

EXHIBIT A

CITY OF EUGENE - 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 for a public work between the City of Eugene and the Contractor named thereon as provided for in the Eugene Code, 1971, the Eugene Public Contracting Rules, 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 subcontractor from City contracts for up to three (3) years.

1. Fair Employment Practice Provisions (Eugene Code, 1971, Section 4.625 and Eugene Public Contracting Rule 137-046-0500(1))

1.1 Non-Discrimination Requirements. During the performance of this contract, the Contractor and each subcontractor agrees to comply with sections 4.613 to 4.655 of the Eugene Code, 1971, and as follows:

(a) The Contractor and each subcontractor will not discriminate against any employee or applicant for employment because of an individual's race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation or source of income, a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, or because an individual is a person with a disability which, with reasonable accommodation by the employer does not prevent the performance of the work involved, unless based upon a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.

(b) The Contractor and all subcontractors employing 15 or more individuals will develop and implement an affirmative action plan to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, age or national origin. Such plan shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(c) The Contractor and each subcontractor will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Human Rights Commission setting forth the provisions of this nondiscrimination clause.

1.2 Reporting. The Contractor and each subcontractor will, prior to commencement and during the term of the contract, provide to the City such documentation, and permit any inspection of records as may be required or authorized by rules adopted by the city manager to determine compliance with subsection 1.1 above.

1.3 Violations. If upon an investigation conducted pursuant to rules adopted by the city manager in accordance with section 2.019 of the Eugene Code, 1971 there is reasonable cause to believe that the Contractor or any subcontractors of the Contractor have failed to comply with any of the terms of subsections 1.1 or 1.2, a determination thereof shall be made by the city manager. Such determination may result in the suspension, cancellation or termination of the principal contract in whole or in part and/or the withholding of any funds due or to become due to the Contractor, pending compliance by the Contractor and/or its subcontractors, with the terms of subsections 1.1 and 1.2. Such determination may further result in debarment of the Contractor in accordance with the adopted rules.

1.4 Failure to Comply. Failure to comply with any terms of subsections 1.1 and 1.2 above shall be a material breach of the contract.

1.5 Inclusion of Fair Employment Practices Provisions in Contracts with Subcontractors. The contractor shall include the provisions of subsections 1.1 through 1.4 above in contracts with subcontractors so that the provisions will be binding upon each subcontractor.

1.6 Contractor Defined. As used in this section 1, "contractor" means all persons, wherever situated, but excluding local, state or federal units of government or their officials, from whom the City purchases Goods and/or Services costing \$2,500 or more in any fiscal year.

2. ORS 279C.505 Conditions concerning payment, contributions, liens, withholding; drug testing.

2.1. **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 subcontractor 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.

2.2. **279C.505 Drug Testing.** For all public improvement contracts:

(a) The Contractor shall demonstrate that an employee drug testing program is in place at the time of submitting its bid, and that such program will be maintained throughout the contract period, including any extensions. The failure of Contractor to have, or to maintain such a drug testing program is grounds for rejection of a bid or immediate termination of this contract.

(b) The City of Eugene shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights or any employee, including but not limited to, selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, failure to establish or implement a drug testing policy, or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing work covered by this contract. These are Contractor's sole responsibilities and nothing in this provision is intended to create any third party beneficiary rights against the City.

3. **ORS 279C.510 Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.**

3.1. If this public improvement contract includes demolition, the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

3.2. If this public improvement contract includes services for lawn and landscape maintenance the contractor shall compost or mulch yard waste material at an approved site.

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

4.1. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with this 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.

4.2. If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract within 30 days after receipt of payment from the City or the Contractor, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier subcontractor on the amount due shall be nine percent per annum. The amount of interest may not be waived.

4.3. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement 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.

4.4. 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.

5. **ORS 279C.830 Public Works Bond**

5.1 A contractor or subcontractor, unless exempt under ORS 279C.800 to 279C.870, shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor under Public Works projects. Before permitting a subcontractor to start work on a Public Works project, the contractor shall verify the subcontractor has also filed a public works bond with the Construction Contractors Board.

5.2 Before starting work on a contract for a Public Works project, the contractor shall provide the City with a written statement certifying contractor and any subcontractor have filed a public works bond as required above.

6. **ORS 279A.120 Nonresident Contractors.**

- 6.1. 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 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.
- 6.2. If the Contractor is a nonresident contractor and the contract price exceeds \$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 public contract. The City may not award a Public Improvement contract or a Public Works 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 a public contract.
- 7. ORS 279C.530 and Eugene Rule 137-046-0500(3) Condition concerning payment for medical care and providing workers' compensation.**
- 7.1. Medical Care. The Contractor and all subcontractors 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 subcontractor, as applicable, of all sums that the Contractor or subcontractor, as applicable, agrees to pay for the services and all moneys and sums that the Contractor or subcontractor, 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.
- 7.2. Workers Compensation. 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.
- 8. ORS 279.520 Conditions Concerning Hours and ORS 279C.540 Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules.**
- 8.1. A person may not be employed for more, or required or permitted to labor more than 10 hours in any one day, or 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) (A) For all overtime in excess of eight (8) hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four 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.
- 8.2. An employer shall give notice in writing to employees who perform work under subsection 8.1, 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.
- 8.3. For the purpose of this section, each time a legal holiday listed in subsection 8.1, other than Sunday, falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a legal holiday listed in subsection 8.1 falls on Saturday, the preceding Friday shall be recognized as a legal holiday.
- 8.4. Subsections 8.1 and 8.2 of this section do not apply to labor on a public improvement contract or to construction services if the contractor is a party to a collective bargaining agreement in effect with any labor organization.
- 8.5. 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 8.1.
- 8.6. 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 8.1(b)(B) to (G) of this section and for all overtime worked in excess of 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 U.S.C. 201 to 209 from receiving overtime.

8.7. (a) Subsections 8.1 and 8.2 of this section do not apply to contracts for construction services other than in construction of a public improvement. 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 8.1(b)(B) to (G) of this section and for all time worked in excess of 10 hours in any one day or in excess of 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.

8.8. Any contractor or subcontractor or contractor's or subcontractor'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 subcontractor or contractor's or subcontractor'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.

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

9. ORS 279C.800 to 279C.870 Prevailing Rate of Wage.

9.1. The specifications for the contract contain a provision stating the existing prevailing rate of wage that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the Contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. Workers shall be paid not less than the specified minimum hourly rate of wage.

9.2. For Public Works projects subject to ORS 279C.800 to 279C.870 and the Davis-Bacon Act (40 U.S.C. 276a): (1) If the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay at least the state prevailing rate of wage as required by ORS 279C.800 to 279C.870; and (2) If the federal prevailing rate of wage is higher than the state prevailing rate of wage, the contractor and every subcontractor on the project shall pay at least the federal prevailing rate of wage as required by the Davis-Bacon Act.

9.3. The City shall retain 25 percent of any amount earned by the contractor on the Public Works project until the contractor has filed certified statements of wage rates and payment on a form prescribed by the Commissioner of the Bureau of Labor and Industries. The City shall pay the contractor the amount retained within 14 days after contractor files the certified statements. The contractor shall retain 25 percent of any amount earned by a first-tier subcontractor on a Public Works project until the first-tier subcontractor has filed the certified statements. The contractor shall verify the first-tier subcontractor has filed the certified statements before the contractor pays the subcontractor the amount retained, which shall be within 14 days after the first-tier subcontractor files the certified statements.

10. ORS 279A.110. Discrimination in subcontracting prohibited; remedies.

10.1. The Contractor may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

10.2. By entering into the contract, the Contractor certifies that it has not discriminated and will not discriminate, in violation of subsection 10.1, against any minority, women or emerging small business enterprise in obtaining any required subcontract.

11. ORS 279B.240 Exclusion of recycled oils prohibited. Lubricating oil and industrial oil may include recycled oils or oils that are not manufactured from virgin materials.

12. Eugene Rule 137-046-0500(5) Right to Audit Records.

12.1 Cost or Pricing Data. The Purchasing Agent may, at reasonable times and places, audit the books and records of any Person who has submitted cost or pricing data in connection with a contract to the extent that such books and records relate to such cost or pricing data. Any Person who receives a contract for which cost or pricing data are required, shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is authorized by the Purchasing Agent in writing.

12.2 Contract Audit. The Purchasing Agent shall be entitled to audit the books and records of the contractor or any subcontractor to the extent that the books and records relate to the performance of the contract. The contractor and each subcontractor shall maintain books and records for a period of three (3) years from the date of final payment under the contract or subcontract, as applicable, unless a shorter period is authorized by the Purchasing Agent in writing.

13. Eugene Rule 137-046-0500(6) Right to Inspect Plant.

13.1 Time for Inspection. The Purchasing Agent may, at reasonable times, inspect the part of the plant or place of business of the contractor or any subcontractor that is related to the performance of any contract awarded.

- 13.2 Contractual Provisions. The City may inspect supplies and Services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to the contract requirements.
- 13.3 Procedures for Trial Use and Testing. The Purchasing Agent may establish operational procedures governing the testing and trial use of equipment, materials, and the application of resulting information and data to Specifications or Procurement.
- 13.4 Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.
- 13.5 Time of Testing or Inspection. Inspection or testing of supplies and Services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times during normal business hours.
- 13.6 Inspection of Construction Projects. Onsite inspection of construction shall be performed in accordance with the provisions of the contract.

14. Eugene Rule 137-046-0500(7) Termination in the Public Interest.

- 14.1 Termination Provisions. The City may terminate the contract for any reason considered by the City to be in the public interest. Reasons for termination in the public interest include but are not limited to:
- (a) The contractor cannot complete the work for reasons beyond the control of either the contractor or the City;
 - (b) Necessary materials are not available;
 - (c) A lack of funds;
 - (d) A phenomenon of nature of catastrophic proportions or intensity;
 - (e) Executive orders of the President related to national defense;
 - (f) Congressional or state acts related to funding or changes in applicable laws; or
 - (g) The presence of other circumstances or conditions such that it is impracticable within a reasonable time to complete the work.
- 14.2 Payment When Contract Is Terminated. 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.
- 14.3 Payment for Construction Services. The City may provide in a contract for construction services, detailed provisions under which the contractor shall be entitled, as a matter of right, to compensation upon termination of the contract on account of any reason considered to be in the public interest.

15. Eugene Rule 137-046-0500(8) Governing Law; Jurisdiction

- 15.1 Governing Law. This contract shall be governed, construed, and enforced in accordance with the laws of the state of Oregon, unless otherwise approved by the City Attorney or designee.
- 15.2 Jurisdiction. Contractor agrees and consents to the exclusive jurisdiction of the courts of the state of Oregon for all purposes regarding the contract and further agrees and consents that venue of any action brought under the contract shall be exclusively in Lane County, Oregon, unless otherwise approved by the City Attorney or designee.

16. Eugene Rule 137-046-0500(9) Compliance with Tax Laws Contractor certifies its compliance with all applicable state and local tax laws, including but not limited to ORS 305.385, ORS 305.620, ORS chapters 316, 317 and 318 and Chapter 539 Oregon Laws 2015 (SB 675). Contractor certifies it will continue to comply with all such tax laws during the term of this contract. Contractor's failure to comply with such state and local tax laws prior to executing this contract or during the term of this contract constitutes a default for which City may terminate this contract and seek damages and other relief available under the terms of this contract or applicable law.