

14 JUL -3 P2 55

AGREEMENT

AGREEMENT FOR YAMHILL COUNTY HEALTH AND HUMAN SERVICES ABACUS BUILDING BASEMENT PROJECT (Yamhill County and Darrin Scott Harlow)

THIS AGREEMENT ("Agreement") is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon (referred to as "Owner" in this Agreement) and Darrin Scott Harlow, an individual, doing business as "Darrin Harlow Construction", located at 11381 NE Modaffari Rd, Carlton, Oregon 97111, referred to as "Contractor" in this Agreement) for the project known as Yamhill County HHS Abacus Building Basement Project (referred to in this Agreement as the "Project").

STATEMENT OF PURPOSE AND IDENTIFICATION OF CONTRACT DOCUMENTS

A. Owner has budgeted funds to perform the Project. Owner obtained competitive quotes to select a contractor that best meets the Owner's needs. Contractor was selected as the most responsive and responsible contractor. This Agreement is made to specify the mutual obligations of Owner and Contractor for completion of the Project.

B. This Agreement includes by reference the following Contract Documents that are part of the Project:

- (A) Specifications
- (B) Contractor Bid Proposal Sheet dated May 13, 2014
- (C) This Agreement
- (J) Agreement Amendments (if any)
- (K) Insurance Certificates
- (L) Notice to Proceed
- (M) Change Orders (if any)
- (N) Notice of Substantial Completion or Project Acceptance
- (O) Warranty Period

AGREEMENT: In consideration of the mutual covenants contained below, Owner and Contractor hereby agree as follows:

1. **Scope of work and services; filing of payment and performance bond.** The Contractor shall commence and complete the construction of the Project in strict accordance with the Contract Documents identified above. The Contractor acknowledges receipt of all Contract Documents in existence at the date it executed this Agreement. Contractor represents to Owner that Contractor has made a reasonable inspection of the Project site and is reasonably familiar with the Project site conditions that might affect Contractor's performance of the Project pursuant to this Agreement. Services provided by Contractor under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions. The Contractor, if required by Owner, shall file a suitable payment and performance bond with Owner before Contractor (or any subcontractors of Contractor) commences Project work and services.

2. **Agreement performed at Contractor's expense as Independent Contractor.** The Contractor shall furnish all of the materials, supplies, tools, equipment, labor, and other services

B.O.14-311

necessary for the construction and completion of the Project as described in the Contract Documents. The Contractor is an independent contractor under this Agreement.

3. **Commencement and completion date.** The Contractor shall commence the work and services required by the Contract Documents upon Owner's issuance of a Notice to Proceed and will complete the same by no later than September 15, 2014 unless the Agreement is extended or otherwise modified by written notice or executed Change Order.

4. **Termination.** Owner may terminate this Agreement if the Contractor fails to comply with a material term of this Agreement or for any other reason considered to be in the public interest. If this Agreement is terminated, the Owner will pay for all work and services accepted by the Supervisor, as defined in Section 16, prior to termination.

5. **Penalty for failure to meet deadline.** Reserved.

6. **Compensation.** The Contractor agrees to perform all of the work and services described in the Contract Documents and to comply with the terms therein at the rates set forth in Contractor's responsive proposal schedule for the fixed sum of \$20,087.42 (not including costs of permits or sprinkler adjustments) ("Agreement Price") unless the Agreement Price is modified by executed Change Order. Payment shall be made by Owner in two separate payments, the first being a down payment in the amount of \$8,034.97, for labor and materials, plus actual costs of permits and sprinkler adjustments, to be paid immediately upon the full execution of this Agreement by all parties. The second payment of \$12,057.45 shall be made following receipt, review and approval of an invoice detailing final completion of the Project. The final invoice shall be mailed to Yamhill County HHS, 627 N Evans Street, McMinnville, OR 97128. Upon receipt of final invoice, Supervisor will review the Project work and services completed to date and if acceptable, Supervisor shall authorize final payment.

7. **Prevailing wages; certified statements.** Reserved.

8. **Incorporation of statutory provisions required for public contracts.** The Contractor certifies it will comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference.

9. **Workers' compensation.** The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all of their subject workers.

10. **BOLI fee.** Reserved.

11. **Certification of compliance with laws.** The Contractor certifies, under penalty of perjury, that Contractor is not in violation of any federal, state or local tax laws, rules or regulations or any federal, state or local laws, rules, codes or regulations applicable to the Project and that Contractor will remain in compliance with all such laws, codes, rules and regulations during the entire term of this Agreement.

12. **Certification of reading and understanding of documents.** The Contractor certifies that it has read and fully understands all Contract Documents and terms and conditions. The

Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same.

13. **Payment.** The Owner agrees to pay the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Agreement, unless otherwise modified by written notice or executed Change Order.

14. **Warranty Period.** Where the warranty period is not otherwise stated in the General Conditions, the warranty period is 365 days commencing upon final acceptance and payment.

15. **Public Works Bond.** Reserved.

16. **Status of the Project Supervisor.** Emily Piper, Yamhill County HHS Community Support Services Manager, is the Project Supervisor (the "Supervisor"). The Supervisor or their designee shall perform technical inspections of work and services and shall have authority to stop the work or services whenever such stoppage is necessary to insure proper execution of the Agreement. The Supervisor or their designee may reject all work and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project work or services. The Supervisor has authority to reject or accept the Project work or services.

17. **Prohibition of Discrimination.** In hiring employees for performance of work under this Agreement neither Contractor, any subcontractor nor any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap or sex discriminate against a person who is qualified and available to perform work or services to which employment relates.

18. **Risk of Loss.** The risk of loss or damage to the subject matter of this Agreement arising from any cause whatsoever, including acts of God but excluding acts arising from the negligence or willful misconduct of Owner, Owner's officers, employees, agents or invitees shall be upon the Contractor until such time as the Owner has accepted the work and services as provided in this Agreement.

19. **Indemnification.** Contractor shall indemnify, defend and save harmless Owner from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney fees, in any way connected with any injury to any person or damage to any property occasioned in any way by Contractor's or Contractor's subcontractors' prosecution of work or services under this Agreement; provided however that Contractor shall not be required to indemnify, defend or save harmless Owner from those claims arising from the negligence or willful misconduct of Owner's officers, employees, agents or invitees.

Within the limits of Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300), Owner shall indemnify, defend and save harmless Contractor from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney fees, in any way connected with any injury to any person or damage to any property occasioned in any way by Owner under this Agreement; provided however that Owner shall not be required to indemnify, defend or save harmless Contractor from those claims arising from the negligence or willful misconduct of Contractor or Contractor's subcontractor.

20. **Insurance.** Contractor, at its expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement:

1. Workers Compensation Insurance in compliance with statutory requirements;
2. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$1,000,000;
3. Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$500,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with Contractor's business or work and the services provided under the Agreement;

The required insurance coverages shall be with insurance companies admitted to do business in the state of Oregon and acceptable to Owner. Evidence of such insurance will be furnished to Owner before commencing Project work or services. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to Owner.

The Commercial General Liability and Commercial Automobile Liability shall (i) name Owner, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of Owner and that any insurance maintained by Owner is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

21. **Nonwaiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of Owner to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of Owner to thereafter enforce each and every provision.

22. **Contractor's Representation.** Contractor, by entering into this Agreement, represents that its proposal for this Project is made without connection with any person, firm or corporation making or refraining from making a proposal for the same or similar project and was in all respects fair and without collusion or fraud.

23. **Severability.** If any clause or section of this Agreement is declared by a court of competent jurisdiction to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

24. **RESERVED**

25. **Attorney fees and costs.** Except as provided in Section 24(b), in the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of

the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any non-judicial action.

26. **Applicable laws.** This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction in Yamhill County.

27. **Subcontractors bound.** Contractor covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all Subcontractor(s) ad infinitum.

28. **Written changes required.** The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

29. **Successors bound.** This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

THIS AGREEMENT AND THE CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN, REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

YAMHILL COUNTY, OREGON



Darrin Scott Harlow
Date: 6/27/14



Silas Halloran-Steiner, Director
Health and Human Services
Date: 6/20/14

Federal EIN/SS#: 5 69 131673

CCB#: 126976

APPROVED AS TO FORM

By: 

for Christian Boenisch
County Counsel
Accepted by Yamhill County
Board of Commissioners on
6/5/14 by Board Order
14-311