



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

July 19, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Maintenance Agreement with the State of Oregon
US26: SE 282nd Ave (Boring Rd) OXING

Purpose/ Outcomes	ODOT is raising the SE 282 nd Ave, Boring Rd, bridge which crosses over US26 at milepoint 17.54 by two and a half feet. The County has been maintaining the road surface of the SE 282 nd Ave, Boring Rd, bridge. This maintenance agreement would specifically outline who would be responsible for each facility in this area.
Dollar Amount and Fiscal Impact	Transportation Maintenance will use available funds under its maintenance budget to fund any maintenance required.
Funding Source	Transportation Maintenance 215-7433
Duration	This agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Helps keep a strong infrastructure and ensures safe communities 2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community. 3. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
Previous Board Action	None
Contact Person	Vince Hall, Project Manager, 503-650-3210

BACKGROUND:

The State of Oregon and Clackamas County agree to abide by the maintenance responsibilities listed in this Agreement at SE 282nd Ave, Boring Rd, where the bridge crosses over US26 at milepoint 17.54.

Clackamas County shall, upon completion of the project and at their own expense, maintain the approach and bridge roadway surfaces and sidewalks. Said maintenance includes paving, plowing, sanding, patching, sweeping, striping and graffiti removal.

The State of Oregon shall, upon completion of the project, maintain the structural portion of the bridge crossing over US26, and shall, to the extent necessary, be responsible for maintenance of drainage, landscaping, bridge-railing on structure (including painting), retaining walls and fencing.

RECOMMENDATION:

Staff recommends Board Approval of Maintenance Agreement No. 31699 between the State of Oregon and Clackamas County.

Respectfully submitted,

Randall A. Harmon
Transportation Operations Manager
Transportation Maintenance Division

**MAINTENANCE AGREEMENT
US26: SE 282ND AVE (Boring Rd) OXING**

THIS MAINTENANCE AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and Clackamas County, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Mt. Hood Highway (US26) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OC). SE 282nd Ave, Boring Rd bridge crosses over US26 at milepoint 17.54 and is located entirely within the right of way of the Mt. Hood Highway (US 26).
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. State is raising the SE 282nd Ave, Boring Rd, bridge which crosses over US26 at milepoint 17.54 by two and a half feet. This will result in raising the road approach on either side of the bridge and adding two swales along the NW bound roadbed, one on either side of the bridge structure.
4. The County has been maintaining the road surface of the SE 282nd Ave, Boring Rd, bridge and the Parties desire that the County continue to maintain the road surface area in the same manner and that the State would specifically be responsible for maintenance of the bridge structure and all other facilities which are beyond the scope of the road surface maintenance that is specifically delegated to the County. This Agreement is to establish the responsibilities of the Parties for maintenance of the bridge structure, and roadway.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and County agree to abide by the maintenance responsibilities listed in this Agreement at SE 282nd Ave, Boring Rd, where the bridge crosses over US26 at milepoint 17.54, hereinafter referred to as "Project." The location of the Project is located entirely within the right of way of the Mt. Hood Highway (US 26) and is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years.

COUNTY OBLIGATIONS

1. County shall, upon completion of the project and at own expense, maintain the approach and bridge roadway surfaces and sidewalks. Said maintenance includes paving, plowing, sanding, patching, sweeping, striping and graffiti removal.
2. County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, County expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
3. If County chooses to assign its maintenance responsibilities to a consultant or contractor, County shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws with ORS Chapters 279A, 279B, and 279C are followed.
4. County shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
5. All employers, including County, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. County shall ensure that each of its contractors complies with these requirements.
6. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
7. County's Project Manager for this Project is Vince Hall, Senior Civil Engineer, 902 Abernethy Road, Oregon City, OR 97045, 503-650-3210, vincehal@clackamas.us, or

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assigned designee upon individual's absence. County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

8. County's Maintenance Manager for this facility is the Transportation Operations Manager, 902 Abernathy Rd, Oregon City, OR 97045, 503-650-3262.

STATE OBLIGATIONS

1. State shall, upon completion of the project, maintain the structural portion of the bridge crossing over US26, and shall, to the extent necessary, be responsible for maintenance of drainage, landscaping, bridge-railing on structure (including painting), retaining walls and fencing.
2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
3. State's Project Manager for this Project is Kelly Hawley, Project Leader, 123 NW Flanders Street, Portland, OR 97209-4012, 503-731-3001, Kelly.R.HAWLEY@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
4. State's Maintenance Manager for this facility is the District 2C Manager, 9200 SE Lawnfield Rd, Clackamas, OR 97015-8685, 971-673-6200.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by State, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If County fails to provide payment of its share of the cost of the Project.
 - d. If State or County fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow the State or County, in the

- exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State or County are prohibited from paying for such work from the planned funding source.
3. County may terminate this Agreement effective upon delivery of written notice to State, or at such later date as may be established by County, under any of the following conditions:
 - a. If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If State fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from County fails to correct such failures within ten (10) days or such longer period as County may authorize.
 - c. If State fails to provide payment of its share of the cost of the Project.
 - d. If State or County fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow the State or County, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State or County are prohibited from paying for such work from the planned funding source.
 4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

6. With respect to a Third Party Claim for which State is jointly liable with County (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which County is jointly liable with State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. State and County agree to notify each other's respective Maintenance Manager whenever facilities are found to be in need of maintenance as defined in this agreement.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either

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Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

County/State
Agreement No. 31699

CLACKAMAS COUNTY, by and through
its elected officials

By _____
County Commissioner, Chair

Date _____

By _____

Date _____

LEGAL REVIEW APPROVAL

(If required in Agency's process)

By _____
County Legal Counsel

Date _____

County Contact:

Randall A. Harmon, Transportation
Operations Manager
902 Abernethy Road
Oregon City, OR 97045
(503) 650-3246
randyhar2@clackamas.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Maintenance & Operations
Manager

Date _____

APPROVAL RECOMMENDED

By _____
District 2C Manager

Date _____

State Contact:

Dan Bacon, District 2C Manager
999 NW Frontage Rd, Suite 250
Troutdale, OR 97060
(503) 655-4193
Dan.W.BACON@odot.state.or.us

EXHIBIT A – PROJECT LOCATION MAP
US26: SE 282ND AVE (Boring Rd) OXING





DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with Conway Construction Company for Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project

Purpose/Outcomes	This project is required to protect the foundation and retaining walls of the existing Bebo-style concrete arch bridge that provides crossing on Bakers Ferry Road over Foster Creek.
Dollar Amount and Fiscal Impact	Contract value is \$310,171.00
Funding Source	County Road Funds
Duration	Contract execution through October 12, 2018
Previous Board Action	None
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by constructing revetment structures to stabilize Foster Creek at the Bakers Ferry Road Crossing.
Contact Person	Devin Patterson, Project Manager 503-742-4666

Background:

DTD is recommending a construction contract with Conway Construction Company for construction of the Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project. This project is required to protect the foundation and retaining walls of the existing Bebo-style concrete arch bridge that provides crossing on Bakers Ferry Road over Foster Creek. This project will include the installation of six streamflow deflector structures comprised of Douglas fir logs and large boulders, upstream of the bridge to direct the streamflow to the center of the bridge. Additionally, nine full-spanning grade-control structures will be constructed and made of large boulders to minimize stream velocities and subsequent head-cut on Foster Creek in the vicinity of the bridge. Both upstream retaining walls will be lined with large boulders, sized appropriately for peak flows.

This project is funded by County Road Funds. The project work is anticipated to begin immediately following contract signing and be substantially complete by October 12, 2018.

Procurement Process:

This project advertised in accordance with ORS and LCRB Rules on May 16, 2018. Bids were opened on June 13, 2018. The County received two (2) bids: Conway Construction Company, \$310,220.00; and Elk Mountain Construction, Inc., \$334,550.00. After review of the bids, Conway Construction Company was determined to be lowest responsive bidder.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this construction services contract with Conway Construction Company for the Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project.

Sincerely,

Mike Bezner
Assistant Director of Transportation

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Conway Construction Company**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: #2018-50 Foster Creek (at Bakers Ferry Road) Crossing Scour Repair Project

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **three hundred ten thousand one hundred seventy-one Dollars (\$310,171.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addendum #1

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2015) referenced therein.

2. Representatives.

Contractor has named David Conway as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Joel Howie as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further

replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: David Conway shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Ken Conway shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Greg Ross shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: McKenzie Baker shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: August 31, 2018 except for seeding, planning, seeding establishment and planting establishment

FINAL COMPLETION DATE: October 12, 2018 except for seeding establishment, and planting establishment

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and

architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless

otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

6. Responsibility for Damages/Indemnity.

6.1 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 the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 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 Section 6.2 shall not be limited 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.

7. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the

right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

- 11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:

