

PUBLIC IMPROVEMENT CONTRACT

Project Name Click here to enter text. Project Name Click here to enter text.

THIS CONTRACT is made this 24th day of march, 2014, between City of Newport, hereinafter called Owner, and RAY WELLS INC., hereinafter called Contractor. In consideration of mutual covenants hereinafter set forth, the parties agree as follows:

1. **Work.** Contractor shall complete all work as specified in the contract documents, in conformance with all Owner public works design and construction standards, and in accordance with the documents and drawings provided for the Project Name Click here to enter text. project.
2. **Materials.** Contractor will furnish, provide and pay for all materials, supplies, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
3. **Contract Time.** The Work will be completed by Contractor within Project Duration Click here to enter text. Ten DAYS days after the date of Owner's Notice to Proceed, unless the time for completion is extended otherwise by the Contract Documents or by written agreement of the parties.
4. **Contract Price.** Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents.
5. **Compensation.** Owner will pay the Contract Price upon final completion and City's acceptance of Contractor's Work.
6. **Contract Documents.** The term "Contract" or "Contract Documents" means and includes the following:
 - a) Request for Competitive Quote;
 - b) Addenda (if any);
 - c) Contractor's submitted Quotation Form;
 - d) Public Improvement Contract;
 - e) ORS 279C Requirements (attached);
 - f) Notice of Award;
 - g) Notice to Proceed;
 - h) Change Orders (if any);

All Contract Documents are attached hereto, and incorporated herein by this

PUBLIC IMPROVEMENT CONTRACT

Project Name Click here to enter text.

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reference. In the event of a conflict, this Contract will prevail over other Contract Documents as modified by any change orders, followed by ORS 279C requirements, the Notice to Proceed, Owner Request for Competitive Quote, then Contractor's submitted Quotation Form, in that order of precedence.

7. **Materials and Equipment.** Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
8. **Contractor's Representations.** In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - a) Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations which, in any manner, may affect cost, progress, or performance of the Work;
 - b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of the Work which were relied upon in the preparation of the drawings and specifications;
 - c) Contractor has made or has caused to be made examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in (b) which it deems necessary for the performance of the Work, determination of the contract price, completing the building within the contract time in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes;
 - d) Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents;
 - e) Contractor has given the Owner's representative written notice of all conflicts, errors or discrepancies which he has discovered in the Contract Documents and the written resolution thereof by the Owner's representative is acceptable to the Contractor.
9. **Insurance.** Before undertaking any work on the project, Contractor shall provide Owner with Certificates of Insurance including comprehensive general liability and other insurance as will provide protection for the claims set out below, which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by

Contractor or any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a) Claims under workers' compensation or other similar employee benefits;
- b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
- c) Claims for damages because of bodily injury, sickness, disease or death of any person other than Contractor's employees;
- d) Claims for damages covered by personal injury liability insurance, sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;
- e) Claims for damages other than to the Work itself because of injury or destruction of tangible property, including loss of use resulting therefrom;
- f) Claims for damages because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The limits of such liability shall be as follows:

1) Comprehensive general liability	\$2,000,000
2) Automobile	\$2,000,000
i) Bodily injury	\$2,000,000
ii) Property Damage	\$2,000,000

Owner shall be named as an additional insured on the certificates of insurance. Such policies shall not be canceled or allowed to expire nor material changes permitted, until Contractor has provided at least 30 days written notice to Owner.

10. **Changes to the Work and Contract Amendments.** Changes to the Work, price and other contract amendments shall be in writing, signed by both parties and made in accordance with Owner Public Contracting Rules 137-049-0160 and 137-049-0910.

11. **Warranty.** This project is warranted against any and all failures for a period of one year from the date of completion. Contractor agrees to be responsible for all such repairs. If Contractor does not perform repairs within 30 days after notice provided by the Owner, the Owner may perform repairs and bill Contractor. Contractor shall be liable for payment of all such sums, as billed.

12. Suspension of Work, Termination Delay.

- a) If Contractor is adjudged as bankrupt or insolvent or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if it repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if it repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment, or if it disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the Work, or if it disregards the authority of the Owner's representative or if it otherwise violates any provision of the contract documents, then the Owner may, without prejudice to any other right or remedy, after giving the Contractor and its surety a minimum of five days' notice from delivery of the written notice, terminate the services of the Contractor and take possession of the Project and all materials, equipment, tools, construction equipment, machinery thereon owned by Contractor and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If the costs exceed such unpaid balances, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Owner and incorporated in a change order.
- b) Where the Contractor's services have been so terminated by the Owner, the termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.
- c) After five days from delivery of written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.

13. **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend Owner and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Contractor's negligent performance and provision of materials and/or fault of Contractor, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of Owner and Contractor, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Contractor shall defend Owner from claims covered under this indemnification section at Contractor's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determines that Owner is liable in whole or in part for the loss or claim caused by Owner's negligence or (2) until Owner and Contractor mutually agree to allocate the liability.

14. Miscellaneous.

- a) No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- b) This Contract shall be binding upon all parties hereto and their respective partners, successors, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

15. Arbitration. If any disputes, disagreements or controversies arise between the parties pertaining to the interpretation, validity, rescission or enforcement of this Contract, the parties shall, upon the request of either party, submit such dispute to binding arbitration. Except as otherwise provided in this Contract, arbitration shall be requested by delivering to the other party a written request for arbitration. Within 10 days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within 10 days, an arbitrator may be appointed by the Circuit Court for the County in which Owner is located, upon the request of either party submitted in accordance with Oregon's Uniform Arbitration Act, ORS 36.600, et seq. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall have the discretion to adopt rules for the arbitration, and the arbitrator's decision shall be binding upon the parties. All arbitration shall take place in Lincoln County, Oregon unless the parties both agree to have the matter arbitrated elsewhere.

16. Attorney Fees. If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for Owner to incur the services of an attorney to enforce any provision of this Contract without initiating litigation, Contractor agrees to pay Owner's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

THIS CONTRACT is effective on the 27th day of march, 2014.

OWNER:

By: [Signature] for SN.
Spencer R. Nebel, City Manager

CONTRACTOR:

By: Ray Wells Inc.
Name: Jim Kifer
Title: Supervisor

Address for giving notices:

City of Newport

169 NW Coast Highway

Newport, OR 97365

Address for giving notices:

ORS 279C REQUIREMENTS

- 1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
 - a) ORS 279C.580(3)(a) requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the prime contractor by the public contracting agency; and
 - b) ORS 279C.580(3)(b) requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within thirty (30) days after receipt of payment from the public contracting agency.
 - c) ORS 279C.580(4) requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.
- 2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.
- 3) Contractor shall not permit any lien or claim to be filed or prosecuted against the public contracting agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
- 4) A notice of claim on contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.
- 5) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 6) Contractor shall demonstrate to the Public Contracting Agency that an employee drug-testing program is in place within ten (10) days of receiving a Notice of Award.
- 7) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public contracting agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by

reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the public contracting agency is unable to determine the validity of any claim for labor or material furnished, the public contracting agency may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

- 8) 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 public contract for a public improvement within thirty (30) days after receipt of payment from the public contracting agency or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (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 Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety (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 public contracting agency or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.
- 9) 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 Contractor's Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 10) Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 11) Contractor shall employ no person for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540.

- 12) The Contractor must give notice to employees who work on this 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 the days per week that the employees may be required to work.
- 13) All employers, including Contractor, that employ subject workers who work under this contract 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.
- 14) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
- 15) The contract may be canceled at the election of public contracting agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- 16) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.
- 17) Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
- 18) In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies.
- 19) Contractor certifies that all subcontractors performing construction work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaper Contractors Board in accordance with 701.035 to 701.055 before the subcontractors commence work under this contract.
- 20) In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Owner has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- Agriculture, Department of
- Forest Service
- Soil Conservation Service
- Defense, Department of
- Army Corps of Engineers

- Environmental Protection Agency
- Interior, Department of
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- Bureau of Land Management
- Bureau of Indian Affairs
- Bureau of Reclamation
- Labor, Department of
- Occupational Safety and Health Administration
- Transportation, Department of
- Coast Guard
- Federal Highway Administration

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Soil and Water Conservation Commission
- State Engineer
- State Land Board
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts

RAY WELLS, INC.

P.O. BOX 3467
FLORENCE, OR 97439

Ph: 541-997-2054

Fax: 541-997-3499

Email: norm@raywellsinc.com

Estimate

Date	Estimate #
3/20/2014	1844

To:

CITY OF NEWPORT
C/O JOHN RITCHEY
169 S.W. COAST HWY.
NEWPORT, OR. 97365

Project

10th & Fogarty Sewer Repair

Description	TOTAL
FOR THE LUMP SUM OF: TO SUPPLY AND INSTALL APPROX. 180 L.F. 8" PVC 3034 SEWER IN PLACE OF EXISTING LINE. INCLUDES HOOKING UP TO (2) EXISTING LATERALS TO NEW LINE. ALSO INCLUDES CRUSHED ROCK IN PIPE ZONE AND UP TO 8" BASE 3/4"-0 AT SURFACE, AND 4" DEPTH (2LIFTS) ASPHALT TRENCH PATCH.	16,885.00
EXCLUDES: PERMITS AND FEES MATERIAL/COMPACTION TESTING MANHOLE REHAB OR REPLACEMENT	

Quoted price is subject to increase up to the time of completion should the cost of materials needed for this proposal increase over today's cost. Written notice of increase will be given to buyer by contractor. If buyer is unwilling to accept increase contractor shall have the right to terminate proposal. All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alterations or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control.

Authorized Signature: Norm Wells
Accepted:

Proposal may be withdrawn by us if not accepted within 30 days



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/24/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ward Insurance Agency PO Box 10167 Eugene OR 97440		CONTACT NAME: Margie Hargett PHONE (A/C, No, Ext): (541) 687-1117 FAX (A/C, No): (541) 342-8280 E-MAIL: margie@wardinsurance.net ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Liberty NW Ins Corp NAIC #: 01814 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
INSURED Ray E. Wells Inc. PO Box 3467 Florence OR 97439			

COVERAGES

CERTIFICATE NUMBER: 13/14 GL/AL/UMB-AI

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	Y	C05172589	4/26/2013	4/26/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						C05172589 4/26/2013 4/26/2014 COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Underinsured motorist \$ 1,000,000
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ C05172589 4/26/2013 4/26/2014 EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000						
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				VEHICULAR STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: 10th & Fogarty Sewer Repair

City of Newport is included as additional insured with respects to work performed by the named insured and where required by written contract per the attached CG8579. Primary and non-contributory coverage and waiver of subrogation are included per form CG8579.

CERTIFICATE HOLDER

CANCELLATION

City of Newport
Attn: Public Works
169 SW Coast Hwy
Newport, OR 97365

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Paul Jensen/TRACEE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**GENERAL LIABILITY MASTER PAK PLUS®
FOR CONSTRUCTION
(OREGON)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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1. BLANKET ADDITIONAL INSURED (Owners, Lessees Or Contractors)

(Includes a Primary/Non-Contributory provision)

Section II - Who Is An Insured is amended to include as an insured any person or organization whom you are required to name as an additional insured on this policy in a written contract or written agreement. The written contract or written agreement must be currently in effect or becoming effective during the term of this policy and executed prior to the "bodily injury," "property damage" or "personal and advertising injury."

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

The insurance provided the additional insured is limited as follows:

A. The person or organization is only an additional insured with respect to liability caused by your negligence and:

1. Arising out of real property, as described in a written contract or written agreement, that you own, rent, lease or occupy; or
2. Caused by your ongoing operations performed for the additional insured.

The insurance provided the additional insured in **1.A.2.** above does not apply to:

a. Coverage A - Bodily Injury and Property Damage Liability, Coverage B - Personal and Advertising Injury Liability or defense coverage under the Supplementary Payments arising out of an architect's, engineer's or surveyor's rendering of or failure to render any professional services including:

- (1) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- (2) Supervisory, inspection, architectural or engineering activities.

b. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) that was performed by or on behalf of the additional insured(s) at the site where the covered operations have been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

B. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of Insurance as stated in the Declarations of this policy and defined in Section III - Limits Of Insurance of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

C. The insurance provided the additional insured does not apply to the liability resulting from the negligence of the additional insured.

D. As respects the coverage provided to the additional insured under this endorsement, **Section IV-Conditions** is amended as follows:

1. The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim, or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense, that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

2. The following is added to **Condition 3. Legal Action Against Us**:

We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.

3. The following is added to Paragraph a., **Primary Insurance** of **Condition 4. Other Insurance**:

If the additional insured's policy has an Other Insurance provision making its policy excess, and a Named Insured has agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

4. The following is added to Paragraph b., **Excess Insurance** of **Condition 4. Other Insurance**:

Except as provided in Paragraph 4.a. Primary Insurance as amended above, any coverage provided hereunder shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis. In the event an additional insured has other coverage available for an "occurrence" by virtue of also being an additional insured on other policies, this insurance is excess over those other policies.

2. FIRE, LIGHTNING, EXPLOSION AND SPRINKLER LEAKAGE DAMAGE TO PREMISES YOU RENT

If **Damage To Premises Rented To You** under **Coverage A** is not otherwise excluded from this policy, the following applies:

- A. The last paragraph of **2. Exclusions** of **Section I - Coverage A** is replaced by the following:

If **Damage To Premises Rented To You** is not otherwise excluded, **Exclusions c. through n.** do not apply to damage by fire, lightning, "explosion" or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III - Limits Of Insurance**.

- B. Paragraph 6. of **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to 5. above, the higher of \$300,000 or the **Damage To Premises Rented To You Limit** shown in the Summary of Limits and Charges section of this policy is the most we will pay under **Coverage A** for damages because of "property damage" to premises rented to you or temporarily occupied by you with the permission of the owner arising out of any one fire, lightning, "explosion" or sprinkler leakage incident.

C. Paragraph **b.(1)(b)** of **Condition 4. Other Insurance (Section IV – Conditions)** is replaced by the following:

(1) That is Fire, Lightning, Explosion or Sprinkler Leakage insurance for premises rented to you or temporarily occupied by you with the permission of the owner;

D. Paragraph **9.a.** of the definition of "insured contract" in **Section V- Definitions** is replaced by the following:

9. "Insured contract" means:

a. A contract for the lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damages by fire, lightning, "explosion" or sprinkler leakage to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract";

E. The following definition is added to **Section V - Definitions**:

"Explosion" means a sudden release of expanding pressure accompanied by a noise, a bursting forth of material and evidence of the scattering of debris to locations further than would have resulted by gravity alone.

"Explosion" does not include any of the following:

1. Artificially generated electrical current including electrical arcing that disturbs electrical devices, appliances or wires;
2. Rupture or bursting of water pipes;
3. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control; or
4. Rupture or bursting caused by centrifugal force.

3. NON-OWNED WATERCRAFT

Subparagraph **g.(2)** of Paragraph **2., Exclusions** of **Section I - Coverage A** is replaced by the following:

(2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge;

4. SUPPLEMENTARY PAYMENTS

In the **Supplementary Payments - Coverages A and B** provision:

The limit for the cost of bail bonds in Paragraph **1.b.** is changed from \$250 to \$1000.

5. PERSONAL AND ADVERTISING INJURY - ELECTRONIC PUBLICATION EXTENSION

Paragraphs **14.b.**, **d.** and **e.** of **Section V - Definitions** are replaced by the following:

- b.** Malicious prosecution or abuse of process;
- d.** Oral, written, televised, videotaped or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e.** Oral, written, televised, videotaped or electronic publication of material that violates a person's right of privacy;

The following is added to Paragraph **14.** "Personal and Advertising Injury" of **Section V - Definitions**:

- h.** Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
 - (1)** Not done intentionally by or at the direction of:
 - (a)** An insured; or
 - (b)** Any "executive officer" director, stockholder, partner or member of the insured; and
 - (2)** Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

Subparagraphs **b.** and **c.** of 2., **Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability** are replaced by the following:

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral, written, televised, videotaped or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral, written, televised, videotaped or electronic publication of material whose first publication took place before the beginning of the policy period;

6. AGGREGATE LIMITS OF INSURANCE (PER LOCATION)

The General Aggregate Limit under **Section III Limits Of Insurance** applies separately to each of your "locations" owned by or rented to you or temporarily occupied by you with the permission of the owner.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

7. AGGREGATE LIMITS OF INSURANCE (PER PROJECT)

The General Aggregate Limit under **Section III Limits Of Insurance** applies separately to each of your projects away from premises owned by or rented to you.

8. VOLUNTARY PROPERTY DAMAGE COVERAGE

At your request, we will pay for "loss" to property of others caused by your business operations. The most we will pay for this coverage is \$500 each "occurrence." The "loss" must occur during the policy period. The "occurrence" must take place in the "coverage territory".

"Loss" means unintended damage or destruction. "Loss" does not mean disappearance, abstraction or theft.

This coverage does not apply to:

1. Damage arising out of the use of any "auto";
2. Property you own, occupy, rent or lease from others; or
3. Property on your premises for sale, service, repair or storage.

None of the other policy exclusions apply to this coverage.

If the policy to which this endorsement is attached is written with a property damage liability deductible, the deductible shall apply to Voluntary Property Damage. The limit of coverage stated above shall not be reduced by the amount of this deductible.

9. OFF PREMISES CARE, CUSTODY OR CONTROL COVERAGE

- A. We will pay those sums that you become legally obligated to pay as damages because of "property damage" to personal property of others while in your or your "employees" care, custody or control or real property of others over which you or your "employees" are exercising physical control if the "property damage" arises out of your business operations. This Coverage is subject to sections B., C., D. and E. below.

B. Exclusions

This insurance shall not apply to:

1. "Property damage" of property at premises owned, rented, leased, operated or used by you;
2. "Property damage" of property while in transit;
3. The cost of repairing or replacing:
 - (a) Any of your work defectively or incorrectly done by you or by others on your behalf; or
 - (b) Any product manufactured, sold or supplied by you, unless the "property damage" is caused directly by you after delivery of the product or completion of the work and resulting from a subsequent undertaking; or
4. "Property damage" of property caused by or arising out of the "products-completed operations hazard".

- C. **Limits Of Insurance** - The most we will pay for "property damage" under this **Section 9** is \$25,000 for each "occurrence". The most we will pay for the sum of all damages covered under this **Section 9** because of "property damage" is an annual aggregate limit of \$25,000.

The **Limits Of Insurance** provided under this **Section 9** are inclusive of and not in addition to any other limits provided in the policy or endorsements attached to it.

- D. **Deductible** - We will not pay for "property damage" in any one "occurrence" until the amount of "property damage" exceeds \$250. If the policy to which this endorsement is attached contains a "property damage" deductible, that deductible shall apply if it is greater than \$250.
- E. In the event of "property damage" covered by this endorsement, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

10. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

A. Paragraph 4. of **Section II - Who Is An Insured** is deleted and replaced by the following:

4. Any business entity acquired by you or incorporated or organized by you under the laws of any individual state of the United States of America over which you maintain majority ownership interest exceeding fifty percent. Such acquired or newly formed organization will qualify as a Named Insured if there is no similar insurance available to that entity. However:
 - a. Coverage under this provision applies only until the expiration of the policy period in which the entity was acquired or incorporated or organized by you.
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before the entity was acquired or incorporated or organized by you.
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before the entity was acquired or incorporated or organized by you.
 - d. Records and descriptions of operations must be maintained by the first Named Insured.

B. This Section 10. does not apply to newly formed or acquired organizations if coverage is excluded either by provisions of the Coverage Part or by other endorsement(s) attached to it.

11. DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

A. The requirements in **Section IV - Conditions**, Paragraph 2.a., that you must see to it that we are notified of an "occurrence" applies only when the "occurrence" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. A member or manager, if you are a limited liability company;
4. An executive officer or designee, if you are a corporation;
5. A trustee, if you are a trust; or
6. A designee, if you are any other type of organization.

B. The requirements in **Section IV - Conditions** Paragraph 2.b. that you must see to it that we receive written notice of a claim or "suit" will not be considered breached unless the breach occurs after such claim or "suit" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. A member or manager if you are a limited liability company;
4. An executive officer or designee, if you are a corporation;
5. A trustee, if you are a trust; or
6. A designee, if you are any other type of organization.

Knowledge of an "occurrence," claim or "suit" by the agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an officer or designee shall have received notice from its agent, servant or "employee".

12. BODILY INJURY

Paragraph 3. of the definition of "bodily injury" in the **Section V - Definitions** is replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

13. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization for whom you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the agreement.

14. MEDICAL PAYMENTS

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Expense Limit provided by this policy shall be the greater of:

- A. \$10,000; or
- B. The amount shown in the Declarations.

15. BROAD NAMED INSURED

Paragraph **2.a.(1)(d)** of **Section II - Who Is An Insured** is replaced by the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to nurses, emergency medical technicians or paramedics who are employed by you to provide medical or paramedical services to your employees.

16. BROADENED MOBILE EQUIPMENT

Paragraph **12.f.(1)** of **Section V - Definitions** is replaced by the following:

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning provided that vehicles have a Gross Vehicle Weight of 1,000 pounds or greater;

17. INCIDENTAL MALPRACTICE LIABILITY

Paragraph **3.** of **Section V - Definitions** is replaced by the following:

- 3. "Bodily injury" means bodily injury, sickness, disease or "incidental medical malpractice" sustained by a person, including mental anguish or death resulting from any of these at any time.

The following is added to **Section V - Definitions**:

- 23. "Incidental medical malpractice" means injury arising out of the negligent rendering or failure to render medical or paramedical services to persons by any physician, dentist, nurse, emergency medical technician or paramedic who is employed by you to provide such services to your employees, provided you are not engaged in the business or occupation of providing any services referred to in this definition.

18. NON-OWNED AIRCRAFT

The following is added to Subparagraph **g.** of **2., Exclusions** of **Section I - Coverage A Bodily Injury And Property Damage Liability**:

- (6) An aircraft with a paid crew, that is hired, chartered or loaned but is not owned by any insured.

19. PROPERTY DAMAGE - ELEVATORS

The following is added to Subparagraph j. of 2., **Exclusions** of **Section I - Coverage A Bodily Injury And Property Damage Liability**:

Paragraphs **(3)** and **(4)** of this exclusion do not apply to damages that result from the use of elevators.

All other terms and conditions of your policy remain unchanged.