shall install the signs using non-reversible hardware anchored to the metal portion of the fence. At sites without fencing, signs shall be installed on the building. RF Warning signs shall be installed per FCC requirements.
- f) Furnish and install a foundation slab and footings for the communications structure in accordance with the drawings.
- g) Provide a concrete pad for the entrance landing at the communications shelter door as shown on the drawings.
- h) Furnish and install concrete foundation for the communications tower as shown on the attached drawings.
- i) Contractor shall cure foundations to the following strengths before use or equipment or structure installation.
  - a. Shelter Foundations – 100% of design strength.
  - b. Tower Foundations – 80% of design strength.
  - c. Propane Tank Foundations – 100% of design strength or a full 7-day cure.
  - d. All other concrete under 2500 psi– 100% of design strength or a full 7-day cure.
  - e. All other concrete over 2500 psi – 100% of design strength.
- j) Contractor shall coordinate all inspections with the Special Inspector and the Agency at five (5) business days prior to need for inspection. Special Inspections (provided by Agency) and Agency inspections are required for all reinforced concrete with specified strength greater than 2500 psi. Concrete inspection required includes both reinforcing steel prior to pour and concrete during pour.
- k) The Agency’s Special Inspector will provide up to eight (8) compression cylinders, five (5) of which will be tested (broken) on the following schedule: 7, 14, two at 28 days, and hold/56 days. The remaining three (3) cylinders are at the Contractor’s discretion for the test (break) days.

#### **8. COMMUNICATIONS TOWER:**

This element of the project only pertains to John’s Peak and Rustler Peak sites. The Work includes, but is not limited to, erecting the Western Utilities communication tower furnished by ECSO using anchors bolts, accessories, antenna mounts, cable tray, climbing ladder and transmission line supports, per attached Western Utilities drawings.

- a) The Contractor is responsible to conform to all codes and standards as may be referred to in these specifications. All such referenced codes are, by such reference, incorporated into this Contract as is set forth herein in full.
- b) Codes and standards shall be the latest issue and/or amendment thereto published at the date of the issue for RFP. Codes and standards are abbreviated as follows:

- OSSC Oregon Structural Specialty Code
- TIA-222 Telecommunications Industry Association
- AISC American Institute of Steel Construction
- AISI American Iron and Steel Institute
- ANSI American National Standards Institute
- ASTM American Society of Testing and Materials
- AWS American Welding Society
- EIA Electronics Industries Association Standard 222 G Addendum #2
- NEC National Electric Code
- IBO International Building Code
- Motorola Quality Standards -- FNE Installations Manual R56.

- c) Inspection of steel fabrication, welding and erection will be performed by certified independent inspector provided by the Contractor.
- d) The Contractor shall cooperate with all inspections and testing procedures.
- e) Prefabricated components and other manufactured items shall be delivered, stored, handled, and erected in such a manner that they will not be damaged or deformed. Materials stored on the site before erection shall be secured on platforms or pallets.
- f) Contractor shall provide stainless steel or galvanized exterior hardware. Contractor shall hot-dip galvanize all Contractor-supplied steel parts.
- g) All required field modifications to steel must be properly treated with cold galvanizing compound.
- h) All exterior zip ties must be stainless steel. Protruding ends of all interior nylon zip ties must be flush cut. All interior zip ties must be black UV resistant nylon.
- i) All exposed unistrut and all-thread ends must be covered with appropriately sized rubber caps.
- j) Contractor shall notify the Agency 48 hours in advance of beginning construction of the tower and 24 hours in advance of completing construction of the tower to full height.
- k) All installations on the tower require an inspection by Agency. Contractor shall request this inspection through the Agency and the Agency at least one week in advance of desired inspection date.
- l) Contractor shall have tower climbers on Site during Agency's tower inspection. The tower climbers shall be equipped with the necessary equipment to address deficiencies found during inspection.
- m) A lightning rod shall be installed at the top of the tower per industry standard. The lightning rod will not depend upon the tower for a ground return.
- n) Microwave dish mounting hardware shall be installed by others under separate contract.

- o) Any and all antenna, mounts, and feed line work shall be done by others under a separate contract.

#### **9. COMMUNICATIONS SHELTER:**

This element of the project will include but not be limited to the Work required to transport and set a various size 12'x16', 12'x20' or 12'x24' Sabre concrete modular communication shelters. Preliminary shelter drawings from Sabre are attached.

- a) Installing reinforced concrete shelter foundation per the drawings.
- b) The Contractor shall be responsible for all lifting and rigging equipment to loan, transport and set the shelter. Shelters are stored at ECSO, 400 Pech Road, Central Point, OR
- c) The Contractor shall be responsible for all hauling equipment from 400 Pech Road, Central Point, OR and shall obtain any and all required permits, flagging, and escort services.
- d) Contractor shall mount shelter to foundation per manufacture, field-assemble and install components of the shelter, such as, but not limited to, fire extinguishers, first aid kit, eye wash station, exterior hoods, generator exhausts, and electrical connections.

#### **10. EMERGENCY GENERATOR/ELECTRICAL SERVICE:**

This element of the project will include but not be limited to construction of concrete pads as shown on the drawings for the generator (provided by ECSO) and the 1,000-gal propane tank (proposer provided). The furnishing and installation of all conduit and wiring as outlined on the drawings for the generator system.

- a) The installation of a 35 kW minimum emergency generator.
- b) Furnish and install a 1000-gallon propane tank as shown on the drawings.
- c) Furnish and install electrical service to the communication shelter.
- d) Furnish and install conduit and wire from Utility and install new Utility owned transformer at site as shown on drawings. Furnish and install conduit and wire for the 120/240 Volt, single phase, 200-amp electrical service from the utility company transformer to the meter socket on the communications shelter. Provide in accordance with utility provider requirements.

#### **11. SITE GROUNDING REQUIREMENTS:**

- a) Contractor shall install all new grounding and grounding upgrades required by the project Plans and Statement of Work.
- b) Contractor shall perform all grounding Work in accordance with the Plans, Statement of Work, and current revision of the Motorola R56 Grounding Guidelines in addition to all applicable local, state, and national codes.
- c) Contractor shall provide three-point fall of potential test of the installed ground ring upon site completion. This test shall be performed in accordance with Motorola's procedures and recommendations.
- d) All below-grade grounding constructed as part of this Contract requires inspection before backfill. Contractor shall schedule the grounding inspection, coordinating that schedule with the Agency at least 48 hours prior to need for inspection.

- e) In the event that there is a conflict between the Plans or Statement of Work and the Grounding Guidelines, Contractor shall request clarification through the Agency.
- f) New buildings, tower, ice bridge installations, and grounding upgrades require new ground bar installations as shown in the Plans. Ground bar locations are at the tower (“TGB”) and interior (“MGB”) and exterior (“EGB”) of the entry port.
- g) The Plans may not give a full representation of all required grounding bonds. Contractor shall bond all exterior metal components and structures per R56 Guidelines.
- h) Furnish and install a site grounding system as shown on the drawings in accordance with Motorola R56 standards dated 2017 generally including the following minimum requirements:
  - i. Install the grounding electrode system using industry standard components and techniques. Bond all external metal objects to the grounding electrode system as required. Test the grounding electrode system.
  - ii. There shall be only one grounding electrode system and the AC power system ground, underground metallic piping, and any other grounding system shall be bonded together to form a single grounding electrode system (per NFPA 70, Articles 250-90, 800-40, 810-21, and 820-40; and NFPA 780, Section 3-14.1).
  - iii. A grounding electrode system shall have low electrical impedance, with conductors large enough to withstand high fault currents.
  - iv. The communications structure has an internal grounding system connected to a single connection point. Contractor shall interconnect the shelter to the site grounding system to provide a common ground potential. This shall also include lighting protection, electric service, as well as underground metallic piping systems. Underground metallic piping systems typically include water service, well castings located within 7.6 (25 ft.) of the structure, gas piping, underground conduits, underground liquefied petroleum gas piping systems, and so on. Interconnection to a gas line shall be made on the customer’s side of the meter (per NFPA 780, Section 3-14).
  - v. All metal objects that are located within (10 ft.) of the external grounding electrode system, or are associated with the communications site equipment, shall be bonded to the external grounding system using #2 AWG conductors. This includes but is not limited to:
    - 1. Internal Master Ground Bar (MGB)
    - 2. Metallic entry points
    - 3. Building ice shields
    - 4. Antenna tower
    - 5. Transmission lines
    - 6. Piping

7. Generator and support skids
8. Storage tanks (above and below grade)
9. Anchors and/or skids on prefabricated buildings
10. Conduits or raceways
11. Fences
12. Main electrical service grounding electrode system
13. Metal roofing and truss systems
14. Metallic structures on the building roof or rain gutter systems
15. Any other grounding electrode systems at the site

COMMUNICATION FACILITIES PROJECT RFP  
ATTACHMENT B

PROPOSER'S RESPONSE FORM

Submitted by:

Address:

Date:

Phone number:

Fax:

E-Mail:

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related Proposal documents and read the instruction and conditions, and hereby proposes to furnish preconstruction and construction services in accordance with the Proposal documents herein, for the price set forth in the Proposal submittal attached hereto, and forming a part of this Proposal.

The Proposer, by his signature below, hereby represents as follows:

(a) That no Board Member, officer, agent or employee of ECSO is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of ECSO, its Board Members, officers, agents, or employees has induced Proposer to enter into this contract and the papers made a part hereof by its terms;

1. The Proposer represents that Proposer is properly licensed and adequately experienced, equipped, organized and financed to furnish and deliver the equipment specified and perform the services required.
2. The Proposer has carefully checked the figures entered in the Forms and the Construction Projects Contract and attached Exhibits, has carefully reviewed for accuracy all statements in this Proposal and attachments, and agrees that ECSO will not be responsible for any errors or omissions of the Proposer in preparing this Proposal. The Proposer agrees that this Proposal may not be revoked or withdrawn for sixty (60) calendars days after the date on which Proposals are received.
3. Contract Execution; Performance Bond. The Proposer agrees that if this Proposal is accepted it will, within ten (10) calendar days after having received the Notice of Award, execute and return to ECSO the Contract in the form included in the Contract Documents and will, at or before that time, deliver the Performance Bond and insurance documentation as required.
4. Addenda. The Proposer acknowledges that it has received the following Addenda No(s): and agrees that all addenda issued are a part of the Contract Documents and have been considered



in preparing this Proposal. (Proposer: insert the number of each addendum received; if no addenda were received, write "NONE" in the space.)

(b) The Proposer and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;

(c) The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in its Proposal.

(d) Proposer has not and will not discriminate against a subcontractor in the awarding of a subcontract because a subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055, or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

(e) The names of the principal officers of the corporation submitting this Proposal, or of the partnership, or of all persons interested in this Proposal as principals are as follows:

\_\_\_\_\_

\_\_\_\_\_

(f) Proposer is a resident Proposer, as defined in ORS 279A.120. If not a resident, Proposer, Proposer's resident state is \_\_\_\_\_.

(g) Proposer agrees to be bound by and will comply with provisions of ORS 279C.840 or 40 U.S.C. 3141 *et seq.*

(h) Proposer agrees to comply with Oregon tax laws in accordance with ORS 305.385.

(i) The Proposer certifies that he or she has read and understands all terms and conditions of this solicitation.

(j) The Proposer acknowledges that the person that signs this Certification is fully authorized to sign on behalf of the Proposer listed and to fully bind the Proposer to all conditions and provisions thereof.

(If Sole Proprietor or Partnership) In witness hereto, the undersigned has set his (its) hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Name of Firm

Signature of Proposer

(If Corporation) In witness whereof the undersigned corporation has caused this instrument to be executed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Name of Corporation

By

Title

CONTRACT MANAGER:

Name Title:

Telephone number:

COMMUNICATION FACILITIES RFP  
ATTACHMENT C  
FEE AND HOURLY RATES AND MATERIAL PRICE SHEET

Contractor Fee & Hourly Rates

By: \_\_\_\_\_ Proposer Name

Fee %: \_\_\_\_\_

Preconstruction Hourly Rate Schedule

Title	Rate

Construction (include only applicable)	Straight Time	Overtime
Project Manager		

MATERIAL AND SUPPLIES COST ESTIMATES

Include costs for all materials and supplies deemed necessary, including but not limited to the following listed items:

Material	Cost per	Installation cost	Total cost
Asphalt			

SCHEDULE OF VALUES:

<b>Soda Mtn Proposal SCHEDULE OF VALUES</b>				
Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		NA
3	Power Service (underground/vaults)	Lineal Feet		NA
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		
5.2	Shelter Foundation	EA		
5.3	Generator Foundation	EA		NA
5.4	Propane Foundation	EA		
6	Prefab Shelter Transport and Install	EA		
7	Fencing	Lineal Feet		
8	Indoor Generator and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Tower and Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$\_\_\_\_\_

**Mt. Isabel Proposal**  
**SCHEDULE OF VALUES**

Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		
3	Power Service (underground/vaults)	Lineal Feet		
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		
5.2	Shelter Foundation	EA		
5.3	Shelter Generator Foundation	EA		
5.4	Propane Foundation	EA		
6	Prefab Shelter Transport and Install	EA		
7	Fencing	Lineal Feet		NA
8	Indoor Generator and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Tower and Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$\_\_\_\_\_

## Rustler Peak Proposal SCHEDULE OF VALUES

Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		NA
3	Power Service (underground/vaults)	Lineal Feet		NA
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		
5.2	Shelter Foundation	EA		NA
5.3	Generator Foundation	EA		NA
5.4	Propane Foundation	EA		
6	Improvements of interior to accommodate generator	EA		
7	Fencing	Lineal Feet		NA
8	Install Generator in existing shelter and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$ \_\_\_\_\_

## Shady Cove Proposal SCHEDULE OF VALUES

Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		NA
3	Power Service (underground/vaults)	Lineal Feet		
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		NA
5.2	Shelter Foundation	EA		
5.3	Generator Foundation	EA		
5.4	Propane Foundation	EA		
6	Prefab Shelter Transport and Install	EA		
7	Fencing	Lineal Feet		
8	Outdoor Generator and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$\_\_\_\_\_

## Flounce Rock Proposal SCHEDULE OF VALUES

Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		NA
3	Power Service (underground/vaults)	Lineal Feet		
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		NA
5.2	Shelter Foundation	EA		
5.3	Generator Foundation	EA		
5.4	Propane Foundation	EA		
6	Prefab Shelter Transport and Install	EA		
7	Fencing	Lineal Feet		NA
8	Outdoor Generator and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Tower and Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$\_\_\_\_\_



## John's Peak Proposal SCHEDULE OF VALUES

Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		NA
3	Power Service (underground/vaults)	Lineal Feet		
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		
5.2	Shelter Foundation	EA		NA
5.3	Generator Foundation	EA		
5.4	Propane Foundation	EA		
6	Prefab Shelter Transport and Install	EA		NA
7	Fencing	Lineal Feet		
8	Outdoor Generator and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Tower and Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$\_\_\_\_\_

**Table Mtn. Proposal**  
**SCHEDULE OF VALUES**

Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		NA
3	Power Service (underground/vaults)	Lineal Feet		
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		NA
5.2	Shelter Foundation	EA		
5.3	Generator Foundation	EA		NA
5.4	Propane Foundation	EA		
6	Prefab Shelter Transport and Install	EA		
7	Fencing	Lineal Feet		
8	Indoor Generator and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$ \_\_\_\_\_

## Tallow Box. Proposal SCHEDULE OF VALUES

Site Name:				
Item Number	Item Description	Unit Quantity	Unit Price	Amount
1	Mobilization	Lump Sum		
2	Access Road Improvements (typical 12' wide)	Lineal Feet		NA
3	Power Service (underground/vaults)	Lineal Feet		NA
4	Site Grading with Erosion Protection	CY		
5	Foundation Work	-		
5.1	Tower Foundation	EA		NA
5.2	Shelter Foundation	EA		
5.3	Generator Foundation	EA		NA
5.4	Propane Foundation	EA		
6	Prefab Shelter Transport and Install	EA		
7	Fencing	Lineal Feet		
8	Indoor Generator and Tank Installation including Electrical and Fuel components	Lump Sum		
9	Site Grounding (R56 Standards)	Lump Sum		
10	Ice bridge Installation	Lump Sum		
11	Compound Gravel Section	Square Feet		
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
	<i>Other (Specify if used)</i>			
			<b>Total</b>	

Total Projected Project Price \$ \_\_\_\_\_

Total Price for Eight Projects \$ \_\_\_\_\_

Discount, if any, for Award of all Eight Projects \$ \_\_\_\_\_

COMMUNICATION FACILITIES RFP  
ATTACHMENT D

## CONSTRUCTION PROJECT AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between Emergency Communications of Southern Oregon, hereinafter called Owner, and \_\_\_\_\_, hereinafter called Contractor, in consideration of mutual covenants hereinafter set forth, agree as follows:

- 1. Work.** Contractor shall complete all work as specified in the contract documents and in accordance with the documents and drawings provided for the Project known as the Communication Facilities Project (Project).
- 2. Materials.** Contractor will furnish all materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
- 3. Contract Time.** The Work will commence within ten (10) calendar days after the date of the Notice to Proceed and will be completed by the Contractor and accepted by the Owner no later than \_\_\_\_\_, 20\_\_, unless the period for completion is extended otherwise by the contract documents or by written agreement of the parties.
- 4. Contract Price.** Owner shall pay Contractor for performance of the Work in accordance with the documents the sum of \$\_\_\_\_\_ as shown in Contractor's Proposal.
- 5. Liquidated Damages.** Owner and Contractor acknowledge and agree that if the Work is not completed by the contract time, the amount of Owner's actual loss of use damages will be difficult and impractical, or impossible to determine. Accordingly, the parties agree that if the Project is not completed by the agreed upon date, as adjusted pursuant to the contract documents, the Contractor shall pay \$250.00 per day to Owner, as liquidated damages for the loss of use of the Project.

The parties further acknowledge and agree that the daily sum for liquidated damages to be paid, as set forth above, is reasonable and that the payment of such liquidated damages is not intended to nor constitutes a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for loss of use delay damages and that Owner reserves the right to claim other types of damages against Contractor including but not limited to actual delay damages.

- 6. Progress Payments.** Owner shall make progress payments on the basis of the Contractor's application for payment as approved by the Owner's representative on or about the last day of each month during construction as provided herein. All progress payments shall be on the basis of progress of the Work measured by the schedule of values provided for in Section 19 of the General Conditions. Prior to substantial completion, progress payments will be an amount equal to not more than 95% of the Work completed and 95% of the materials and equipment not incorporated in the Work, but delivered and suitably stored, less in each case the aggregate

of payments previously made. Upon substantial completion, the Owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the contract price, less such amounts as the Owner shall determine in accordance with Section 19 of the General Conditions. Final payment shall be upon final completion and acceptance of the Work. Approved partial payment estimates shall be reviewed and approved at the next regularly scheduled Board meeting.

**7. Contract Documents.** The term “contract documents” means and includes the following:

- (a) Request for Proposals;
- (b) Proposals;
- (c) Proposal Bond;
- (d) Construction Agreement;
- (e) Oregon Prevailing Wage Rates;
- (f) General Conditions;
- (g) Payment Bond;
- (h) Performance Bond;
- (i) Notice of Intent to Award;
- (j) Notice to Proceed;
- (k) Drawings and Specifications attached;
- (l) Change Orders;
- (m) Addenda; Number: \_\_\_\_\_ Dated: \_\_\_\_\_
- (n) Proof of Insurance

**8. Contractor’s Representations.** In order to induce Owner to enter into this agreement, Contractor makes the following representations:

- (a) Contractor has familiarized itself with the nature and extent of the contract documents, work, locality, and with all local conditions and any federal, state, and local laws, ordinances, rules, and regulations which, in any manner, may affect cost, progress, or performance of the Work;
- (b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the sites which may affect cost, progress, or performance of work and which were relied upon in the preparation of the drawings and specifications;
- (c) Contractor has made or has caused to be made examinations, investigations, tests and studies of reports and related data, in addition to those referred to in paragraph (b), which Contractor deems necessary for the performance of the Work, determination of the contract price, and completion of the Project within the contract time in accordance with the other terms and conditions of the contract documents. No additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes;
- (d) Contractor has reconciled the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the contract documents;

- (e) Contractor has given the Owner's representative written notice of all conflicts, errors or discrepancies which he has discovered in the contract documents and the written resolution thereof by the Owner's representative is acceptable to the Contractor.

**9. Miscellaneous.**

- (a) No assignment by a party hereto of any rights under or interests in the contract documents will be binding on another party to this contract without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.
- (b) This Agreement shall be binding upon all parties to the contract and their respective partners, successor, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the contractual documents.

THIS AGREEMENT is effective on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

OWNER:

CONTRACTOR:

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

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

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Agent for Service of Process  
License # \_\_\_\_\_

# GENERAL CONDITIONS

**Section 1. Definitions.** Whenever used in these General Conditions or in the other contract documents, the following terms have the meanings indicated which are applicable in both the singular and plural or masculine or feminine thereof:

1. **Addenda.** Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the contract documents, Drawings and specifications by additions, deletions, clarifications, or corrections.
2. **Proposal.** The offer or proposal of the Proposer submitted on the prescribed form setting forth the prices for the Work to be performed.
3. **Bonds.** Proposal, performance and payment bonds and other instruments of security.
4. **Change Order.** A written order to the Contractor signed by the Owner authorizing an addition, deletion or revision in the Work, or an adjustment in the contract price or the contract time issued after the effective date of the Agreement.
5. **Contract Price.** The total monies payable to the Contractor under the terms and conditions of the contract documents.
6. **Contract Time.** The number of calendar days stated in the contract documents for completion of the Work.
7. **Contractor.** The person, firm, or corporation with whom the Owner has executed the Agreement.
8. **Drawings.** The part of the contract documents which show the characteristics and scope of the Work to be performed and are referred to in the contract documents.
9. **Owner's Representative.** That person appointed by the Board of Directors of the Owner to act as the Owner's Representative in all matters relating to this contract.
10. **Field Order.** A written order issued by the Owner's Representative which orders minor changes in Work not involving an adjustment in the contract price or an extension of the contract time.
11. **Substantial Completion.** The date certified by the Owner's Representative when the construction of the Project or a specified part thereof is sufficiently completed in accordance with the contract documents so that the Project or a specified part can be utilized for purposes for which it is intended.
12. **Subcontractor.** An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

13. Supplier. Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design but who does not perform labor at the site.
14. Work. All labor necessary to produce the construction required by the contract documents and all materials and equipment incorporated or to be incorporated in the Project.
15. Written Notice. Any notice to any party to the Agreement, or relative to any part of this Agreement, in writing is considered delivered and service completed when posted by certified mail or registered mail to the party at the party's last given address as shown on the Agreement, or when delivered in person to the party or the party's authorized representative on the worksite.

**Section 2. Preliminary Matters.**

1. Delivery of Bonds. When the Contractor delivers the executed Contract Documents to the Owner, Contractor shall also deliver to Owner such bonds as the Contractor may be required to furnish.
2. Copies of Documents. Owner shall furnish to Contractor up to three (3) copies of the contract documents. Additional copies will be furnished upon request at the cost of reproduction.
3. Commencement of Contract Time. The contract time will commence to run on the day indicated in the Notice to Proceed.
4. Insurance. Contractor shall maintain insurance acceptable to Owner in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors, if any. Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by Owner. Owner reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to Owner prior to execution of the contract. Such policies or certificates must be delivered prior to commencement of the work. No contract shall be effective until the required certificates have been received and approved by Owner. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration. The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. The Contractor's coverage provided by insurance required under this contract shall be primary, and any other insurance carried by Owner shall be excess. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect of contractor connected with this contract and Contractor shall indemnify, defend and hold the Owner harmless from and against such damages, injuries, losses, expenses or costs.

The policy or policies of insurance maintained by the Contractor shall provide at least the following limits and coverages:

- (a) Commercial General Liability Insurance. Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability



Insurance covering Bodily Injury and Property Damage on an “occurrence” form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract.

The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
• General Aggregate	\$4,000,000
• Each Occurrence	\$2,000,000

(b) Commercial Automobile Insurance. Contractor shall also obtain, at contractor’s expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

(c) Workers’ Compensation Insurance. The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers’ Compensation Law and shall comply with ORS 656.017, which requires them to provide workers’ compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers’ compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than \$1,000,000 each accident.

(d) The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies Owner deems necessary shall include Owner, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

(e) Builder’s All Risk Insurance. The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder’s risk “all-risk” or equivalent policy form to cover the course of construction in the amount of the initial Contract Sum, less costs of clearing, preparation and excavation of the site under this Agreement, plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Owner has an insurable interest in the property required by this Section to be covered, whichever is later. This insurance shall include interests of Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Each loss may be subject to a deductible. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor. The policy shall be endorsed to allow complete or partial occupancy by Owner before or after Substantial Completion without the insurer’s approval.

(f) Professional Liability. Errors and Omissions insurance covering Contractor's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis and will have an extended claims reporting period of six (6) years after final completion. (Proof of coverage will be attached to this Contract).

5. Owner Insurance. The Owner shall be responsible for purchasing and maintaining its own liability insurance. Owner shall also purchase and maintain property insurance upon the Work, once fully completed, at the site to the full insurable value thereof against the perils of fire and extended coverage. All other risk of loss at the Work site shall be borne by Contractor until acceptance of building by Owner.
6. Subrogation Waiver. Insurance coverage of Contractor shall include a waiver of subrogation provision in favor of the Owner. Owner and Contractor waive all rights against each other, their agents and any Subcontractors and their agents and employees for damages caused by fire or other perils to the extent covered by insurance provided for in this Section. The Contractor shall require similar written waivers from each Subcontractor and each such waiver shall be in favor of all other parties enumerated in this paragraph.

### **Section 3. Contract Documents.**

1. The contract documents comprise the entire agreement between Owner and Contractor concerning the Work. They may be altered only by written modification, as provided in this Agreement.
2. The contract documents are complementary; what is called for by one is binding as if called for by all. If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the contract documents, Contractor shall report it to the Owner's Representative in writing at once and before proceeding with the Work affected by the conflict.
3. It is the intent of the specifications and Drawings to describe the complete Project to be constructed in accordance with the contract documents. Any Work which may reasonably be inferred from the specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual or code in effect at the time of the opening of the proposal, except as may be otherwise specifically stated. However, no provision of any reference, standard, specification, manual or code shall change the duties and responsibilities of the Owner, Contractor, or any of their agents or employees from those set forth in the contract documents. Clarifications and interpretations of the contract documents shall be issued by the Owner's Representative.

4. Re-use of Documents. Neither Contractor nor any Subcontractor, manufacturer, fabricator, Supplier, or distributor shall have or acquire any title to or ownership rights in any of the Drawings, specifications, or other documents which are a part of this contract. They may not be reused by any party without the express written consent of the Owner and of the preparer of the Drawings.

#### **Section 4. Materials, Service and Facilities.**

1. It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
2. Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
3. All materials and equipment shall be of good quality and new except as otherwise provided in the contract documents.
4. Equivalent Materials and Equipment. Whenever materials or equipment are specified or described in Drawings or specifications by using the name of proprietary item or the name of a particular manufacturer, fabricator, Supplier or distributor, the name of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, Suppliers, or distributors may be accepted by the Owner's Representative if sufficient information is submitted by Contractor to allow the Owner's Representative to determine that the material proposed is equivalent to that named.
5. Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by Contractor and any Subcontractor and of persons or organizations for whose acts any of them may be liable to the same extent Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in these documents creates any obligation on the part of the Owner to pay or to see to the payment of any monies due any Subcontractor or other person or organization except as may otherwise be required by law.

#### **Section 5. Fees, Taxes and Permits.**

1. Contractor shall pay all applicable royalties and license fees. Contractor shall defend all suits or claims for infringement of any patent rights and save Owner harmless from loss on account thereof.
2. All permits and licenses, including SDC or other governmental fees, licenses, and inspections required for construction shall be obtained at the expense of Contractor. Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all

governmental charges and inspection fees necessary for the prosecution of the Work and which are applicable at the time of Proposal opening. Contractor shall pay all charges of utility service companies for connections to the Work. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the laws of the place of the Project.

**Section 6. Survey, Permits and Regulations.**

1. Owner shall furnish all boundary surveys and establish all base lines for locating principal component parts of the Work together with a suitable number of bench marks adjacent to the Work as shown in the contract documents. From the information provided by Owner, unless otherwise specified in the contract documents, Contractor shall develop and make all detailed surveys needed for construction such as slope stakes, stakes for piling locations, and other working points, lines, elevations and cut sheets.
2. The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, Contractor shall be charged with the resulting expense and shall be responsible for any mistakes which may be caused by unnecessary loss or disturbance.

**Section 7. Protection of Work, Property and Persons.**

Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor will take all necessary precautions for the safety of, or provide the necessary protection to prevent injury, damage, or loss, to all employees on the worksite and other persons who may be affected. Contractor shall also be responsible for all safety precautions regarding all Work and all materials or equipment to be incorporated into the Work, whether in storage on or off the site, and the property at the site or adjacent to it, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designed for removal, relocation, or replacement in the course of construction. Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or any for whose acts any of them may be liable except for acts directly attributable to Owner or Owner's Representative or any person employed by either of them whose acts are not attributable directly or indirectly in whole or in part to the fault or negligence of Contractor.

**Section 8. Supervision by Contractor.**

The Contractor will supervise and direct the Work. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor will employ and maintain on the Work a qualified supervisor who shall have been designated in writing by Contractor as Contractor's representative at the site. The supervisor shall have full authority to act on behalf of Contractor and all communications given to the supervisor shall be as binding as if given to Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

**Section 9. Changes in Work.**

Owner, at any time the need arises, may order changes in the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the contract documents, or the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order. Owner or its representative may also, at any time, by issuing a Field Order, make changes in the details of the Work. Contractor shall proceed with the performance of any changes in the Work so ordered, unless Contractor believes that such Field Order entitles Contractor to a change in Contract Price or Contract Time, or both, in which event Contractor shall give Owner's Representative Written Notice of the proposed Change Order within two (2) days after receipt of the Field Order. Contractor shall document in Contractor's notice the basis for the change in Contract Price or Contract Time by separate notice delivered within five (5) days of the date of the Written Notice of the proposed Change Order. Contractor shall not execute such changes pending the receipt of an executed Change Order or further instruction from Owner.

**Section 10. Changes in Contract Price.**

The Contract Price may be changed only by a written, signed Change Order. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

1. Unit prices previously approved.
2. An agreed lump sum.
3. The actual cost of labor, direct overhead, materials, supplies, and other services necessary to complete the Work plus an amount not to exceed 10% of the actual Work to cover the cost of general overhead profit.

**Section 11. Limitation on Liquidated Damages.**

Contractor shall not be charged with liquidated damages when the delay in completion of the Work is due to the following and Contractor has promptly given Written Notice of such delay to Owner or its representative:

1. Unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to acts of God or of the public enemy, acts of Owner, acts of another Contractor in performance of the contract with the Owner, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, and abnormal and unforeseen weather; and
2. Any delays of Subcontractors occasioned by any of the causes specified above.

**Section 12. Correction of Work.**

1. Contractor shall promptly remove from the premises all Work rejected by Owner's Representative for failure to comply with the contract documents, whether incorporated in construction or not, and Contractor shall promptly replace and re execute the Work in accordance with the contract documents and without expense to Owner and shall bear the

expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

2. All removal and replacement Work shall be done at Contractor's expense. If Contractor does not take action to remove rejected Work within five (5) days after receipt of Written Notice of rejection, Owner may remove such Work and store the materials at the expense of Contractor.

**Section 13. Subsurface Conditions.**

Contractor shall promptly and before such conditions are disturbed, except in the event of an emergency, notify Owner by Written Notice of:

1. Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents.
2. Unknown physical conditions at the site of an unusual nature, differing markedly from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the contract.

Owner shall promptly investigate the conditions and if found that such conditions do so materially differ and cause an increase or decrease in the cost of or in the time required for performance of the Work, an equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of Contractor for adjustment hereunder shall not be allowed unless he has given the required Written Notice.

**Section 14. Suspension of Work, Termination Delay.**

1. If Contractor is adjudged a bankrupt or insolvent or if Contractor makes a general assignment for the benefit of Contractor's creditors, or if a trustee or receiver is appointed for the Contractor or for any of Contractor's property, or if Contractor files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if Contractor repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if Contractor repeatedly fails to make prompt payments to Subcontractors for labor, materials, or equipment, or if Contractor disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the Work, or if Contractor disregards the authority of Owner's Representative or if Contractor otherwise violates any provision of the contract documents, then Owner may, without prejudice to any other right or remedy, after giving Contractor and Contractor's surety a minimum of five (5) days' Written Notice, terminate the services of the Contractor and take possession of the Project and all materials, equipment, tools, construction equipment, and machinery owned by Contractor and finish the Work by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to Contractor. If the costs exceed such unpaid balances, Contractor will pay the difference to Owner. Such costs incurred by Owner will be determined by Owner and incorporated in a change order.

2. Where Contractor's services have been terminated under Section 14.1, by Owner, the termination shall not affect any right of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by Owner due Contractor will not release Contractor from compliance with the contract documents.
3. After five (5) days from delivery of Written Notice under Section 14.1 to Contractor, Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the contract. In such case, Contractor shall be paid for all Work executed and any reasonable expense sustained plus reasonable profit for the Work performed.

**Section 15. Equal Opportunity.**

Contractor agrees to comply with the applicable provisions of the Equal Opportunity Act of 1972 and the Civil Rights Act of 1964 as amended. Contractor shall have the obligation to ensure that the employees and applicants for employment are not discriminated against because of race, creed, color, sex, or national origin.

**Section 16. Public Contracting Code Requirements.**

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the Work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
  - (a) ORS 279C.580(3)(a) requires the prime Contractor to include a clause in each subcontract requiring Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the prime Contractor by the public contracting agency; and
  - (b) ORS 279C.580(3)(b) requires the prime Contractor to include a clause in each subcontract requiring Contractor to pay an interest penalty to the first-tier Subcontractor if payment is not made within thirty (30) days after receipt of payment from the public contracting agency.
  - (c) ORS 279C.580(4) requires the prime Contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a Subcontractor and a lower-tier Subcontractor or Supplier.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.

4. A notice of claim on Contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.
5. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
6. Contractor shall demonstrate to Owner that an employee drug-testing program is in place within ten (10) days of receiving a Notice of Award.
7. Pursuant to ORS 279C.515, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the Owner may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due to Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or its surety from their obligations with respect to any unpaid claim. If Owner is unable to determine the validity of any claim for labor or material furnished, Owner may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
8. Pursuant to ORS 279C.515, if the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from Owner or Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10 day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is thirty (30) days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.
9. As provided in ORS 279C.515, if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public 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.
10. Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, 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 services 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.
11. Contractor shall employ no person for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half



pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the Work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the Work week is 4 consecutive days, Monday through Friday; and for all Work performed on Saturday and on any legal holidays as specified in ORS 279C.540.

12. Pursuant to ORS 279C.540(2), the Contractor must give notice to employees who Work on this contract in writing, either at the time of hire or before commencement of Work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to Work.

13. The provisions of ORS 279C.800 to ORS 279C.870 relating to the prevailing wage rates will be complied with.

(a) The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.

(b) The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The October 5, 2023, Prevailing Wage Rates for Public Works Projects in Oregon, including any amendments. Such publication can be reviewed electronically at:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

and are hereby incorporated as part of the contract documents.

(c) Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

(d) The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner as required by the administrative rules adopted by the Commissioner.

(e) If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

14. Unless exempt under ORS 279C.836(4), (7), (8) or (9), before starting Work on this contract, or any subcontract hereunder, Contractor and all Subcontractors must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000. The bond must provide that the Contractor or Subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the

bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836(2), unless the surety sooner cancels the bond. The surety may cancel the bond by giving thirty (30) days' Written Notice to the Contractor or Subcontractor, to the Construction Contractors Board and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for Work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for Work performed on contracts entered into before the cancellation. Contractor further certifies that Contractor will include in every subcontract a provision requiring a Subcontractor to file a public works bond with the Construction Contractors Board before starting Work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

- (a) Unless exempt under ORS 279C.836(4), (7), (8), or (9), before permitting a Subcontractor to start Work on this public works project, the Contractor shall verify that the Subcontractor has filed a public works bond as required under this section or has elected not to file a public works bond under ORS 279C.836(7).
- (b) Unless the Owner has been notified of any applicable exemptions under ORS 279C.836(4), (7), (8), or (9), the public works bond requirement above is in addition to any other bond Contractor or Subcontractors may be required to obtain under this contract.

15. As may be required by ORS 279C.845, Contractor or Contractor's surety and every Subcontractor or Subcontractor's surety shall file certified payroll statements with the Owner in writing.

- (a) If Contractor is required to file certified statements under ORS 279C.845, the Owner shall retain twenty-five (25) percent of any amount earned by the Contractor on the public works project until the Contractor has filed with the Owner a certified statement as required by ORS 279C.845. The Owner shall pay the Contractor the amount retained within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements required by statute. The Owner is not required to verify the truth of the contents of certified statements filed by the Contractor under this section and ORS 279C.845.
- (b) The Contractor shall retain twenty-five (25) percent of any amount earned by a first-tier Subcontractor on this public works contract until the Subcontractor has filed with the Owner certified statements as required by ORS 279C.845. The Contractor shall verify that the first-tier Subcontractor has filed the certified statements before the Contractor may pay the Subcontractor any amount retained. The Contractor shall pay the first-tier Subcontractor the amount retained within fourteen (14) days after the Subcontractor files the certified statements as required by ORS 279C.845. Neither the Owner nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier Subcontractor.

16. All employers, including Contractor, that employ subject workers who Work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

17. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
18. The contract may be canceled at the election of Owner for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
19. Contractor certifies that it has not and will not discriminate against minorities, women or emerging small business enterprises in obtaining any required Subcontractors, or against a business enterprise that is owned or controlled by, or that employs a disabled veteran as defined in ORS 408.225.
20. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
21. In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
22. As may be applicable, Contractor certifies that all Subcontractors performing construction Work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaping Contractors Board in accordance with ORS 701.035 to ORS 701.055 before the Subcontractors commence Work under this contract.
23. Pursuant to OAR 137-049-0880, the Owner may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
24. Pursuant to ORS 279C.510, if feasible and cost-effective and contract is for demolition, Contractor shall salvage or recycle construction and demolition debris.
25. Pursuant to ORS 279C.510, if feasible and cost-effective and contract is for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site.
26. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Owner has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- Agriculture, Department of
  - Forest Service
  - Soil Conservation Service
- Defense, Department of
  - Army Corps of Engineers
- Environmental Protection Agency
- Interior, Department of
  - Bureau of Sport Fisheries and Wildlife
  - Bureau of Outdoor Recreation
  - Bureau of Land Management

- Bureau of Indian Affairs
- Bureau of Reclamation
- Labor, Department of
  - Occupational Safety and Health Administration
- Transportation, Department of
  - Federal Highway Administration
- Homeland Security, Department of
  - Coast Guard

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Soil and Water Conservation Commission
- State Engineer
- State Land Board
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts

27. Once before the first payment and once before final payment is made of any sum due on account of the contract for a public work, Contractor or Contractor's surety and every Subcontractor with a Subcontractor's surety, shall file a statement with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each classification of worker which Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or the Subcontractor's surety, that Contractor or Subcontractor has read such statement and certificate, knows the contents thereof, and that the same is true to Contractor's or Subcontractor's knowledge. A true copy of

the certification or certifications required to be filed pursuant to this section shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries.

28. The following notice is applicable to Work involving excavation. "ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987."

**Section 17. Warranty and Guarantee.**

1. Contractor warrants and guarantees to Owner that all Work will be done in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted. Contractor understands that the Jackson County and its various departments, and agencies, must be consulted and be allowed to inspect the Work and sign off in each particular area. At all times Owner's Representative and appropriate inspectors shall have access to the Work for inspection and testing. Contractor shall provide proper and safe conditions for such access.
2. Where any law, ordinance, rule, regulation, code, or other order of any public body having jurisdiction requires any Work or part thereof to specifically inspected, tested or approved, Contractor shall assume full responsibility for such inspection, testing, or approval, and pay all costs in connection therewith and furnish Owner's Representative with the required certificates of inspection, testing or approval. If any Work to be inspected, tested, or approved is covered without written concurrence of Owner's Representative, it must be, if requested, uncovered for observation. Such uncovering shall be at Contractor's expense.
3. Neither observations by the Owner's Representative nor inspection tests or approvals by others shall relieve the Contractor from his obligations to perform the Work in accordance with the contract documents.
4. If, within two (2) years after the date of final completion and sign off and payment of any retainage by Owner to Contractor, there is any defect in materials or workmanship, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such defective Work or, if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. Notice from Owner of such defects shall toll the two (2)-year warranty period, which shall reset to two (2) years for Contractor's correction work, upon its completion.

If Contractor does not promptly comply with the terms of such instructions, or in an emergency where a delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced. All direct or indirect costs of such removal or replacement, including compensation for additional professional services, shall be paid by Contractor. Such additional professional services include the services of any attorney employed by Owner to assist it in dealings with Contractor. If Contractor does not pay for such Work, or does not ensure that such Work is performed as required by this section, Owner may pursue reimbursement from Contractor, including pursuing a claim upon Contractor's bond, if

applicable, for payment of such Work. All notices sent to Contractor shall have copies sent to Contractor's surety.

5. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by the application for payment, whether incorporated in the Project or not, will pass to Owner at the time of payment, free and clear of all liens, claims, security interests and encumbrances of any party whomsoever.

**Section 18. Bond Form.**

Payment and Performance Bonds shall be in the form provided within the Request for Proposal packet. Proposal Bonds shall be in the standard form of the issuing company. If a standard form is not available, the AIA Form A-310 shall be acceptable for the Proposal Bond.

**Section 19. Payments to Contractor.**

1. By the 5th day of each month, Contractor will submit to Owner's Representative a partial payment estimate filled out and signed by Contractor covering the Work performed during the period covered by the partial payment estimate and supported by such data as Owner's Representative may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to Owner, as will establish Owner's title to the material and equipment, and protect its interest therein, including applicable insurance. Owner's Representative will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to Owner, or return the partial payment estimate to Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, Contractor may make the necessary corrections and resubmit the partial payment estimate. Owner will, within ten (10) days of the next Board meeting after presentation by Owner's Representative of an approved partial payment estimate, pay Contractor a progress payment on the basis of the approved partial payment estimate. Owner shall retain five percent (5%) of the amount of each payment until final completion and acceptance of all Work covered by the contract documents. After fifty percent (50%) of the Work has been completed, Owner may, at Owner's sole discretion, reduce or eliminate retainage on the remaining progress estimates. When the Work is substantially complete, Owner may, at Owner's sole discretion, further reduce the retained amount below 5% to only that amount necessary to assure completion. On completion and acceptance of a part of the Work on which the price is stated separately in the contract documents, Owner may, in Owner's sole discretion, pay for that part of the Work in full, including retained percentages, less authorized deductions.
2. A request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.
3. Prior to Substantial Completion, Owner, with the approval of Owner's Representative and with the concurrence of the Contractor, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.

4. Owner shall have the right to enter the premises for the purpose of doing Work not covered by the contract documents. This provision shall not be construed as relieving Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of Owner. Such entry or Work shall only be allowed to the extent it does not interfere with Contractor's Work.
5. Upon completion and acceptance of the Work, Owner's Representative shall issue a certificate attached to the final payment request that the Work has been accepted by him under the conditions of the contract documents. The entire balance found to be due the Contractor, including the retained percentages, but except such sums as may be lawfully retained by Owner, shall be paid to the Contractor within thirty (30) days of the issuance of the certificate of completion and acceptance of the Work.
6. Responsibility for Damages / Indemnity:
  - (a) Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.
  - (b) The Contractor shall indemnify, hold harmless, and defend the Owner, its officers, employees and agents from any and all claims, losses, damages, attorney fees, costs and liabilities arising out of accidents, unforeseen difficulties, or intentional, reckless or negligent acts or omissions of the Contractor, its Subcontractors, suppliers, employees, or agents in performance of the Work. Claims include any assertion of a right to monetary damages or equitable relief or any combination thereof.
  - (c) Owner shall notify Contractor of any claim of which it is aware that requires Contractor to defend, indemnify and hold Owner harmless. Thereafter, Contractor shall notify Owner in writing within 30 days that it will defend, indemnify and hold Owner harmless. Contractor's failure to provide such notification is a breach of Contract. In the event the Contractor fails to give notice within 30 days, Owner may defend the claim and charge Contractor with any costs associated with that effort.
  - (d) Owner reserves the right to participate in any claim irrespective of the Contractor's obligations to indemnify, hold harmless, defend or notify. However, if Owner elects to participate in any claim after receiving notification from Contractor, Contractor is not obligated to indemnify Owner for the costs associated with that participation, although its other obligations to indemnify, hold harmless and defend remain intact.
  - (e) In claims against any person or entity indemnified under this Section 19(6) by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section 19(6) shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- (f) If any provision of this Contract is determined to require either party to indemnify, defend, reimburse, hold harmless or provide insurance to the other party (or that party's insurers or sureties) in a manner that would violate applicable law (including but not limited to ORS 30.140), then the offending provision shall be construed such that it is given the broadest meaning and effect allowed by law.
  - (g) The indemnities and other covenants of this Section 19(6) shall survive the termination of the Contract.
7. If Owner fails to make payment thirty (30) days after approval of a partial payment estimate by Owner's Representative, in addition to the other remedies available to Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

**Section 20. Cleanup.**

1. From time to time as the Work progresses and immediately after completion of the Work, Contractor shall clean up and remove all refuse and unused materials of any kind resulting from the Work. Upon failure of Contractor to do so within 24 hours after being so directed by Owner's Representative, the Work may be done by Owner and the cost thereof may be deducted from any payment due Contractor.
2. After all other Work embraced in the contract is completed and before final acceptance of the contract, the entire right of way and driveways, alleys, and side street approaches, slopes, ditches, utility trenches, and construction areas shall be neatly finished to the lines, grades and cross sections shown in the specifications.
3. As a condition precedent to final acceptance of the Project, Contractor shall remove all equipment and temporary structures, and all rubbish, waste and generally clean the right of way and premises.

**Section 21. Use of Light, Power and Water.**

Contractor shall furnish temporary light, power, and water complete with connecting piping, wiring, lamps, and similar equipment necessary before the Work is improved. Contractor shall install, maintain and remove temporary lines upon completion of Work. Contractor shall obtain all permits and bear all costs for connection with temporary services and facilities at no expense to Owner.

**Section 22. Arbitration.**

1. All claims, disputes, and other matters in question between Owner and Contractor arising out of, or relating to, the contract documents, including rescission, reformation, enforcement, or the breach of the terms thereof, except for claims which may have been waived by the making or acceptance of final payment or for acquisition of property subject to eminent domain, may be decided by arbitration. Owner shall have the sole discretion as to whether or not a dispute will be decided by arbitration conducted in Jackson County, Oregon, rather than through the court process.



2. No demand for arbitration of any claimed dispute or other matter shall be effective until after a claim or demand regarding the underlying dispute is made to the District's Board and the Board at its next regularly scheduled meeting, has rendered a written decision with respect thereto denying the claim or demand. No demand for arbitration of the denial of any such claim, dispute, or other matter shall be made later than thirty (30) days after the date on which the Board of Directors has rendered a written decision denying the claim. The failure to demand arbitration within thirty (30) days of the date of the Board of Director's decision denying the claim shall result in the Board of Director's decision being binding upon Owner and Contractor.
3. Notice of demand for arbitration shall be filed in writing with the other party to the agreement. The demand for arbitration shall be made within the 30-day period specified above. Owner, if not the party demanding arbitration, has the option of allowing the matter to proceed with arbitration or by Written Notice within five (5) days after receipt of a demand for arbitration, or rejecting arbitration and requiring Contractor to proceed through the courts for relief. Arbitration shall be conducted under the Uniform Arbitration Act, ORS 36.600 *et seq.* If the parties are unable to mutually select an arbitrator within twenty (20) days following Owner's decision to pursue arbitration, then each party shall select an arbitrator, and the two arbitrators shall select a single arbitrator. The arbitrator(s) shall have substantial experience in construction disputes. The parties agree that any award rendered by the arbitrator will be final, and judgment may be entered upon the award in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Oregon law.

**Section 23. Attorney Fees.**

If suit, action or arbitration is brought either directly or indirectly to rescind or enforce the terms of this agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as any costs and disbursements. Further, if it becomes necessary for Owner to incur the services of an attorney to enforce any provision of this agreement without initiating litigation, Contractor agrees to pay Owner's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred, until the date paid by losing party.

## **FINAL SCOPE OF WORK**

Attachment E

Payment and Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_ hereinafter called "PRINCIPAL", and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

\_\_\_\_\_  
(Oregon representative for service of process for Surety)

hereinafter called "SURETY", are held and firmly bound unto

Emergency Communications of Southern Oregon  
400 Pech Road  
Central Point, OR 97502

hereinafter called "OWNER", in the total amount of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the  
equal to the contract price) (insert here a sum

payment whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has by written agreement entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof and is hereinafter referred to as the Contract. Said Contract is for:

\_\_\_\_\_  
\_\_\_\_\_

---

NOW, THEREFORE:

1. The condition of this obligation is such that, if PRINCIPAL shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

2. The SURETY hereby waives notice of any alteration or extension of time made by the OWNER.

3. It is expressly agreed that the Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment of the Contract, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment," wherever used in this Bond, and whether referring to this Bond, the Contract, or any Loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

4. Whenever PRINCIPAL shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER's obligations thereunder, the SURETY may promptly remedy the default, or shall promptly:

a) Arrange for the PRINCIPAL, with consent of the OWNER, to perform and complete the contract;

b) Complete the Contract in accordance with its terms and conditions, or

c) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by OWNER and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and OWNER, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth above. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by OWNER to PRINCIPAL under the Contract and any amendments thereto, less the amount properly paid by OWNER to PRINCIPAL.

5. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

6. If any provision of this Bond conflicts with state law, such portion will be deemed deleted therefrom and provisions conforming to such state law shall be deemed incorporated herein. The intent is that the bond shall be construed as a statutory bond and not as a common law bond.

7. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of the OWNER.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

PRINCIPAL

\_\_\_\_\_

\_\_\_\_\_  
(PRINCIPAL) Secretary

(SEAL)

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

\_\_\_\_\_

\_\_\_\_\_  
(Witness to PRINCIPAL)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(SURETY)

ATTEST:

\_\_\_\_\_  
(Witness to SURETY)

By \_\_\_\_\_  
(Attorney-in-Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners must execute Bond.

IMPORTANT: SURETY companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Oregon. SURETY companies must also have an Oregon representative for service of process.

# Payment Bond

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):  
Principal Place of Business):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SURETY (Name and Address of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## CONTRACT

Effective Date of Agreement:

Amount:

Description (Name and Location):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## BOND

Bond Number:

Date (Not earlier than Effective Date of Agreement):

\_\_\_\_\_

Amount:

Modifications to this Bond Form:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_ (Seal)

Contractor's Name and Corporate Seal

\_\_\_\_\_ (Seal)

Surety's Name and Corporate Seal

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

Signature

Print Name: \_\_\_\_\_

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

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

Signature (Attach Power of Attorney)

Print Name: \_\_\_\_\_

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

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

Signature

\_\_\_\_\_  
Title

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

Signature

\_\_\_\_\_  
Title

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with Contractor:
    1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.



15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY:

Name, Address and Telephone:

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Surety Agency or Broker:

Owner's Representative (Engineer or other):

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