

**“EXHIBIT C”  
(DRAFT) PROFESSIONAL SERVICE AGREEMENT**

**Engineering Design Services  
[Seismic Rehabilitation of Fire Station #1] or  
[Police Station]**

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the CITY OF SUTHERLIN, an Oregon municipal corporation, hereinafter called “CITY”, and \_\_\_\_\_ an independent Contractor hereinafter called “CONTRACTOR”.

**SECTION 1. CONTRACTOR AGREES:**

**1.1 Term.** Beginning on, \_\_\_\_\_ **2023** and continuing thereafter until terminated pursuant to Section 3.6 of this Contract, CONTRACTOR shall perform the services required by the Contract.

**1.2 Services.** CONTRACTOR shall

1. Include Architectural and Design Engineering Services for the [*Seismic Rehabilitation of Fire Station #1*] or [*Police Station*], perform a seismic evaluation of the buildings, per American Society of Civil Engineers (“ASCE”) Standard 41-17 “Seismic Evaluation of Existing Buildings”. Develop rehabilitation and mitigation strategies per ASCE Standard 41-17 and the 2022 Oregon Structural Specialty Code (“OSSC”). It is the wish of the City to rehabilitate the buildings to meet the rehabilitation objective of “Immediate Occupancy”.

Based on research and evaluation efforts performed during the Seismic Rehabilitation Grant (“SRG”) in preparation for the project, the structural improvements listed in the evaluation report should be considered for the existing structures.

The scope of work also includes: Develop all construction documents for the projects required for a CM/GC or hard bid construction delivery methods, assist the City in the selection process for a CM/GC firm if CM/GC is selected as the method of delivery. The selection process will include the preparation and administration of the “Facts and Findings Report” and the “RFP” for the proposed alternative contracting method as outlined in the OAR 137-049-0600, assist the City with the entitlement of the projects through the Authorities Having Jurisdiction and the State Historical Preservation Office, provide all construction administration services necessary for the implementation of the projects. Services include but are not limited to: Administering project logs, RFI administration, manages progress meetings, submittal review, change order review and verification of certified pay requests, assist City Staff with SRG reporting requirements for the project as required.

1. Contractor will provide Services as described in Exhibit C.1-Scope of Work. Contractor may also perform other services not set forth above “Extra Services” provided Contractor and City have agreed in writing to the scope of such Extra Services and the fee for such Extra Services.
2. Additional coordination meetings with city staff, construction contractor, regulatory agencies, and utility staff may be required.
3. Cost Estimating - Detailed cost estimates will be prepared for all of the planned improvements recommend within the final design. The estimate shall include but not be limited to detailed costs for construction, design, construction engineering, administration costs, and other project related items.

4. Meetings and Presentation - In order for a successful project it is imperative and expected that the consultant communicate effectively with staff and keep them informed. It is anticipated that meetings will be on an as-needed basis however the following meetings have been identified to capture certain milestones that will occur during final design:

A. 60 % Design Review - The main purpose of the meeting is to keep staff informed of the project approach and configuration. Topics for this meeting may include the following items:

- i. Updated plans for the various process areas.
- ii. Detailed discussion of controls.
- iii. Items that may have been changed or modified.
- iv. Revised cost estimate.

B. 90% Design Review - Development Progress Report: The main purpose of this meeting is to discuss the final project layout, controls and details. Topics for this meeting may include:

- i. Presentation of recommendations and layouts
- ii. Final plan review.
- iii. Final specification review.
- iv. Final cost estimate.

5. Make every effort to adhere to the proposed schedule provided through the RFP.

6. Shall submit the Final Report to City Council TBD.

NOTE: The execution of the design engineering objectives stated above will require considerable coordination and communication with City Staff. This coordination and communication will require that the proposer be prepared to commit the required personnel to attend various project team meetings with City Staff to successfully achieve the final design results. It is further anticipated that the proposer provide the required personnel to attend City Council Meetings and other Meetings as required or requested.

**1.3 Expenditures.** Extraordinary unbudgeted expenditures, from Contracted funds, outside the scope of the work program may not be made by CONTRACTOR without the prior written approval of CITY'S Manager. CONTRACTOR shall promptly pay all expenses it incurs as a result of this Contract and shall comply with all provisions of federal, state and local law applicable to this Contract.

**1.4 Insurance Requirements.** At all times during the term of this Contract, at the sole expense of the CONTRACTOR, CONTRACTOR shall maintain continuously in effect the insurance policies described herein. Each policy shall be written as a primary policy, not contributing with or in excess of any coverage the CITY may carry. A copy of each policy or a certificate, and copies of additional insured endorsements, satisfactory to the CITY shall be delivered to the CITY prior to commencement of any work or services provided under this Contract. The certificates shall specify and document all insurance related provisions within this Contract. A renewal certificate will be sent to the CITY at least ten (10) days prior to expiration of coverage. Unless specified, each policy shall be written on an "occurrence" form. Policies must be underwritten by an insurance company deemed acceptable to the CITY and admitted to do business in Oregon, or, in the alternative, rated A- or better by AM Best. The CITY reserves the right to reject any insurance carrier with an unacceptable financial rating. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice to the CITY. The 30-day notice of cancellation provision must be physically endorsed on the policy. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limits specified in this Contract, CITY shall have the right to

require CONTRACTOR to increase the CONTRACTOR'S coverage by an amount at least equal to the increase in the statutory limit for such claims and to increase the aggregate coverage by at least twice the amount of the increase in the statutory limit. Failure to maintain any insurance coverage required by this Contract shall be cause for immediate termination of the Contract by the CITY, but termination shall not relieve CONTRACTOR of its obligation to provide and maintain such coverage, and CITY shall be entitled to enforce all liability and indemnity provisions of this Contract following such termination. In addition, all requirements concerning insurance and indemnity shall survive the termination of this Contract. Unless waived or modified in writing by CITY, CONTRACTOR shall maintain the insurance coverages stated below:

**1.4.1 Commercial General Liability.** Throughout the term of this Contract, CONTRACTOR shall maintain continuously in a broad commercial general liability insurance policy with coverage of not less than \$3,000,000 combined single limit per occurrence, with an aggregate of \$3 million, for bodily injury, personal injury or property damage. The policy shall also contain an endorsement naming the CITY as an additional insured, on a form satisfactory to CITY, and expressly provide that the interest of the CITY shall not be affected by CONTRACTOR'S breach of policy provisions. Such policy must be maintained in full force and effect for the duration of this Contract, failure to do so shall be cause for immediate termination of this Contract by CITY. Any additional insured requirements included in this Contract shall both provide completed operations coverage after job completion and coverage that is primary and non-contributory. Claims Made policies will not be accepted.

**1.4.2 Automobile Liability Insurance.** At all times during the term of this Contract, and at the sole expense of CONTRACTOR, CONTRACTOR shall maintain "Symbol 1" automobile liability coverage including coverage for all owned, hired, non-owned vehicles, equivalent to a combined single limit per occurrence on not less than \$3,000,000 for bodily injury or property damage.

**1.4.3 Professional Liability Insurance.** At all times during the term of this Contract, CONTRACTOR shall maintain and keep in full force, an insurance policy for professional liability in the amount of \$2,000,000 per claim, incident, or occurrence. In no instance shall CITY be responsible for any retention amount or deductible that CONTRACTOR may owe as a result of this coverage, nor shall such retention or deductible exceed \$25,000. CONTRACTOR shall continue professional liability coverage for the duration of the project and three years thereafter; and further, submit Certificate of Insurance renewals of such coverage to the CITY.

**1.5 Indemnification.** CONTRACTOR shall defend, indemnify and hold harmless CITY, and each of CITY'S elected officials, officers, employees and agents from and against any and all claims, losses, suits, actions, damages, and costs (including reasonable attorney fees) for personal injury, death or property damage arising out of the intentional or negligent acts or omissions of CONTRACTOR, or any of its sub-contractors, suppliers, employees, or agents, in the performance of its services. Nothing in this paragraph shall require CONTRACTOR or its insurer to defend or indemnify CITY for claims of personal injury, death or property damage caused by the sole negligence of CITY. This duty shall survive the expiration or termination of this Contract.

**1.6 Books and Records.** CONTRACTOR shall keep complete and proper books, records and accounts of all transactions performed as part of this Contract and the approved invoices and work program. The books, records and accounts shall be open to inspection by the CITY or its designee during normal business hours, and shall remain open to the CITY for such inspection for three (3) years following the termination of this Contract.

**1.7 Availability.** CONTRACTOR shall be available for meetings, discussions and program review with CITY, as deemed necessary or beneficial by City, upon reasonable and sufficient notice.

**1.8 Assignment.** The responsibility for performing CONTRACTOR'S services under the terms of this Contract shall not be assigned, transferred, delegated or otherwise referred by

CONTRACTOR to any third person or other entity without the prior written consent of CITY.

**1.9 Compliance with Law and Standard Contract Provisions.** CONTRACTOR shall comply with all federal, state and local laws, including Sutherlin Municipal Code Regulations relating to business registration, and with all Standard CITY Contract Provisions which are stated in **Exhibit “A”** attached hereto and incorporated herein by reference.

**1.10 Health Hazard Notification.** If CONTRACTOR is hired to perform work for the CITY involving possible exposure to hazardous materials or entry into confined spaces, CONTRACTOR will be informed of the CITY’S programs and the associated hazards that CITY is aware of. The notification is not designed to take over the Contractor’s safety responsibilities to his or her employees, but to provide appropriate notification under the Oregon OSHA rules.

## **SECTION 2. CITY AGREES:**

**2.1 Fee.** In consideration of the above-described services, CITY agrees to pay CONTRACTOR an amount not to exceed \$\_\_\_\_\_ as outlined in proposal received from CONTRACTOR identified as **Exhibit “B,”** which is attached hereto and is incorporated herein by reference.

**2.2 Terms of Payment.** CONTRACTOR will tender an invoice to CITY by no later than the tenth (10<sup>th</sup>) day after services rendered, and CITY shall make full payment on such invoice within thirty (30) days of its receipt.

## **SECTION 3. BOTH PARTIES AGREE:**

**3.1 Budget and Work Plan Approval.** All approved invoices and work programs shall be in writing.

**3.2 Independent Contractor.** CONTRACTOR is an independent Contractor. CONTRACTOR shall control the manner in which it performs the services herein, however, the nature of the services and the results to be achieved shall be specified by CITY. CONTRACTOR is not to be deemed an employee or agent of CITY for any purpose, shall not be entitled to any CITY benefits and shall not have any authority to make any binding commitments on behalf of CITY except as may be expressly approved in advance and in writing by the CITY Manager.

**3.3 Dispute Resolution.** The parties agree to submit to mediation, prior to the commencement of any litigation or other form of dispute resolution process, any dispute that may arise between the parties regarding the terms of this Agreement, any Task Order made a part of this Agreement, any matters or issues arising out of or related to any work or service covered by this Agreement, any claimed breach of this Agreement or the termination of this Agreement. The parties agree to participate in good faith in the mediation process.

3.3.1 Condition Precedent. **Unless specifically waived in writing by both parties, the submission of a dispute to mediation and good faith participation in mediation shall be a condition precedent to the right of either party to commence litigation or any other form of dispute resolution.**

3.3.2 Commencing Mediation. **To commence mediation, the aggrieved party must deliver to the other party written notice of its intent to submit a dispute to mediation within thirty (30) days after the date the dispute first arose. “The date when the dispute first arose” is defined to mean when a party discovered, or, with reasonable diligence should have discovered, the facts or information on which the dispute is based.**

3.3.3 Mediator. **Any mediation will be conducted in Roseburg, Oregon, unless both parties agree otherwise. The mediation shall be conducted by one neutral mediator selected and agreed to by the parties or, if the parties fail to agree on a mediator within**

**fifteen (15) days of provision of the notice of intent to submit a dispute to mediation, a mediator will be appointed by the presiding judge of the Douglas County Oregon Circuit Court upon request of either party.**

**3.3.4 Conduct. The mediation will be conducted as promptly as possible but in no event later than ninety (90) calendar days from the date of the written notice of intent to submit a dispute to mediation. No discovery will be allowed by or against either party prior to mediation. Each party shall share equally the mediator's fees and other administrative costs of the mediation process. The parties shall bear their own respective attorney fees and all other costs.**

**3.3.5 Litigation. If mediation is not successful in resolving a dispute, the parties may mutually agree to a dispute resolution of their choice or either party may commence litigation in a court of competent jurisdiction.**

**3.4 Attorney Fees.** If any arbitration, administrative proceeding, judicial action, or appeal thereon, is instituted in connection with any controversy arising out of this Contract, the performance of this Contract or any failure to perform this Contract, the prevailing party shall be entitled to recover, in addition to costs and disbursements, such sum as the court or arbitrator may adjudge as reasonable attorney fees.

**3.5 Ownership and use of Documents.** In whatever form they may be produced or stored, any documents prepared in performance of this Contract and any supporting and investigative information that is gathered in the performance of this Contract, upon completion of the work, or upon termination of this Contract, shall be and remain the property of the CITY and shall be subject to copyright by the CITY at its sole discretion. CONTRACTOR shall be permitted to retain copies, including reproducible copies, of such documents. CONTRACTOR shall treat such documents as if CITY had secured a copyright thereon, and will not use the documents in a manner that would constitute copyright infringement. CITY may use the documents prepared hereunder for any purpose, however CONTRACTOR shall have no liability with regard to the City's use of such documents to the extent they are used or applied outside of the scope of CONTRACTOR's work under this Contract unless CONTRACTOR is consulted and offers a professional opinion that the contemplated use is appropriate.

**3.6 Termination.** This Contract may be terminated as follows:

**3.6.1.** CITY and CONTRACTOR, by mutual written agreement, may terminate this Contract at any time.

**3.6.2.** CITY, in its sole discretion, may terminate this Contract for any reason on thirty (30) days written notice to CONTRACTOR. Written notice shall be effective upon the date the written notice is provided in accordance with Section 3.7 of this Contract.

**3.6.3.** Either CITY or CONTRACTOR may terminate this Contract in the event of a breach of the Contract by the other party. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach as provided in Section 3.7 of this Contract and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving written notice of termination to the other party.

**3.6.4.** Notwithstanding paragraph 3.6.3, CITY may terminate this Contract immediately by written notice, as provided by Section 3.7, to CONTRACTOR upon denial, suspension, revocation or non-renewal of any license, permit or certificate that CONTRACTOR must hold to provide services under this Contract.

**3.7 Notices.** Any notice permitted or required to be given under this Contract, or required by law, shall be in writing and delivered to the parties by either hand delivery or certified mail, return receipt requested, at the following addresses:

CITY OF SUTHERLIN

*[Seismic Rehabilitation of Fire Station #1] or*

CITY Manager

*[Police Station]*

126 E Central

\_\_\_\_\_

Sutherlin, OR 97479

\_\_\_\_\_

**3.8 Applicable Laws.** The laws of the State of Oregon shall be used in construing this Contract and enforcing the rights and remedies of the parties.

**3.9 Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties and to each of their respective heirs, administrators, successors and assigns.

**3.10 Complete Agreement.** This Contract constitutes the entire agreement between CITY and CONTRACTOR concerning the subject matter of this Contract and supersedes any and all prior negotiations, agreements and understandings between the parties, whether in writing or oral, that is not expressly set forth in this Contract. No amendments or modifications to this Contract may be made unless in writing and signed by both parties.

CITY OF SUTHERLIN

*[Seismic Rehabilitation of Fire Station #1] or  
[Police Station]*

\_\_\_\_\_  
Jerry Gillham, CITY Manager

\_\_\_\_\_  
Contractor

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

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

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

Melanie Masterfield, CITY Recorder

## EXHIBIT C.1

### CITY OF SUTHERLIN - STANDARD CONTRACT PROVISIONS

#### Contracts Subject to ORS Chapter 279C

#### Services of Architects, Engineers, Land Surveyors and Related

#### Consultants on Public Improvements

#### Construction Services

#### Labor and Services for Public Improvements and

#### Public Works Subject to ORS 279C.800 to 279C.870

The following provisions, if applicable, are hereby included in and made a part of the attached Contract between the CITY of Sutherlin ("CITY") and the Contractor named thereon as provided for in the Sutherlin Municipal Code, the revised statutes of the State of Oregon, and Federal laws, rules, regulations, and guidelines. THE CONTRACTOR AND EVERY SUBCONTRACTOR SHALL INCLUDE THESE PROVISIONS IN EVERY SUBCONTRACT SO THAT THESE PROVISIONS WILL APPLY TO, AND BE BINDING ON EVERY SUBCONTRACTOR. Failure to comply with any of the applicable provisions below shall be a material breach of the Contract and may result in debarment of the Contractor or sub-Contractor from CITY Contracts for up to three (3) years.

#### 1. Discrimination in sub-Contracting prohibited; remedies. (ORS 279A.110)

- 1.1. The Contractor may not discriminate against a sub-Contractor in the awarding of a sub-Contract because the sub-Contractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
- 1.2. By entering into the Contract, the Contractor certifies that it has not discriminated and will not discriminate, in violation of subsection 1.1, against any minority, women or emerging small business enterprise in obtaining any required sub-Contract.
- 1.3. If the Contractor violates the nondiscrimination certification made under subsection 1.2, the CITY may regard the violation as a breach of Contract that permits the CITY to terminate the Contract or exercise any remedies for breach permitted under the Contract.

#### 2. CITY'S right to audit records. (OAR 137-049-0880)

- 2.1. **Cost or pricing data.** The CITY may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data in connection with the Contract to the extent that such books and records relate to such cost or pricing data. If the Contract requires submission of cost or pricing data, any person who has submitted cost or pricing data shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the Contract, unless a shorter period is authorized by the CITY in writing.
- 2.2. **Contract audit.** The CITY shall be entitled to audit the books and records of the Contractor or any sub-Contractor to the extent that the books and records relate to the performance of the Contract. Contractor and each sub-Contractor are required to maintain books and records for a period of three years from the date of final payment under the Contract or sub-Contract, as applicable, unless a shorter period is authorized by the CITY in writing.

#### 3. Termination in the public interest. (ORS 279C.665)

The CITY may terminate the Contract when required by the public interest including, at minimum, for the following:

- (a) If the Contractor is prevented from completing the work for reasons beyond the control of the CITY;
- (b) If completion of the project is beyond control of the Contractor; or
- (c) For any reason considered by the CITY manager to be in the public interest. These reasons may include, but are not necessarily limited to, non-availability of materials, lack of funds, phenomenon of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional or state acts related to funding or changes in applicable laws.

When the Contract, or any portion thereof, is terminated before completion of all items of work in the Contract, payment will be made for the actual items of work completed under the Contract, or by mutual agreement, for items of work partially completed. No claim for loss of anticipated profits will be allowed.

#### **4. Nonresident Contractors. (ORS 279A.120)**

- 4.1. As used in this section, "nonresident Contractor" means a Contractor that: (A) has not paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of the bid for the Contract, (B) does not have a business address in this state and (C) stated in the bid for the Contract that it was not a "resident bidder" under ORS 279A.120.
- 4.2. If the Contractor is a nonresident Contractor and the Contract price exceeds Ten Thousand Dollars (\$10,000), the Contractor shall promptly report to the Department of Revenue on forms to be provided by the Department of Revenue the total Contract price, terms of payment, length of Contract and such other information as the Department of Revenue may require before the Contractor may receive final payment on the Contract. The CITY may not award a Contract to a nonresident bidder that is an educational service district. The CITY shall satisfy itself that the requirement of this subsection has been complied with before the CITY issues a final payment on the Contract.

#### **5. Conditions concerning payment, contributions, liens, withholding; drug testing. (ORS 279C.505)**

- 5.1. **Prompt payment.** The Contractor shall:
  - (a) Make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the Contract.
  - (b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or sub-Contractor incurred in the performance of the Contract.
  - (c) Not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished.
  - (d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

#### **6. Demolition Contracts to require material salvage; lawn and landscape maintenance Contracts to require composting or mulching. (ORS 279C.510)**

- 6.1. If the Contract includes demolition, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.
- 6.2. If the Contract includes services for lawn and landscape maintenance the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

**7. Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials, and complaints. (ORS 279C.515)**

- 7.1. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a sub-Contractor by any person in connection with the Contract as the claim becomes due, the CITY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.
- 7.2. If the Contractor or a first-tier sub-Contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract within thirty (30) days after receipt of payment from the CITY or the Contractor, the Contractor or first-tier sub-Contractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier sub-Contractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from the CITY or from the Contractor, but the rate of interest may not exceed thirty percent (30%). The amount of interest may not be waived.
- 7.3. If the Contractor or a sub-Contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 7.4. The payment of a claim in the manner authorized in this section does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

**8. Condition concerning payment for medical care and providing workers' compensation. (ORS 279C.530)**

- 8.1. The Contractor and all sub-Contractors shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor or sub-Contractor, as applicable, of all sums that the Contractor or sub-Contractor, as applicable, agrees to pay for the services and all moneys and sums that the Contractor or sub-Contractor, as applicable, collected or deducted from the wages of employees under any law, Contract or agreement for the purpose of providing or paying for the services.
- 8.2. All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

**9. Conditions concerning hours and maximum hours of labor on public Contracts; holidays; exceptions; liability to workers; rules. (ORS 279C.520; 279C.540)**

- 9.1. A person may not be employed for more, or required or permitted to labor more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, except in cases of Contracts for architect, engineering, land surveying or related consultant services, the person so employed for excessive hours shall receive at least time and a half pay:
  - (a) For all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or  
For all overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday;

and

(b) For all work performed on Saturday and on the following legal holidays:

(A) Each Sunday.

(B) New Year's Day on January 1.

(C) Memorial Day on the last Monday in May.

(D) Independence Day on July 4.

(E) Labor Day on the first Monday in September.

(F) Thanksgiving Day on the fourth Thursday in November.

(G) Christmas Day on December 25.

9.2. An employer shall give notice in writing to employees who perform work under subsection 9.1, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

9.3. For the purpose of this section, each time a legal holiday listed in subsection 9.1, other than Sunday, falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a legal holiday listed in subsection 9.1 falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

9.4. Subsections 9.1 and 9.2 of this section do not apply to labor on the Contract or to construction services if the Contractor is a party to a collective bargaining agreement in effect with any labor organization.

9.5. When specifically agreed to under a written labor-management negotiated labor agreement, an employee may be paid at least time and a half pay for work performed on any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection 9.1.

9.6. This section does not apply to Contracts for architect, engineering, land surveying or related consultant services, provided that persons employed under such Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection 9.1(b)(B) to (G) of this section and for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201-209 from receiving overtime.

9.7. (a) Subsections 9.1 and 9.2 of this section do not apply to Contracts for construction services other than in construction of a Public Improvement or a Public Works. However, persons employed under such Contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in subsection 10.1(b) (B) to (G) of this section and for all time worked in excess of ten (10) hours in any one day or in excess of forty (40) hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a Contract for services, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

9.8. Any Contractor or sub-Contractor or Contractor's or sub-Contractor's surety that violates the provisions of this section is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation results from willful falsification of payroll records, the

Contractor or sub-Contractor or the Contractor's or sub-Contractor's surety is liable to the affected employees in the amount of their unpaid overtime wages and an additional amount equal to twice the unpaid overtime wages as liquidated damages.

9.9. This section does not apply to financial institutions as defined in ORS 706.008.

#### **10. Contractor's relations with sub-Contractors. (ORS 279C.580)**

10.1. **Payment to sub-Contractors.** The Contractor shall include in every sub-Contract entered into by the Contractor and a first-tier sub-Contractor, including a material supplier, for the purpose of performing the Contract:

A payment clause that obligates the Contractor to pay the first-tier sub-Contractor for satisfactory performance under its sub-Contract within ten (10) days out of such amounts as are paid to the Contractor by CITY under such Contract; and

(a) An interest penalty clause that obligates the Contractor, if payment is not made within thirty (30) days after receipt of payment from CITY, to pay the first-tier sub-Contractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the sub-Contract. The Contractor or first-tier sub-Contractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier sub-Contractor did not make payment when payment was due is that the Contractor or first-tier sub-Contractor did not receive payment from CITY or the Contractor when payment was due. The interest penalty shall be:

A. For the period beginning on the day after the required payment date and ending on which payment of the amount due is made; and

B. Computed at the rate specified in ORS 279C.515 (2).

10.2. The Contractor shall include in each of its sub-Contracts, for the purpose of performance of such Contract condition, a provision requiring the first-tier sub-Contractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subsection 11.1 and requiring each of its sub-Contractors to include such clauses in their sub-Contracts with each lower-tier sub-Contractor or supplier.

10.3. None of the provisions in this section are intended to prevent the Contractor or any sub-Contractor from including in its Contracts the provisions described in ORS 279C.580 (5).

10.4. **Contractor may not request payment of sums withheld from sub-Contractors.** The Contractor may not request payment from CITY of any amount withheld or retained from a sub-Contract by the Contractor in accordance with ORS 279C.580(5) until such time as the Contractor has determined and certified to CITY that the sub-Contractor has determined and certified to the Contractor that the sub-Contractor is entitled to the payment of such amount.

10.5. **CITY not party to disputes.** A dispute between the Contractor and first-tier sub-Contractor relating to the amount or entitlement of a first-tier sub-Contractor to a payment or a late payment interest penalty under a clause included in the sub-Contract under subsection ORS 279.580 does not constitute a dispute to which CITY is a party. CITY may not be included as a party in any administrative or judicial proceeding involving such a dispute.

**11. Compliance with Tax Certification; Compliance with Laws.** Contractor certifies under penalty of perjury, that to the best of its knowledge, it is not in violation of any tax laws described in ORS 305.380(4). Contractor shall comply with all federal, state and local laws, rules, ordinances and regulations at all times and in the performance of the services describe in this Contract.