



CITY OF ALBANY, OREGON  
PUBLIC WORKS OPERATIONS

# INVITATION TO BID

# Water Quality Analysis and Courier Services

**Issue Date:** June 25, 2018

**Due Date:** July 31, 2018, 2:00 p.m. (Local Time)

**Public Works Operations Director** ..... **Chris Bailey**  
**Water Superintendent**.....**Karen Kelley**  
**Purchasing Coordinator** ..... **Diane M. Murzynski, CPPO, CPPB**

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

CITY OF ALBANY  
TABLE OF CONTENTS

**TABLE OF CONTENTS .....2**

**INVITATION TO BID (ITB) .....4**

**SECTION 1 – INSTRUCTIONS TO BIDDER .....5**

**SECTION 2 – GENERAL REQUIREMENTS.....12**

**SECTION 3 – SPECIAL CONDITIONS .....14**

**SECTION 4 - TECHNICAL SPECIFICATIONS.....16**

**EXHIBIT A – PROPOSAL AND COST WORKSHEET .....17**

**EXHIBIT B – EMPLOYEE DRUG TESTING PROGRAM  
CERTIFICATION.....21**

**EXHIBIT C - EMPLOYEE BACKGROUND CHECK PROGRAM  
CERTIFICATION .....22**

**ATTACHMENT A – *SAMPLE AGREEMENT* .....23**

## BIDDER'S SUBMITTAL CHECKLIST

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

**It is the responsibility of the Bidder to deliver the Bid by the indicated deadline to the designated location. The City will not accept responsibility for the timely delivery of any Bid sent via a delivery service (FedEx, UPS, USPS, etc.). Bidder is solely responsible for the Bid to be delivered to the correct location by the correct time.**

**If the Bidder submits a Bid via a delivery service (FedEx, UPS, etc.), the required sealed envelope must be enclosed in the delivery service packaging and the Project Title of the Bid should be written on the outside delivery service packaging.**

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

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



**CITY OF ALBANY, OREGON  
INVITATION TO BID (ITB)**

**Water Quality Analysis and Courier Services  
Bids Due by 2:00 p.m., (local time) Tuesday, July 31, 2018**

Notice is hereby given that the City of Albany, Oregon (City) is requesting bids from Vendors to provide the City of Albany with water quality analysis and courier services beginning August 2018, for three years, with the option to renew the contract up to an additional two, one-year terms.

Water quality analyses must be conducted in a laboratory certified by the Oregon Environmental Laboratory Accreditation Program (ORELAP) using methods approved by the Safe Drinking Water Act. Courier services must include providing appropriate sample containers, instructions, chain of custody forms, freezer packs, coolers, etc. necessary to collecting and transporting water samples when requested by the City. Courier services must also include picking up the samples a minimum of once per week, preferably twice per week, and transporting them safely at the correct temperature to the laboratory within timeframes specified by the analysis method.

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

The City will post all addenda on the City website. Prospective Bidders are solely responsible for checking the website to determine if addenda have been issued. All questions regarding this solicitation must be submitted by email to Diane Murzynski, [diane.murzynski@cityofalbany.net](mailto:diane.murzynski@cityofalbany.net), phone: 541-917-7522; and inquiries concerning bid specifications should be directed to Karen Kelley, [karen.kelley@cityofalbany.net](mailto:karen.kelley@cityofalbany.net).

Time is of the essence to establish a contract with a Vendor who can provide water quality analysis and courier services to the City of Albany. Sealed bids must be received by the City of Albany, at the Parks & Recreation Counter, not later than 2:00 p.m. (local time), Tuesday, July 31, 2018, at which time said bids will be publicly opened and read in the Periwinkle Room, at City Hall. Bids shall be addressed to the City of Albany, Finance Department, Attn: Diane Murzynski, CPPO, Purchasing Coordinator, 333 Broadalbin Street SW, Albany, OR 97321. The outside of the envelopes shall plainly identify: (1) the name of the bid, (2) the bid closing date and time, and (3) the name and address of the bidder. Electronic bids will not be accepted. Bids received after the designated time and date will not be opened.

Bid totals will be posted on the City's website at <https://www.cityofalbany.net/departments/finance/city-purchasing/bids-rfps-rfqs>. The City may reject any bid not in compliance with all prescribed solicitation procedures and requirements and other applicable law, and may reject any or all bids in whole or in part when the cancellation or rejection is in the best interest of the City, and at no cost to the City. Prices quoted shall be firm offers, irrevocable, valid and binding for a period of sixty (60) calendar days after the closing date.

DATED THIS 25TH DAY OF JUNE 2018.

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

Diane M. Murzynski, CPPO, CPPB  
Purchasing Coordinator

Publish: Albany Democrat-Herald, Monday, June 25, 2018  
Daily Journal of Commerce, Monday, June 25, 2018

Water Quality Analysis and Courier Services  
INVITATION TO BID (ITB)

Invitation to Bid  
Page 4 of 29

# SECTION 1 – INSTRUCTIONS TO BIDDER

## 1.1 ISSUING OFFICE AND SUBMITTAL LOCATION

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

### Submittal Address & Process Questions:

City of Albany  
Finance Department  
Diane M. Murzynski, CPPO, Purchasing Coordinator  
333 Broadalbin Street SW  
Albany, OR 97321  
Email: [diane.murzynski@cityofalbany.net](mailto:diane.murzynski@cityofalbany.net)  
Phone: 541-917-7522

### Technical/Specification Questions:

Karen Kelley  
Water Superintendent  
Public Works Operations  
[karen.kelley@cityofalbany.net](mailto:karen.kelley@cityofalbany.net)

Telephone, facsimile, or electronically transmitted bids will not be accepted. Bids received after the specified date and time will not be opened or returned. **Bidder submitting bids are solely responsible for the means and manner of their delivery and are encouraged to confirm delivery prior to the deadline.**

## 1.2 ITB SCHEDULE

The City anticipates the following general timeline for receiving bids and selecting a Vendor. The timeline listed below may be changed if it is in the City's best interest to do so.

ITB Advertised	June 25, 2018
Solicitation Changes or Protests	July 3, 2018, 12:00 p.m.
Last Date for Addenda	July 26, 2018, 12:00 p.m.
Bid Closing Date	July 31, 2018, 2:00 p.m.
Notice of Intent to Award	August 1, 2018
Protest Period ends	August 8, 2018, 12:00 p.m.
City Council Meeting	August 22, 2018
Contract Award	August 2018

## 1.3 CHANGES TO THE SOLICITATION BY ADDENDA

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

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

1. All addenda, clarification, and interpretations will be posted on the City of Albany's website at [City of Albany Bids, ITBs, RFQs](#).

2. No addenda will be issued later than the date set in the ITB Schedule, except an addendum, if necessary, postponing the date for receipt of bids, withdrawing the invitation, modifying elements of the bid resulting from a delayed process, or requesting additional information, clarification.
3. Each Bidder shall ascertain, prior to submitting a bid, that the Bidder has received all addenda issued, and receipt of each addendum shall be acknowledged in the appropriate location on each addendum and included with the bid submittal.

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

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

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

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

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

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

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

#### **1.6 CANCELLATION**

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

## **1.7 CONDITIONS OF SUBMITTAL**

1. The Bidder and each person signing on behalf of any Bidder certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or in part by the City of Albany, has a direct or indirect financial interest in the bid, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Bidder's response to this solicitation.
2. The Bidder has examined all parts of the Invitation to bid, including all requirements and contract terms and conditions thereof, and, if its bid is accepted, the Bidder shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Bidder.
3. The Bidder, if an individual, is of lawful age; is the only one interested in this bid; and that no person, firm, or corporation, other than that named, has any interest in the bid, or in the proposed contract.
4. The Proposer has demonstrated quality experience providing the required goods and services.
5. The Bidder has examined the scope of services and conditions thoroughly and can provide the appropriate insurance, deposits, and bonds, as set forth in this ITB, if required.
6. The Bidder will comply fully with the scope of services for the agreed contract.
7. The Bidder can meet any and all registration and certification requirements as set forth and required in the Oregon Revised Statutes and this ITB.

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

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

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

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

Delays due to mail and/or delivery handling, including, but not limited to delays within City of Albany's internal distribution systems, do not excuse the Bidder's responsibility for submitting the bid to the correct location by the stated deadline.

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

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

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

## **1.11 REJECTION OF BIDS**

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

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

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

## **1.12 ALTERNATE BIDS**

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

## **1.13 FEDERAL EXCISE TAXES**

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

## **1.14 DURATION OF BID**

Bid prices, terms and conditions shall be firm for a period of at least sixty (60) days from the deadline for receipt of submittal. The successful bid shall not be subject to future price escalation or changes of terms if accepted during the sixty (60) day period. Price decreases or changes in terms by others after the acceptance of a bid will not be considered.



### **1.15 AFFIRMATIVE ACTION**

By submitting a bid, the Bidder agrees to comply with the Fair Labor Standard Act, Title VI of the Civil Rights Act of 1964, Executive Order 11246 (as amended), Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, ORS, and all applicable requirements of federal, state and local civil rights and rehabilitation statutes, rules and regulations if awarded a contract by the City.

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

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

### **1.17 DISADVANTAGED, MINORITY, WOMEN, AND EMERGING SMALL BUSINESSES (DMWESB)**

Albany encourages the participation of Target Businesses. These businesses are defined as Disadvantaged, Minority-Owned, Women-Owned, and Emerging Small Businesses (DMWESB) certified by the State of Oregon (OMWESB), and businesses certified as Small Disadvantaged Businesses by the Small Business Administration. Bidder agrees not to discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business enterprise certified under ORS 200.055 in awarding subcontracts as required by ORS 279A.110.

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

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

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

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

### **1.20 BID DISCREPANCIES**

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

### **1.21 IDENTICAL BIDS**

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

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

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

### **1.23 RECYCLED PRODUCTS**

Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

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

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

### **1.25 OBLIGATION TO AWARD**

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

### **1.26 AGREEMENT**

The Successful Bidder will be required to sign an Agreement to deliver to the City at the prices bid for a period of three years, beginning August 2018 meeting the specifications and conditions set forth herein. It is the City's intent to award an Agreement in substantially the form of the Agreement attached to this bid document. Bidder may submit an alternative Agreement for City's review. The City, at its sole determination, may approve the Bidder's offered Agreement as is, require modifications, or reject the Bidder's Agreement and require that the City's Agreement be executed for the purpose of this bid.

## **1.27 RECIPROCAL PREFERENCE LAW**

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

## **1.28 COOPERATIVE PURCHASING**

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

## **1.29 AWARD**

The City shall award a contract to the Bidder whose bid is the lowest responsive, responsible bid and will best serve the interests of the City, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, under ORS 279B.110.

## **SECTION 2 – GENERAL REQUIREMENTS**

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

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

### **2.2 PURPOSE AND USAGE OF CITY ANNUAL REQUIREMENTS CONTRACTS**

The City appreciates the contractual relationship established to provide the citizens of the City with goods and services that meet the annual operating requirements of the City.

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

### **2.3 ROYALTIES AND PATENTS**

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

### **2.4 QUALITY**

Water quality analyses must be conducted in a laboratory certified by the Oregon Environmental Laboratory Accreditation Program (ORELAP) using methods approved by the Safe Drinking Water Act. Courier services must include providing appropriate sample containers, instructions, chain of custody forms, freezer packs, coolers, etc. necessary to collecting and transporting water samples when requested by the City. Courier services must also include sample pick-up a minimum of once per week, preferably twice per week, and transporting the samples safely at the correct temperature to the laboratory within timeframes specified by the analysis method.

### **2.5 QUANTITY**

The type and quantity of analyses indicated in the ITB are the City's estimated requirements based on current Oregon Health Authority requirements and previous needs and are in no way binding upon the City. The City reserves the right to increase or decrease the quantity of sample analyses ordered at any time. The analyses listed within this solicitation shall be ordered on an "as needed basis" throughout the term(s) of the Contract.

The failure of the Successful Bidder to provide services meeting the specifications and conditions set forth herein shall be a violation of this Contract, giving the City the right to cancel the Contract and obtain services elsewhere with recourse to the Successful Bidder.

### **2.6 FORFEITURE OF CONTRACT**

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

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

The resulting contract of this Invitation to Bid will be a fixed price contract with an economic price adjustment. Any change in fees are subject to a maximum increase in any one year based on the Oregon Consumer Price Index - All Urban Consumers (CPI) for the twelve (12) month period prior to first day of the renewal Contract Year, or three percent (3%), whichever is lower. Successful Bidder must submit a request in writing to the City's Purchasing Coordinator and Contract Administrator or designee, 30 days prior to the contract renewal date for price adjustment consideration.

## **SECTION 3 – SPECIAL CONDITIONS**

### **3.1 TYPE OF CONTRACT**

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

### **3.2 CONTRACT TERM**

This contract shall commence August 1, 2018 and continue for three years, (through July 2021) and upon renewal (see Renewal) shall continue for each additional consecutive year (up to two additional one-year terms) until canceled or expiration of the contract term.

### **3.3 CONTRACT ADMINISTRATION**

The Contract Administrator for this contract shall be Karen Kelley, or designee.

### **3.4 ORDERING**

Ordering will be conducted by the Contract Administrator, or designee, either by phone or email on an "as needed basis" against contract awarded by this ITB.

### **3.5 INVOICING AND PAYMENTS**

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

City of Albany  
333 Broadalbin Street SW  
P.O. Box 490, Albany, Oregon 97321  
[accountspayable@cityofalbany.net](mailto:accountspayable@cityofalbany.net)

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this section

### **3.6 WATER SAMPLE ANALYSIS**

Water quality analyses must be conducted in a laboratory certified by the Oregon Environmental Laboratory Accreditation Program (ORELAP) using methods approved by the Safe Drinking Water Act.

### **3.7 LOCATION AND FREQUENCY OF DELIVERY AND SAMPLE COLLECTION**

Sampling will, in most instances, occur a minimum of once per week but may occur two times per week to provide City with flexibility to cover staffing and workloads. Exceptions to this condition shall only be made when a request by the Successful Bidder is made and approved by the Contract Administrator. If a request is made and approved verbally, confirmation of both the request by the Successful Bidder and approval by the Contract Administrator shall be made in writing.

The City will collect samples and store them in refrigerators at designated locations for laboratory pickup. Vendor must provide appropriate sample containers, instructions, chain of custody forms, freezer packs, coolers, etc. necessary for the City to collect samples and for the vendor to transport them to the laboratory

while maintaining sample temperature and hold times specified by the analytical method. Pickup shall be made between the hours of 8:00 a.m. to 4:00 p.m. as directed by the Contract Administrator to the following addresses:

1. Vine Street Water Treatment Plant, 300 Vine Street, Albany, OR 97321
2. Albany-Millersburg Water Treatment Plant, 33883 Berry Drive NE, Albany, OR 97322
3. Albany Public Works Operations, Distribution Crew Room Building E, 310 NE Waverly Dr, Albany, OR 97321

### **3.8 RENEWAL**

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

1. Approval by the City and budget approval.
2. Service has been determined, by the Contract Administrator, to be satisfactory.
3. Bid price remains firm for current year and will be adjusted as defined in Section 2, Fixed Price Contract Economic Price Adjustment and allowed for under the terms of the Contract.
4. Agreement to extend the contract, in writing, by the Successful Bidder after a minimum thirty (30) calendar day notice by the City prior to the expiration of the Contract.

## **SECTION 4 - TECHNICAL SPECIFICATIONS**

### **4.1 GENERAL**

Analyses furnished under the specifications listed for the City of Albany shall comply with the provisions herein. The analysis and services shall be in accordance with the specifications proposed below by the City of Albany. Price bid shall be the gross price which includes water analysis and services.

The bid price will be based on estimated services described in Exhibit A - Proposal and Cost Worksheet. The requirements and specifications for routine analysis and courier services are defined within the worksheet. Prices shall include sampling materials, delivery, sample pick up and any other charges or provisions anticipated by the Supplier and not shown in these specifications. The estimated quantities are given for informational and bidding purposes based on prior actual annual quantities and projected future sampling requirements. Supplier should not consider these estimates to be a guarantee of a minimum or maximum amount, nor entitle the Supplier to an adjustment to the unit price bid or to other compensation.

### **4.2 BID AWARD**

This ITB will supply water quality analysis and courier services for the Water Division as follows:

1. Vine Street Water Treatment Plant, 300 Vine Street, Albany, OR 97321
2. Albany-Millersburg Water Treatment Plant, 33883 Berry Drive NE, Albany, OR 97322
3. Albany Public Works Operations, Distribution Crew Room Building E, 310 NE Waverly Dr, Albany, OR 97321

Bid award will be made to the lowest responsive, responsible Bidder. Bid Award will be made to the Bidder with the lowest "Base Bid" as calculated on Exhibit A. The "Base Bid" shall include the costs associated in Section 1 and Section 2 and reflect the combined total cost of both Sections.

### **4.3 SPECIFICATIONS**

The specifications for water quality analysis and courier services are outlined within the Proposal and Cost Worksheet – Exhibit A. The analysis services included in Section 1 are Public Drinking Water Samples for yearly service and Canal Profile Samples. Section 2 includes Public Drinking Water Samples requiring water analysis defined by "Year Due".



## EXHIBIT A – PROPOSAL AND COST WORKSHEET

**Section 1:** The following analyses are projected on a “Yearly Service” and outline the Project Requirements and Specifications.

<b>Public Drinking Water Samples “Yearly Service”</b>					
Analysis	Frequency of Sampling/Number of Locations	Total Number of Samples	Method	Cost Per Sample	Total Cost
Coliform (Routine - presence/absence)	Monthly/60	720			
Special Coliform	Varies as needed	120			
Total Organic Carbon	Quarterly/3	12			
Alkalinity	Quarterly/1	4			
Nitrate	Annual/2	2			
Volatile Organic Chemicals	Annual/2	2			
Disinfection Byproducts (TTHM & HAA5)	Quarterly/8	32			
Special Lead & Copper Sampling (customer requested and special projects)	Varies/10	50			
<b>Canal Profile Samples</b>					
Volatile Organic Chemicals	Semi-Annual/5	10			
Inorganic Chemical Screen Including Copper & Phosphorus	Semi-Annual/5	10			
Total Organic Carbon	Semi-Annual/5	10			
Multi-residue Pesticide Screen & Chlorinated Herbicides	Semi-Annual/4	8			
<b>Total Cost for Section 1 (Public Drinking Water Samples Yearly Service &amp; Canal Profile Samples):</b>				\$	

**Section 2:** The following analyses are projected by “Year Due” and outline the Project Requirements and Specifications.

<b>Public Drinking Water Samples by “Year Due”</b>						
<b>Analysis</b>	<b>Frequency of Sampling/Number of Locations</b>	<b>Total Number of Samples</b>	<b>Year Due</b>	<b>Method</b>	<b>Cost Per Sample</b>	<b>Total Cost</b>
Asbestos	Once/1	1	2022			
Lead & Copper Sampling (routine)	Once/30	30	2020			
Inorganic Chemicals	Once/2	2	2020			
Synthetic Organic Chemicals (including dioxin)	2 Consecutive Quarters/2	4	2021			
<b>Total Cost for Section 2 (Public Drinking Water Samples by “Year Due”).</b>					\$	

<b>Sum of Extended Totals Bid - Section 1 &amp; Section 2 (Base Bid) *</b>	\$
--	----

These quantities are based on projection of need for the first year of the agreement and additional needs in future years potentially covered under the contract. The City requests your best bid. All required materials delivered to the City for their use in providing the collected water samples to Supplier must be shipped F.O.B. Destination.

\*Bid Award will be made to the Bidder with the lowest responsive, responsible Base Bid based on the Sum of the Extended Totals Bid (Sections 1 plus Section 2).

**Residency Information - Oregon Reciprocal Preference Law**

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

Bidder shall check one:

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

\_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_ Yes, my company is willing to provide services in a short time frame for an unforeseen situation or emergency. Please indicate the time frame:

\_\_\_\_\_ hours \_\_\_\_\_ days

\_\_\_\_\_ No, my company is not willing to provide services in a short time frame for an unforeseen situation or emergency.

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

1. Within the last five years, have you, your company, or any officers, agents or employees working for you or your company been found by any agency or court to be in violation of any governmental environmental rule, regulation, ordinance or statute, whether local, state or federal. Include any resolution or settlement of any allegation of such a violation by civil compromise, settlement, consent decree, mutual agreement and order (MAO) or otherwise. If so, please explain in detail.

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

2. Within the last five years, have you, your company or any officers, agents or employees working for you or your company been convicted or found at fault for any personal injury or property damage as a result of a product liability claim relating to any product that will be provided under this solicitation. If so, please explain in detail.

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

3. Within the last five years, have you, your company or any officers, agents or employees working for you or your company been found in violation of any rule, regulation, ordinance or statute, whether local, state or federal, respecting wages, prevailing wages requirements, or conditions of employment. If so, please explain in detail.

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

4. Within the last five years, have you, your company or any officers, agents or employees working for you or your company been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from submitting bids or bids by any federal, state or local entity, department or agency.

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

\*\*\*\*\*

**THE UNDERSIGNED BIDDER** declares that the only persons or parties interested in this proposal are those named herein, that this proposal is in all respects fair and without fraud; that it is made without any collusion with any person making another proposal on this bid.

**THE UNDERSIGNED BIDDER** acknowledges by signing and returning this bid, that the Bidder has read, understands, and agrees to be bound by the terms and conditions contained in this solicitation document.

**THE UNDERSIGNED BIDDER** certifies that they have not discriminated, and will not discriminate, in the award of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business certified under ORS 200.055 in awarding subcontracts as required by ORS 279A.110.

\*\*\*\*\*

**THE UNDERSIGNED BIDDER** also agrees to furnish all products and services necessary in accordance with the specifications described herein and further attests that they have carefully considered any addenda numbered in the preparation of this bid response.

\*\*\*\*\*

**THE UNDERSIGNED BIDDER** also declares they are exempt from Workers' Compensation:

yes  no

\*\*\*\*\*

Pursuant to ORS 279A.200 to 279A.225, other public agencies may use the purchase agreement resulting from this invitation to bid unless Bidder expressly notes on the proposal form that the prices quoted are available to the City of Albany only.

City of Albany

City of Albany and other Public Agencies

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_____ Bidder's Signature	_____ Company Name ( <i>please print</i> )	_____ Date
_____ Bidder's Name ( <i>please print</i> )	_____ Mailing Address ( <i>please print</i> )	
_____ Bidder's Title ( <i>please print</i> )	_____ City, State Zip	_____ Federal Tax ID No.
Telephone No.: _____	Fax: _____	Email: _____

-End Proposal-

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

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

Therefore, by signing this Certification, the Bidder does hereby certify and confirm that, as the proposed Contractor for the City of Albany’s **Water Quality Analysis and Courier Services**, that he/she has an Employee Drug Testing Program in place.

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

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

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

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

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

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

Therefore, by signing this Certification, the Bidder does hereby certify and confirm that, as the proposed Contractor for the City of Albany's **Water Quality Analysis and Courier Services**, that he/she has an Employee Background Check Program in place.

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

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

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

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

**ATTACHMENT A – *SAMPLE AGREEMENT***

**STANDARD TERMS AND CONDITIONS – REQUIRMENTS CONTRACT  
WATER QUALITY ANALYSIS AND COURIER SERVICES  
TO THE CITY OF ALBANY, OREGON**

**ARTICLE I: SCOPE**

For consideration set forth in Article V of this Agreement, the firm of \_\_\_\_\_, hereinafter referred to as CONTRACTOR, agrees to provide Water Quality Analysis and Courier Services, as defined in this ITB and the CONTRACTOR’S Proposal and Cost Worksheet, to the City of Albany, Oregon, a municipal corporation, hereinafter referred to as CITY.

CONTRACTOR further agrees to provide Water Quality Analysis and Courier Services to the City of Albany for a contract term of three years, beginning August 1, 2018, with the option to renew for two additional, one-year terms. This Agreement incorporates all these Standard Terms and Conditions, the promises, representations, and obligations set forth in the following Order of Precedence: Contract Amendments, City Standard Terms and Conditions, Addenda and Clarifications, Invitation to Bid Contract Document, including Exhibits and Attachments, and Contractor’s Proposal and Cost Worksheet.

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

**ARTICLE II: RESPONSIBILITIES OF CONTRACTOR**

- A. Notice to Proceed. CONTRACTOR will not begin work on any of the duties and services listed in Article I until execution of the contract and receipt of a Notice to Proceed from City. Authorization to proceed on additional services not defined in Article I shall be in the form of an amendment as defined in Article IV.
- B. Scope of Services. CONTRACTOR will demonstrate the ability to meet or exceed all federal, State and local laws, codes and regulations. CONTRACTOR agrees to provide the goods and services listed within the ITB to the satisfaction of the City.
- C. Level of Competence. CONTRACTOR is employed to render goods and services and shall be responsible, to the level of competence presently maintained by other practicing providers in good standing and engaged in providing the same type of work products and services as furnished under this Agreement.
- D. Contractor Representative. \_\_\_\_\_ shall serve as the Lead Contractor for the Requirements Contract described under the terms of this Agreement.
- E. Documents Produced. CONTRACTOR agrees that all work products produced by CONTRACTOR in the fulfillment of its obligations under this Agreement, and all information, documents and material, gathered or compiled in meeting those obligations, shall be considered property of the CITY, and shall be provided to the CITY upon completion of this Agreement or termination of the Agreement pursuant to Article XI.

- F. State or Federal Requirements. CONTRACTOR covenants and agrees to comply with all of the obligations and conditions applicable to public contracts of this type pursuant to ORS Chapter 279 A, and B, as though each obligation or condition were fully set forth herein. In addition, CONTRACTOR covenants and agrees that in the performance of its duties hereunder, it will comply with all other state and federal requirements applicable to contracts of this type. If any provision of this Agreement shall be deemed to be not in compliance with any statute or role of law, such provision shall be deemed modified to ensure compliance with said statute or role of law.
- G. Oregon Workers' Compensation Law. CONTRACTOR, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.
- H. Record Retention and Review. The CONTRACTOR shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject during regular business hours of the CONTRACTOR to inspection, review, or audit by personnel duly authorized by the City upon reasonable advance written notice from the City to the CONTRACTOR. The CONTRACTOR will retain all records related to this Agreement for seven (7) years following the date of final payment or completion of any required audit, whichever is earlier, and make them available for inspection by persons authorized under this provision. The CONTRACTOR shall be responsible for any audit exceptions or disallowed costs incurred by the CONTRACTOR or any of its subcontractors.
- I. Oregon Identity Theft Protection Act. CONTRACTOR, and its subcontractors to comply with the Oregon Identity Theft Protection Act (OITPA), ORS Sections 646A.600 through 646A.628.
- J. Taxpayer Identification Number. CONTRACTOR agrees to complete a Request for Taxpayer Identification Number and Certification (W-9 Form) as a condition of the City's obligation to make payment. If the CONTRACTOR fails to complete and return the W-9 Form to the CITY, payment to CONTRACTOR may be delayed, or the CITY may, in its discretion, terminate the Contract.
- K. ACH Direct Payment Authorization. The City prefers to pay CONTRACTOR invoices via electronic funds transfers through the Automated Clearing House (ACH) network. To initiate this more timely, efficient, and secure payment method, CONTRACTORS must complete the City's ACH Vendor Direct Payment Authorization Form. The form is available on the City website at <https://www.cityofalbany.net/departments/finance/city-purchasing/purchasing>. Information provided on the form is exempt from public records disclosure under ORS 192.501(27).

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

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



## **ARTICLE IV: MODIFICATIONS**

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

## **ARTICLE V: COMPENSATION**

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

The CITY shall remit payment within thirty (30) days of receipt of a monthly billing from the CONTRACTOR. Such billing shall be only for services provided to that point. If payment is not made within 30 days, interest on the unpaid balance will accrue beginning on the 31st day at the rate of one percent (1%) per month or the maximum interest rate permitted by law, whichever is less.

Such interest is due and payable when the overdue payment is made, unless delay in payment is due to a contested billing. CITY has the right to appeal or ask for clarification on any CONTRACTOR billing within 30 days of receipt of billing. Until said appeal is resolved or clarification is accepted, no interest will accrue on that portion of the billing. In the event of a contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with this Article V.

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

## **ARTICLE VI: INDEMNIFICATION**

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

## **ARTICLE VII: INSURANCE**

Before the Agreement is executed and work begins, the CONTRACTOR shall furnish the CITY a Certificate of Insurance for the coverage and limits set out below which is to be in force and applicable to the project for the duration of the contract. The issuing insurance companies must have a minimum current A.M. Best rating of A- VII or approved by the CITY. The Certificate must state that any insurance coverage shown cannot be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days prior written notice has been given to the CITY.

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

Coverage shall be at least as broad as:

- 1. Commercial General Liability Insurance:** Insurance Services Office (ISO) form CG 0001 with an edition date of 10-2001 or later, providing Commercial General Liability – Occurrence Form. With CG 25 03 (Amendment Aggregate Limits of Insurance per Project) or equivalent attached.
- 2. Automobile Liability Insurance:** Insurance Services Office (ISO) form CA 0001, providing Business Automobile Coverage on owned, non-owned and hired vehicles.

- 3. Workers' Compensation Insurance:** Insurance as required by Oregon Revised Statutes and including Employers Liability Insurance.

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

CONTRACTOR shall maintain limits no less than:

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

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

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

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

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

## **D. Other Insurance Provisions**

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

1. Additional Insured Clause - The Commercial General Liability insurance coverage required for performance of this contract shall be endorsed to name City of Albany and its officers, agents and employees as Additional Insured on any insurance policies required herein with respect to CONTRACTOR'S or any subcontractor's activities being performed under the Agreement. The Certificate of Insurance must include a copy of the Additional Insured Endorsement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, employees, or agents.
3. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive by endorsement, all rights of subrogation against the City of Albany, its officers, employees, and agents for losses arising from work performed by the CONTRACTOR for the CITY.

## **ARTICLE VIII: ASSIGNMENT**

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

Use of subcontractors by the CONTRACTOR or subsidiary or affiliate Firms of the CONTRACTOR for technical or professional services shall not be considered an assignment of a portion of this Agreement, and

the CONTRACTOR shall remain fully responsible for the work performed, whether such performance is by the CONTRACTOR or subcontractors. No subcontractors shall be used without the written approval of the CITY.

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and CONTRACTOR.

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

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

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

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

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

CITY may terminate all or a portion of the work covered by this Agreement for its convenience. Either party may terminate work if the other party fails to substantially perform in accordance with the provisions of the Agreement. Termination of the Agreement is accomplished by written notice from the party initiating termination no less than one hundred and twenty (120) days in advance of the effective date of termination. Such notice of termination shall be delivered by certified mail with a receipt for delivery returned to the sender.

In the event of termination, CONTRACTOR shall perform such additional work as is necessary for the orderly filing of documents and closing of the project. The time spent on such additional work shall not exceed 10 percent (10%) of the time expended on the terminated portion of the project prior to the effective date of termination. CONTRACTOR shall be compensated for work actually performed prior to the date of termination plus work required for filing and closing as described in this Article. Upon termination, CONTRACTOR shall provide to the CITY all work products, material, documents, etc., gathered or compiled, related to the project, whether in CONTRACTOR'S possession at the time of termination or received later.

If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

#### **ARTICLE XII: FORCE MAJEURE**

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

### **ARTICLE XIII: DISPUTE COSTS**

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

### **ARTICLE XIV: CONFLICT AND SEVERABILITY**

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

### **ARTICLE XV: CONSTRUCTION**

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

### **ARTICLE XVI: NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

During the term of this Agreement, the CONTRACTOR agrees as follows:

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

### **ARTICLE XVII: COOPERATIVE PURCHASING**

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

**ARTICLE XVIII: COURT OF JURISDICTION**

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

**CONTRACTOR:**

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

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

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

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

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

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

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

\_\_\_\_\_  
Corp. Tax No.

**CITY OF ALBANY, OREGON:**

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney