



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Contract Documents between Clackamas County Service District No.1  
and Advanced American Construction Inc. for the  
Kellogg Creek WPCP Outfall Extension Project

<b>Purpose/Outcomes</b>	Construct a new effluent outfall at the Kellogg Creek WPCP that will meet the Oregon Department of Environmental Quality water quality standards for ammonia and all other effluent constituents.
<b>Dollar Amount and Fiscal Impact</b>	Funding for construction services is available in the FY2015-16 budget and completion will carry over to the FY2016-17 budget year. The agreement is for an amount not to exceed \$795,000.
<b>Funding Source</b>	Clackamas County Service District No.1 FY 2015-16 and 2016-17 annual budgets
<b>Duration</b>	Project Duration: April 2016 to October 2016
<b>Previous Board Action</b>	None
<b>Strategic Plan Assignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan to provide wastewater and stormwater infrastructure necessary to support partner communities and economic development over the next 20 years.</li> <li>2. This project supports the County Strategic Plan to build a strong infrastructure.</li> </ol>
<b>Contact Person</b>	Randy Rosane PE, Project Manager – Water Environment Services – 503-742-4573
<b>Contract No.</b>	P112077

**BACKGROUND:**

The Kellogg Creek Water Pollution Control Plant (WPCP) is operated by the District under NPDES Permit No. 100983 which expired December 31, 2009 and continues to be in effect under administrative extension until a new permit is issued. The Oregon Department of Environmental Quality (DEQ) has set a stricter ammonia limit the District knows it cannot meet. The District's objective is to comply with Oregon water quality standards for ammonia and all other effluent constituents. To accomplish the objective, modifications to the existing outfall are required to increase dilution by optimizing the available mixing zone.

Currently the District has an ammonia limit of 33 mg/l (maximum daily) and 18 mg/L (monthly average) on the Kellogg Creek WPCP effluent. It may be feasible to eliminate or modify these ammonia limits once the District increases the outfall dilutions. The District understands that the dilution provided by the existing outfall may be less than what will be needed to comply with water quality criteria for ammonia. As a result, the District needs to improve the dilution or provide additional treatment.

The District has worked with Oregon DEQ to establish a Mutual Agreement Order (MAO) to provide the time to install the outfall improvements that will be reflected in the renewed NPDES permit.

On February 24, 2016, the District publicly advertised for bids, through county purchasing, for construction services to improve and extend the Kellogg WPCP Outfall.

On March 17, 2016 bids were received and evaluated. It was determined that Advanced American Construction Inc. was the low responsive bidder and is eligible to perform work in the State of Oregon.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No.1, a county service district, approve and execute the contract documents between Clackamas County Service District No.1 and Advanced American Construction Inc. for the Kellogg Creek WPCP Outfall Extension Project for an amount not to exceed \$795,000.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Purchasing



LANE MILLER  
MANAGER

PURCHASING DIVISION

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

April 20, 2016

MEMORANDUM TO THE  
BOARD OF COUNTY COMMISSIONERS

Please place on the Board Agenda of April 28, 2016 this contract with Advanced American Construction for the **KELLOGG CREEK WPCP OUTFALL EXTENSION PROJECT** for **Clackamas County Service District No. 1**. This project was requested by Randy Rosane, PE, Project Manager Water Environment Services (WES). Bids were requested for all the materials and manpower necessary to complete specified work on the above-mentioned project. This project was advertised in accordance with ORS and LCRB Rules. Thirty-Nine (39) bid packets were sent out and six (6) bids were received: Advanced American Construction \$795,000.00, Northbank Civil & Marine \$904,722.00, Marine Industrial Construction \$1,074,000.00, Ballard Marine Construction \$1,110,635.00, RPM \$1,227,365.00, and Emery & Sons \$1,490,318.00. After review of all bids, Advanced American Construction was determined to be **the** lowest responsive and responsible bidder. The total contract amount is not to exceed \$795,000.00. All work is to be completed by October 1, 2016 with a contract completion date of October 31, 2016. This contract has been reviewed and approved by County Counsel. Funds for this project are budgeted under **Clackamas County Service District No. 1**.

Respectfully Submitted,

Ryan Rice  
Procurement Staff

## AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2016 by and between Clackamas County Service District No. 1 (hereinafter called DISTRICT) and **Advanced American Construction** (hereinafter called CONTRACTOR).

DISTRICT and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### Article 1. WORK

1.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

#### **Kellogg Creek WPCP Outfall Extension Project**

### Article 2. THE PROJECT

The Project for which the Work is described in the Contract Documents.

### Article 3. ENGINEER

3.1 The term Engineer is defined in the Supplementary Conditions.

3.2 Engineer is to act as DISTRICT'S representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### Article 4. CONTRACT TIMES

4.1 All time limits for milestones, if any, substantial completion, and completion and readiness for final payment are stated in the Contract Documents and are of the essence of the Contract.

4.2 The CONTRACTOR shall commence work within 10 calendar days after receipt of written Notice-to-Proceed. CONTRACTOR shall substantially complete the Work by October 1, 2016, and the Work shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions by October 31, 2016. The written notice to proceed will be forwarded to the CONTRACTOR after the CONTRACTOR submits the signed Agreement, Performance Bond and Payment Bond, and Certificate of Insurance to the DISTRICT and these documents have been approved as to form by the DISTRICT'S attorney, signed by the DISTRICT.

4.3 CONTRACTOR and DISTRICT recognize that time is of the essence of this Agreement and that DISTRICT will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by DISTRICT if the Work is not completed on time. Accordingly, instead of requiring any such proof, DISTRICT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay DISTRICT five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.2 above for completion and readiness for final payment or any proper extension thereof granted by DISTRICT, CONTRACTOR shall pay DISTRICT five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for completion and readiness for final payment, plus any fees or penalties imposed by regulators for other violations.

## Article 5. CONTRACT PRICE

5.1 DISTRICT shall pay CONTRACTOR for completion of the Work in accordance with Contract Documents an amount in funds equal to the sum of the amounts determined pursuant to the paragraphs below:

Unless changes and alterations in the Plans, quantities or details of construction materially change the character of the work to be performed or the unit costs thereof, the CONTRACTOR shall accept as payment in full, so far as contract items are concerned, payment at the same unit prices as are provided under the Contract for the accepted quantities of work done.

If, however, changes and alterations in the Plans, quantities or details of construction materially change the character of work or unit costs thereof, compensation for such work will be made on such basis as may be agreed upon in advance of performance of work, or in case no such basis has been agreed upon, then an allowance may be made, either for or against the CONTRACTOR. Payment will be made at unit prices only for work actually performed or materials actually furnished according to actual measurement. If the amount of any major work item changes by more than 25%, compensation for all work that differs from the original estimated quantities for that work item may be made on such basis as may be agreed to in advance of performance of work, or in case no such basis has been agreed upon, an allowance may be made, either for or against the CONTRACTOR in such amount as the Engineer determines is fair and equitable. For the purpose of this Section, a major work item is defined as an item that constitutes at least 10% of the total contract bid amount based on either the estimated original quantities or the actual quantities and CONTRACTOR'S original Bid prices.

If the Contract is done on a lump sum basis, the adjustment for increases or decreases may be based, at the sole discretion of the Engineer, on a theoretical unit price. This

price will be determined by dividing the CONTRACTOR'S applicable breakdown category price by the estimated quantities of all units of work within the applicable breakdown category.

Bidder must include in their Bid prices the entire cost of the work set forth in the Bid.

The Contract Price is the total price stated in CONTRACTOR'S Bid, attached hereto as an exhibit.

#### Article 6. PREVAILING WAGE RATES

6.1 CONTRACTOR agrees that the provisions required by ORS 279C.830 pertaining to CONTRACTOR'S payment of prevailing wage rates shall be included as part of this Agreement. Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor or other person doing or contracting for whole or any part of the work on this contract, shall be paid not less than the applicable prevailing wage in effect for this contract.

#### Article 7. PAYMENT PROCEDURES

##### 7.1 Progress Payments and Retainage

- A. Payment for all work under the Contract will be made at the price or prices bid, and those prices shall include full compensation for all incidental work.
- B. If the Contract is for a public work and the Contract price is \$50,000.00 or more, supply and file, and require every Subcontractor to supply and file, with the DISTRICT and with the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland, Oregon 97201, a statement in writing that conforms to the requirements of ORS 279C.854. The schedule for submitting payroll information is as follows: Once before the first payment and once before the final payment is made; in addition, for projects exceeding ninety (90) days for completion, submissions are to be made at ninety (90) day intervals.
- C. Make progress estimate of work performed in any calendar month and submit to the Engineer for approval by the 5<sup>th</sup> day of the following month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed.
- D. If the Contract price is determined, in whole or in part, on a Lump Sum basis, prepare an itemized cost breakdown relating thereto and have the Engineer

approve in accordance with Division 1 requirements; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the Engineer provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.

- E. If the Contract price is determined wholly on a unit basis, Engineer may use Unit Prices bid in making progress estimates on the work. In case said Unit Prices do not, in the opinion of the Engineer, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.
- F. If the DISTRICT receives written notice of any unsettled claims for damages or other costs due to CONTRACTOR'S operations including, without limitation, claims from any County Department or other governmental agency, an amount equal to the claim may be withheld from the progress or final payments until such claim has been resolved to the satisfaction of Engineer.
- G. Progress payments will be made by DISTRICT on a monthly basis within thirty (30) days after receipt of the CONTRACTOR'S estimate of work performed, or 15 days after the payment is approved by the Engineer, whichever is the earlier date. Negotiable warrants will be issued by DISTRICT for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by DISTRICT until it is included in and paid to CONTRACTOR as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if CONTRACTOR elects, retainage as accumulated will be deposited by DISTRICT in an interest-bearing account pursuant to ORS Chapter 279 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the DISTRICT may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be allowed only upon written application by the CONTRACTOR, which application shall include written approval of the CONTRACTOR'S Surety.
- H. The Engineer may decline to approve an application for payment and may withhold such approval if, in the Engineer's opinion, the work has not progressed to the point indicated by the CONTRACTOR'S submittal in paragraph C above. The Engineer may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any payment previously made to such extent as may be necessary in his opinion to protect the DISTRICT from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the CONTRACTOR to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3)

reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum, (4) damage to another CONTRACTOR'S work, (5) reasonable indication that the Work will not be completed within the Contract time (6) unsatisfactory prosecution of the Work by the CONTRACTOR, (7) claims against the CONTRACTOR by the DISTRICT, (8) failure of CONTRACTOR to submit updated project schedules as specified.

When the above grounds are removed, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the CONTRACTOR to interest on such withheld payments or partial payments.

- I. If CONTRACTOR fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by DISTRICT.
- J. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. The making of a progress payment shall not be construed as an acceptance of any of the work or materials under the Contract.
- K. When the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1000), no progress payment will be made for that estimate period, unless approved by the Engineer.
- L. CONTRACTOR is required to provide the DISTRICT with a list of CONTRACTOR'S personnel who are authorized to personally receive contract payments. This written authorization must be signed by an officer of the Contracting company and will be placed on file in the DISTRICT'S office. No payment will be released to an unauthorized person.

## 7.2 Final Estimate and Final Payment

- A. Pursuant to ORS Chapter 279C, notify the Engineer in writing when work is considered complete and Engineer shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify CONTRACTOR of work yet to be performed on the Contract. If accepted, Engineer shall so notify CONTRACTOR, and will make a final estimate and prepare a Certificate of Completion recommending acceptance of the Work as of a certain date.
- B. If the CONTRACTOR believes the quantities and amounts specified in the final estimate and Certificate of Completion prepared by the Engineer to be incorrect, CONTRACTOR shall submit to the Engineer within fifteen (15)

days of mailing of the Engineer's final estimate and Certificate of Completion to the CONTRACTOR'S last known address as shown in the records of the DISTRICT, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said fifteen (15) day period is expressly waived and the DISTRICT shall not be obligated to pay the same. Nothing contained herein shall limit the requirements of Standard General Conditions; Section 00700, Subsection 10.05, *Claims*.

- C. Upon receipt of the executed Certificate of Completion from the CONTRACTOR, and approval by the Engineer, the Engineer will process the final payment.
- D. Provided CONTRACTOR submits a claim in the manner and time as required in B. above, the Engineer, as soon as practicable, will consider and investigate the claim or claims of the CONTRACTOR for compensation earned under the Contract and not included in the Engineer's final estimate and Certificate of Completion. The Engineer will then promptly advise the CONTRACTOR of acceptance or rejection of the claim in full or part. If the Engineer allows the CONTRACTOR'S claims in full or in part, Engineer will prepare a revised final estimate and Certificate of Completion, including all such items allowed and will submit the same to the CONTRACTOR.
- E. The CONTRACTOR shall execute and return the revised Certificate of Completion within five (5) days of its receipt together with notice of his acceptance or rejection of the amount there stated as being full compensation earned under the Contract.
- F. If the Engineer rejects the claim or claims, he will issue written notice of rejection mailed to the CONTRACTOR'S last known address as shown in the records of the DISTRICT.
- G. The CONTRACTOR shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from differences in measurements or errors of computation in the final estimate within a period of one (1) year following the original mailing of the Engineer's final estimate and Certificate of Completion to the CONTRACTOR'S last known address as shown in the records of the DISTRICT. The Engineer's issuance of a revised final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Completion or revised final estimate and Certificate of Completion, if revisions are made, shall be conclusive with respect to the amount earned by the CONTRACTOR, and the CONTRACTOR expressly waives any and all

claims for compensation and any and all causes of suit or action for the enforcement thereof that he might have had.

- H. Upon return of the fully executed Certificate of Completion from the CONTRACTOR, the Engineer will submit the Certificate of Completion and final estimate to the DISTRICT for approval. Upon approval and acceptance by the DISTRICT, CONTRACTOR will be paid a total payment equal to the amount due under the Contract including retainage.
- I. Monies earned by the CONTRACTOR are not due and payable until the procedures set forth in these Specifications for inspection, approval and acceptance of the Work, for determination of the work done and the amount due therefor, for the preparation of the final estimate and Certificate of Completion processing the same for payment, for consideration of the CONTRACTOR'S claim, or claims, if any, and for the preparing of a revised final estimate and Certificate of Completion and processing same for payment have been carried out.
- J. Non-resident CONTRACTOR will provide DISTRICT with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.
- K. Execute and deliver to DISTRICT, in form approved by the Attorney, a receipt for all amounts paid or payable to CONTRACTOR under the Contract, and a release and waiver of all claims against DISTRICT arising out of or relating to the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by the Performance and Payment Bond and or insurance protecting DISTRICT, its officers, agents and employees as well as CONTRACTOR. This is a condition of final payment and CONTRACTOR will not be entitled to final payment on release of retainage nor interest thereon until execution and delivery of said Receipt, Release & Waiver.
- L. If DISTRICT declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainages held by DISTRICT shall be paid to Surety and not to CONTRACTOR in accordance with terms of the Contract.
- M. Acceptance by CONTRACTOR of final payment shall release DISTRICT and Engineer from any and all claims by CONTRACTOR whether known or unknown, arising out of and relating to the Work. No payment, however, final or otherwise shall operate to release CONTRACTOR or his Sureties from warranties or other obligations required in the performance of the Contract.

Article 8. CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents which comprise the entire agreement between DISTRICT and CONTRACTOR concerning the Work consist of the following:
  - 1. This Agreement
  - 2. Performance Bond
  - 3. Payment Bond
  - 4. General Conditions
  - 5. Supplementary Conditions
  - 6. Specifications as listed in Table of Contents (Appendices and Plans) of the Contract Documents, to also include the prevailing wage rates for Public Works Contracts in Oregon.
  - 7. Drawings and/or Plans consisting of a cover sheet and sheets numbered 1 through 7 inclusive with each sheet bearing the following general title: **Kellogg Creek WPCP Outfall Extension Project.**
  - 8. Exhibits to this Agreement (enumerated as follows):
    - a. Addenda number(s)\_\_\_\_\_ to be included as Exhibit 1.
    - b. Bid Proposal, Bid Schedule of prices
    - c. Bid Bond
    - d. First-Tier Subcontractor Disclosure Form
  - 9. The following which may be delivered or issued on or after the effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed.
    - b. Written Amendments.
    - c. Work Change Directives.
    - d. Change Order(s).

- B. The documents listed in Paragraph 8.1.A are attached to this Agreement (except as expressly noted otherwise above).

## 8.2 Coordination of Contract Requirements

- A. In general, in the case of a conflict or discrepancy between sections of the Contract Documents, the most stringent requirement and/or the highest quality product (as determined solely by the Engineer) shall be incorporated into the Work. The drawings and specifications are intended to describe and provide for a complete Work. Any requirement in one is as binding as if stated in all. The CONTRACTOR shall provide any work or material clearly implied in the Contract Documents even if the Contract Documents do not mention it specifically, using best industry practices. If there is still a conflict within the Contract Documents, it will be resolved in the sole judgment of the Engineer by the following order of precedence:

1. DISTRICT-CONTRACTOR Agreement
2. Addenda and/or Change Orders
3. Bid Form
4. Supplementary Conditions
5. General Conditions
6. Technical Specifications, Divisions 1 through 9 with Division 1 taking precedence over Divisions 2 through 9
7. Permits from other agencies as may be required by law.
8. Drawings
9. Bonds

Dimensions shown on the drawings or that can be computed shall take precedence over scaled dimensions. Notes on drawings shall take precedence over drawing details.

## 8.3 Conflict of Provisions

- A. In the event of any conflicting provisions or requirements between the component parts of his Contract, the component part having the lowest number, as established in Subsection 8.2 above, shall govern.

This shall in no way relieve the performance bond and public liability insurance of their respective and specific protection to the CONTRACTOR, provided, however, that such sequence control does not conflict with the intent of or harm the product in any way. In case of such conflict which would alter the intent of or harm the product, the requirement which, in the opinion of the Engineer, will result in the best product will govern. It is hereby agreed that the entire project shall be completed in accordance with the full intent of the Contract, regardless of conflicting statements, omissions, or errors. The intent of the drawings and

Specifications is to outline and control the work in a manner necessary to result in the best completely finished product practicable, at a minimum cost, incorporating all items. Any omissions in the Plans and Specifications pertinent to the requirements of the specified bid items are unintentional. If such are found, the CONTRACTOR will be required to perform the work in a customary workmanlike manner to achieve the intent as stated above.

It shall be definitely understood that omissions of one or more of the Documents shall not be construed as conflicting provisions. Any requirement given in one Document shall be known to be binding as though it is repeated in all Documents alike. The intent of the Contract is to combine all requirements of all Documents into one.

#### Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement will have the meaning indicated in the General Conditions, and as revised by Supplementary Conditions.
- 9.2 The Contractor shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the District, which may be granted or withheld in its sole and absolute discretion. The District may assign this Agreement at any time and shall provide the Consultant with notice of such assignment within thirty (30) days of such assignment.
- 9.3 DISTRICT and CONTRACTOR each binds itself, its partners, successors, assignees, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon DISTRICT and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.5 Two Year Maintenance and Warranty
  - A. In addition to and not in lieu of any other warranties required under the Contract, make all necessary repairs and replacements to remedy, in a manner satisfactory to the DISTRICT and at no cost to DISTRICT, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of Acceptance of the Work due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused,

in whole or in part, from activities of the CONTRACTOR in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year maintenance period required shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair. Where equipment or systems are specified to have a longer warranty period, CONTRACTOR shall be bound to the longer warranty period for the specific equipment and/or systems.

- B. If CONTRACTOR, after written notice, fails within ten (10) days to proceed to comply with the terms of this section, DISTRICT may have the defects corrected, and CONTRACTOR and CONTRACTOR'S Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the DISTRICT, delay would cause serious loss or damage, repairs may be made without notice being given to CONTRACTOR and CONTRACTOR or Surety shall pay the cost of repairs. Failure of the DISTRICT to act in case of an emergency shall not relieve CONTRACTOR or Surety from liability and payment of all such costs.
- C. As a means of providing surety during the maintenance period, the CONTRACTOR shall provide to the DISTRICT written and legally attested proof of surety in the amount of not less than 10 percent of the final contract amount. The maintenance guarantee shall be one of the following types:

Continuance of the contract performance bond at the original or a reduced amount.

- 2. Maintenance bond in a format and with the conditions acceptable to the DISTRICT.
- 3. Cash deposit to the DISTRICT'S Treasury, with a treasurer's receipt acting as proof of surety.
- 4. Other arrangements, as may be proposed by the CONTRACTOR and accepted by the DISTRICT.

#### Article 10. GOVERNING LAW

10.1 It is expressly understood that this Agreement in all respects shall be governed by the laws of the State of Oregon and the ordinances of the Service District and Clackamas County.

#### Article 11. ASSIGNMENT OF ANTITRUST RIGHTS

11.1 By entering into this Agreement, the CONTRACTOR irrevocably assigns to DISTRICT any claim or cause of action which the CONTRACTOR now has or which may accrue in the future, including at DISTRICT'S option, the right to control any such litigation, by reason of any violation of 15 USC Section 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the CONTRACTOR by any person which are used, in whole or in part, for the purpose of carrying out the CONTRACTOR'S obligations under this Agreement.

11.2 CONTRACTOR shall require any subcontractor to irrevocably assign to the DISTRICT, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at the DISTRICT'S option, the right to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the CONTRACTOR in pursuance of the completion of this Agreement.

11.3 In connection with this assignment, it is an express obligation of the CONTRACTOR that it shall take no action which any way diminishes the value of the rights conveyed or assigned hereunder to the DISTRICT. It is an express obligation of the CONTRACTOR to advise the DISTRICT'S legal counsel:

- A. In advance of its intention to commence any action on its own behalf regarding such claims or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignments to the DISTRICT.

11.4 Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the CONTRACTOR, it shall promptly pay over to the DISTRICT its proportionate share thereof, if any, assigned to the DISTRICT hereunder.

## Article 12. RECORDS RETENTION

12.1 CONTRACTOR shall maintain all standard records and accounts as required by the Contract Documents throughout the life of the Agreement and for a period of three years after the termination of the Agreement.

## Article 13. TAX LAWS

13.1 The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

A. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

B. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

C. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

D. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

13.2 The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

A. Termination of this Contract, in whole or in part;

B. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and

C. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respectively authorized officers or representatives as of the day and year first above written.

CONTRACTOR

DISTRICT

Advanced American Construction  
Company

CLACKAMAS COUNTY BOARD OF  
COUNTY COMMISSIONERS Acting as  
the Governing Body of the Clackamas  
County Service District No. 1 by:

Address

City , State, Zip

Authorized Signature

Chair

Name / Title (Printed)

Recording Secretary

Date

Date

Telephone Number / Fax Number

APPROVED AS TO FORM

CCB License Number

Federal Tax ID

County Counsel

\*Oregon Business Registry\*

Entity Type / State of Formation

\*Required if using an assumed business name, or if the business is a LLC, a LLP, a Corporation or other business type required by statute to be registered with the Oregon Secretary of State's office.