

**GENERAL:**

This Contract made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Sundown Sanitary Sewer District, hereinafter called "District", and \_\_\_\_\_, hereinafter called "Contractor", duly authorized to do business in Oregon.

**WITNESSETH:**

That the said Contractor and the said District, for consideration hereinafter named agree as follows:

**DESCRIPTION OF WORK:**

The Contractor agrees to perform the work of making certain repairs to the existing sanitary sewerlines, including inserting HDPE pipe inside existing sections of sewerline, and replacing manholes, as more specifically described within the Supplemental Conditions.

**COMPLETION OF CONTRACT:**

The Contractor agrees that the work under this contract shall be performed and completed by the specified deadline of February 28, 2014. If conditions beyond the control of the Contractor prevent completion of the project within the time set, Contractor may request a reasonable extension of time in accordance with APWA General Requirements.

**CONTRACT PRICE:**

The contract price for this project is \$\_\_\_\_\_. Payment will be made in accordance with ORS 279C.560 including progress payments at the end of each month. Retainage will be withheld in accordance with ORS 279C.550 - .565.

**CONTRACT DOCUMENTS:**

The Contractor and the District agree that the plans, specifications (including the APWA Oregon Chapter 1990 Standard Specifications for Public Works Construction with 1996 revisions), General Conditions, Supplementary Provisions, Construction Bid, special provisions to the engineering specifications, all modifications thereto, shall be incorporated into this contract and are fully a part of this contract.

**CHANGES IN WORK:**

With the consent of the Contractor and the Contractor's surety, the District may change the plans, specification, character of the work, or quantity of work, provided the total value of all such changes, both additive and deductive, does not exceed the following:

A. An increase or decrease of more than 25 percent of the total cost of the work calculated from the original proposal quantities and the unit contract prices; or,

B. An increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition B) above, a major item is defined as any item that amounts to 10 percent or more of the total contract price. If it is necessary to exceed this limitation, the change shall be by written supplemental agreement between the Contractor and District.

Any change shall be in writing and state the dollar value, method of payment, and any adjustments in contract time, and shall provide for the signatures of the Contractor and District.

Changes in plans and specifications, requested in writing by the Contractor, which do not materially affect the work, may be granted by the District. Payment will be made in accordance with this contract.

**COMPLIANCE:**

The Contractor specifically agrees to comply with all laws, ordinances, and regulations applicable to municipal contracts and to make prompt payment of all amounts that may be due from said Contractor in the way of taxes or lawful deductions and to make prompt payment of all labor and materials, and save the District harmless from any damages or claims whatsoever in the performance of this contract.

The Contractor further agrees to comply with all laws, ordinances, rules, orders and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities.

Contractor agrees to take every precaution against injuries to persons or damage to property.

The Contractor agrees that the work will be done to the satisfaction and approval of the District.

Contractor agrees to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of their work or the work of any other employees or persons.

Contractor agrees to hold the District free and harmless from all liability to persons and property for failure to leave the premises in a safe condition and to make payment to all persons employed by them in such project.

**ADDITIONAL CONTRACTOR RESPONSIBILITIES:**

Contractor is responsible for obtaining and paying for all necessary permits.

Contractor shall verify existing conditions and locations of all utilities and shall notify the District of any discrepancies that may affect the work.

Contractor is responsible for contacting the utilities to have the lines relocated or repaired as necessary.

**CONTRACTOR IS AN INDEPENDENT CONTRACTOR:**

A. Contractor's services shall be provided under the general supervision of District, but Contractor shall be an independent Contractor for all purposes and shall be entitled to no compensation other than the compensation provided within this Contract,

B. Contractor acknowledges that for all purposes related to this contract, Contractor is and shall be deemed to be an independent Contractor and not an employee of the District, shall not be entitled to benefits of any kind to which an employee of the District is entitled and shall be solely responsible for all payments and taxes required by law.

**SUBCONTRACTS – RELATIONS WITH SUBCONTRACTOR, ASSIGNMENTS AND DELEGATION:**

A. Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by District of neither any subcontractor nor anything contained herein shall be deemed to create any contractual relation between subcontractor and District.

B. Contractor certifies that all subcontractors performing work described in ORS 701.005(3) or ORS 671.520(1) will be registered with the Construction Contractors Board or by the State Landscape Contractors Board before the subcontractors commence work under this contract.

C. Assignment or Transfer Restricted. The Contractor shall not assign, sell, dispose of, or transfer rights nor delegate duties under the contract, either in whole or in part, without the District's prior written consent. Unless otherwise agreed by the District in writing, such consent shall not relieve the Contractor of any obligations under the contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the contract. If the District consents in writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of the Contractor's duties, the Contractor and its surety, if any, shall remain liable to the District for complete performance of the contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the District otherwise agrees in writing.

D. Contractor certifies that Contractor has not discriminated and will not discriminate against minority, women or small business enterprises in obtaining any required subcontracts.

**EARLY TERMINATION:**

A. This contract may be terminated without cause by mutual written consent of the parties. In addition, the parties may agree to terminate the contract.

1. If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or

2. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.

B. Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section, the District shall pay the Contractor a reasonable amount of compensation for preparatory work completed and for costs and expenses arising out of termination. The District shall also pay for all work completed, based on the contract price. Unless the work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of contract completed. No claim for loss anticipated profits will be allowed.

C. Responsibility for Completed Work. Termination of the contract or a divisible portion thereof pursuant to this section shall not relieve either the Contractor or its surety of liability for claims arising out of the work performed.

D. Termination under any provision of this paragraph shall not affect any right, obligation or liability of Contractor or District which accrued prior to such termination.

E. If work is suspended under circumstances described in A (1) but the contract is not terminated, the Contractor is entitled to a reasonable extension of time to complete the contract, and reasonable compensation for all costs resulting from the suspension plus reasonable allowance for overhead with respect to such costs.

**CANCELLATION FOR CAUSE:**

District may cancel all or any part of this Contract if Contractor breaches any of the terms herein or in the event of any of the following: Insolvency of Contractor; voluntary or involuntary petition in bankruptcy by or against Contractor; appointment of a receiver or trustee for Contractor, or any assignment for benefit of creditors of Contractor. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney's fees, and other costs of litigation at trial and upon appeal.

Contractor may likewise cancel all or any part of this contract if District breaches any of the terms herein and be therefore entitled to equivalent damages as expressed above for District.

**NONWAIVER:**

The failure of the District to insist upon or enforce strict performance by Contractor of any of the terms of this Contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

**REMEDIES:**

Consequences for Contractor's failure to perform the scope of work identified or the Contractor's failure to meet established performance standards may include, but are not limited to:

(A) Reducing or withholding payment;

(B) Requiring the Contractor to perform, at the Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or

(C) Declaring a default, terminating the public contract, and seeking damages and other relief available under the terms of the public contract or other applicable law.

**SUIT OR ACTION:**

In the event suit or action is instituted to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover from the other party such sum as the Court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

**CONFLICT BETWEEN TERMS:**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid of the Contractor, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

**INDEMNIFICATION:**

With regard to Comprehensive General Liability, Contractor agrees to indemnify and hold harmless the District, its officers, employees, and agents against and from any and all loss, claims, actions, suits, Including costs and attorney fees and expenses for or on account of injury, bodily or otherwise to, or death of persons, damage to or destruction of property belonging to District, Contractor, or others, resulting from or arising out of Contractor's negligence.

**WORKERS' COMPENSATION:**

The Contractor, subcontractors, if any, and all employers working under this Contract, in the State of Oregon, shall comply with ORS 656.017, and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. (ORS 279C.530 (2)).

**PAYMENT OF CLAIMS BY PUBLIC OFFICERS; PAYMENT TO PERSONS FURNISHING LABOR AND MATERIALS; AND COMPLAINTS:**

A. 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 the public contract as such claim becomes due, the District 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 such contract.

B. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this public contract within 30 days after receipt of payment from the District, the Contractor, or subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 30-day period that payment is due under ORS 279C.580 and ending upon final payment, unless payment is subject to a good faith dispute as defined in 279C.580. The interest penalty shall be as provided in ORS 279C.580.

C. If the Contractor or a subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

D. The payment of a claim in the manner here authorized shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

E. Contractor shall not permit any lien or claim to be filed against the District on account of any labor or material furnished.

F. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**HOURS OF LABOR:**

No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, the employee shall be paid at least time and a half pay:

A. For all overtime in excess of eight 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 five consecutive days, Monday through Friday; and

C. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

D. Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees of the number of hours per day and days per week that the employees may be required to work.

E. Contractor will comply with the requirements of ORS 279.C545 regarding time limitation or claim for overtime, posting of circular.

**INSURANCE:**

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Prior to starting work hereunder, Contractor, at Contractor's cost, shall secure and continue to carry during the term of this contract, with an insurance company acceptable to District, the following insurance:

**A. Commercial General Liability.** Contractor shall obtain, at Contractor's expense and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and the annual aggregate of not less than \$2,000,000. Coverage shall include Contractors, subcontractors and anyone directly or indirectly employed by either. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limited will not be less than \$2,000,000.

**B. Automobile Liability.** Contractor shall obtain, at Contractor's expense and keep in effect during the term of the resulting Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.

**C. Additional Insured.** The liability insurance coverage shall include District and its officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. Prior to starting work under this Contract, Contractor shall furnish a certificate to District from each insurance company providing insurance showing that the District is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

**D. Notice of Cancellation or Change.** There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor or its insurer(s) to District. Any failure to comply with the reporting provisions of this clause will constitute a material breach of this Contract and will be grounds for immediate termination of this Agreement.

**CERTIFICATION OF COMPLIANCE WITH TAX LAWS:**

As required by ORS 305.385(6), Contractor certifies under penalty of perjury that the Contractor, to the best of Contractor's knowledge, is not in violation of any of the tax laws described in ORS 305.380.(4).

**NO THIRD PARTY BENEFICIARIES:**

This contract gives no rights or benefits to anyone other than the District and Contractor and has no third party beneficiaries.

**WARRANTY OF WORKMANSHIP:**

The Contractor hereby agrees to warranty his workmanship for 1-year. The warranty period shall begin on the date of final payment. Workmanship will include settlement and restoration of ground around the work areas to a condition better than or equal to the original condition prior to construction. Warranty shall include the work described within the Supplemental Provisions and the Construction Bid.

**IN WITNESS WHEREOF**, the parties hereto have executed this contract the day and year first written above.

BY: \_\_\_\_\_  
Mr. Mark Schacher, Chairman  
Sundown Sanitary Sewer District

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Mr. \_\_\_\_\_, Contractor  
\_\_\_\_\_ Company

\_\_\_\_\_  
Date