

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between the City of Newport ("Owner") and Road and Driveway Co. ("Contractor"). Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

Placement and grading of aggregate base, asphalt cold plane milling, patching existing HMAC pavement, and construction of new HMAC pavement.

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is "2013 Street Overlay Program".

ARTICLE 3 – ENGINEER

The Project has been designed by the Owner. The Owner assumes all duties and responsibilities, and has the rights and authority, assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **120** days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 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 preceding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$200 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A below:

- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item as shown in the Bid Form, an estimated sum of: \$174,736.20.

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

- 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the

Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate allowed by Oregon law.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement
 - 2. Performance Bond
 - 3. Payment Bond
 - 4. General Conditions
 - 5. Supplementary Conditions
 - 6. Technical Specifications
 - 7. Addenda
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid Form

- b. Documentation submitted by Contractor prior to Notice of Award
- 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. Change Orders
 - c. Warranty Bond
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that 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.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. 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 Owner 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.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Pursuant to ORS 279C.505(1) – Contractor shall make payment promptly, as due, to all persons supplying the Contractor with labor or materials for the performance of the work provided for in the contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.
- B. Pursuant to ORS 279C.505(2) – Contractor certifies that it has an employee drug testing program in place.
- C. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. Other provisions of ORS 279C.515 and ORS 279C.580 concerning payments also apply.

- D. Contractor shall comply with hours of labor rules Pursuant to ORS 279C.520, 279C.540, and 279C.545.
- E. Per ORS 279C.530, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126
- F. Contractor shall pay workers not less than the applicable prevailing wage rate.
- G. Public Works Bond – Contractor shall have a public works bond filed with the Oregon Construction Contractors Board before starting Work on the Project unless exempt under ORS 279C.836. Contractor shall include in every subcontract a provision requiring every subcontractor to have a public works bond filed with the Oregon CCB before starting Work on the project unless exempt under ORS 279C.836.
- H. Contractor shall defend, hold harmless and indemnify Owner, its officers, agents, engineers, attorneys and employees from any and all losses, liability, damages, costs, expenses (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs), claims, suits or actions whatsoever in nature, including intentional acts, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Contract.
- I. Failure of Owner to enforce any provision of this Contract shall not constitute a waiver by the Owner of that or any other provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on 1/13/14 (which is the Effective Date of the Agreement).

Signed for OWNER: City of Newport

By: Ted Smith

Name/

Title: Spencer Nebel, City Manager

Ted Smith, Acting City Manager

Signed for CONTRACTOR:

By: [Signature]

Name/

Title: GENERAL MANAGER

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Attest: [Signature]

Title: Office Mgr

Address for giving notices:

City of Newport

169 SW Coast Hwy

Newport, Oregon 97365

Address for giving notices:

PO Box 730
Newport OR 97365

CCB No.: 16331



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/6/2014

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 ADDRESS margie@wardinsurance.net	
INSURED Road & Driveway PO Box 730 Newport OR 97365		INSURER(S) AFFORDING COVERAGE INSURER A: Continental Western Ins. Co. NAIC # 10804 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 13/14 GL/AL/UMB-AI-R&D

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	ADOL 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 <input checked="" type="checkbox"/> \$2,000 PD DED PER OCCURRENCE GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X	Y	CWP289960624 LOGGERS BFPD @ \$1,000,000 LIMITED POLLUTION LIABILITY @ \$1,000,000	10/1/2013	10/1/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 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 \$		
	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						CWP289960624 AUTO POLLUTION LIABILITY @ \$1,000,000	10/1/2013 10/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$ 15,000
	A UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						CW289960723	10/1/2013 10/1/2014	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below						N/A		WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> 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: 2013 Street Overlay Program

City of Newport is named as additional insured as respects to work performed by the named insured under written contract agreement and per the attached CLCG0013. Coverage is primary and non-contributory per the attached CLCG0013. Waiver of subrogation is included in CLCG0013.

CERTIFICATE HOLDER**CANCELLATION**

City of Newport
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

**COMMERCIAL GENERAL LIABILITY
CL CG 00 13 08 13**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY PLATINUM ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**A. MEDICAL PAYMENTS**

If **SECTION I - COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit provided by this policy, subject to the terms of **SECTION III - LIMITS OF INSURANCE**, shall be the greater of:
 - a. \$10,000; or
 - b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

B. FIRE, LIGHTNING, EXPLOSION, SMOKE 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:

1. The last paragraph of **SECTION I - COVERAGE A.2. Exclusions** is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke 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**.

2. Paragraph 6. of **SECTION III - LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph 5. above, the greater of:

- a. \$300,000; or
- b. the Damage To Premises Rented To You Limit shown in the Declarations;

is the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you or temporarily occupied by you with the permission of the owner.

3. Paragraph 4.b.(1)(a)(ii) **Other Insurance** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced by the following:

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

4. Paragraph 9.a. of **SECTION V - DEFINITIONS** is deleted and replaced by the following:

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

C. LIMITED NON-OWNED WATERCRAFT

1. Paragraph **g.(2)** of **SECTION I - COVERAGE A.2. Exclusions** is deleted and replaced by the following:

A watercraft you do not own that is:

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

D. SUPPLEMENTARY PAYMENTS

SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is amended as follows:

1. The limit of insurance in paragraph **1.b.** is increased from \$250 to \$2,500; and
2. The limit of insurance in paragraph **1.d.** is increased from \$250 to \$500.

E. AUTOMATIC ADDITIONAL INSURED - SPECIFIED RELATIONSHIPS - PRIMARY NON-CONTRIBUTORY

The following is added to Paragraph **2.** of **SECTION II - WHO IS AN INSURED:**

- e. Any person or organization described below, when you are obligated by virtue of a written contract or agreement that such person be added as an additional insured on your policy.

When required by virtue of a written contract or agreement, coverage provided to any additional insured will be on a primary basis and will not seek contribution from the additional insured's policy.

Only the following persons or organizations are additional insureds under this endorsement:

- (1) **Managers Or Lessors Of Premises.** The manager or lessor of a premise leased to you, but only with respect to liability arising from the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant of that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

- (2) **Lessor Of Leased Equipment.** Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- (3) **Vendors.** Any person or organization, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- a. The insurance afforded the vendor does not apply to:

1. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
2. Any express warranty unauthorized by you;
3. Any physical or chemical change in the product made intentionally by the vendor;

4. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 5. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 6. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 7. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

(4) State Or Political Subdivision - Permits Or Authorizations Relating To Premises.
Any state or political subdivision, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (b) The construction, erection, or removal of elevators; or
- (c) The ownership, maintenance, or use of any elevators covered by this insurance.

Limits of insurance for such additional insured are the limits in this coverage form or the limits you and such additional insured agreed to by virtue of a contract or agreement, whichever is less. These limits are inclusive of and are not in addition to the Limits Of Insurance shown in the Declarations.

When required by virtue of a written contract or agreement, coverage provided to any additional insured **AUTOMATIC ADDITIONAL INSURED - SPECIFIED RELATIONSHIPS - PRIMARY NON-CONTRIBUTORY** will be on a primary basis and will not seek contribution from the additional insured's policy.

F. BROADENED NAMED INSURED - NEWLY ACQUIRED 180 DAYS

Paragraph 3. of **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or majority interest of more than 50% will be a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
- b. **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.
- c. **COVERAGE B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

G. AGGREGATE LIMITS OF INSURANCE

The General Aggregate Limit under **SECTION III - LIMITS OF INSURANCE** applies separately to each of your:

1. Projects away from premises owned by or rented to you.
2. "Locations" owned by or rented to you.

"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.

When paragraph **B. Construction Project General Aggregate Limit** on form CL CG 00 20 is a part of this policy, then paragraph **G. Aggregate Limits of Insurance** of this endorsement does not apply.

H. KNOWLEDGE OF OCCURRENCE

The following is added to paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. A report of an "occurrence", offense, claim or "suit" to:
 - (1) You, if you are an individual,
 - (2) A partner, if you are a partnership,
 - (3) An executive officer, if you are a corporation, or
 - (4) A manager, if you are a limited liability company;is considered knowledge and requires you to notify us of the "occurrence", offense, claim, or "suit" as soon as practicable.
- f. We are considered on notice of an "occurrence", offense, claim or "suit" that is reported to your Workers' Compensation insurer for an event which later develops into an "occurrence", offense, claim or "suit" for which there is coverage under this policy. However, we will only be considered on notice if you notify us as soon as you know the claim should be addressed by this policy rather than your Workers' Compensation policy.

I. UNINTENTIONAL OMISSIONS

The following is added to paragraph **6. Representations** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- d. If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under this Coverage Part solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

J. MENTAL ANGUISH

Paragraph **3.** of **SECTION V - DEFINITIONS** is deleted and 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.

K. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations or "your work" done under a contract requiring such waiver with that person or organization and included in the "products-completed operations hazard".

However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

Paragraph K. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS does not apply if another waiver of transfer of rights of recovery against others is endorsed separately to this policy.

L. OTHER INSURANCE

When Coverage applies in this General Liability Enhancement Endorsement, no other coverage or limit of insurance in the policy applies to loss or damage insured by this coverage.

M. NON-EMPLOYMENT DISCRIMINATION LIABILITY (DEFENSE WITHIN LIMITS)

The following is added to paragraph 14. **"Personal and advertising injury" SECTION V - DEFINITIONS of COMMERCIAL GENERAL LIABILITY COVERAGE FORM:**

h. Non-employment discrimination.

Non-employment discrimination means violation of a person's civil rights with respect to such person's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other protected class or characteristic established by any federal, state or local statutes, rules or regulations. Non-employment discrimination does not include violation of civil rights arising out of past, present or prospective employment.

Our obligation under the **Personal and Advertising Injury Liability Coverage** to pay non-employment discrimination liability damages on your behalf applies only to the amount of damages in excess of **\$5,000 deductible** as the result of any one offense regardless of the number of persons or organizations who sustain damages because of the offense.

The most we will pay for all damages for non-employment discrimination is **\$15,000 annual aggregate**. No other liability to pay sums or perform acts or services is covered.

Supplemental Payments - Coverages A and B do not apply to non-employment discrimination coverage.

N. ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS OR OTHERS- AUTOMATIC, INCLUDING PRIMARY NON-CONTRIBUTORY

- 1. SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization for whom you are performing operations when you are obligated by virtue of a written contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused by your ongoing operations for the additional insured and only to the extent that such "bodily injury", "property damage" or "personal and advertising injury" is caused by your negligence or the negligence of those performing operations on your behalf.

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" included within the "products-completed operations hazard".

This insurance does not apply to any additional insured scheduled on your policy by separate endorsement

2. Limits of Insurance

Limits of insurance for such additional insured are the limits in this coverage form or the limits you and such additional insured agreed to by virtue of a contract or agreement, whichever is less. These limits are inclusive of and are not in addition to the Limits Of Insurance shown in the Declarations.

3. Exclusions

- A.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- 1.** The rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:

- a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
 - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
 2. Subject to Paragraph 3. below, professional services include:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
 3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you or performed by or for the construction manager, its employees or its subcontractors in connection with your ongoing operations.
- 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) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has 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 a part of the same project.

4. **Primary Non-Contributory**

When required by virtue of a written contract or agreement, coverage provided to any additional insured by **ADDITIONAL INSURED - OWNERS, LESSEES, CONTRACTORS OR OTHERS - ONGOING OPERATIONS - AUTOMATIC, INCLUDING PRIMARY NON CONTRIBUTORY** will be on a primary basis and will not seek contribution from the additional insured's policy.

OREGON WORKERS COMPENSATION CERTIFICATE OF INSURANCE

**CERTIFICATE HOLDER:**

CITY OF NEWPORT
169 SW COAST HIGHWAY
NEWPORT, OR 97365

The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy.

POLICY NO.	POLICY PERIOD	ISSUE DATE
812716	10/01/2013 to 10/01/2014	01/06/2014
INSURED: ROAD & DRIVEWAY CO PO BOX 730 NEWPORT, OR 97365-0053		BROKER OF RECORD: WARD INSURANCE AGENCY INC PO BOX 10167 EUGENE, OR 97440
LIMITS OF LIABILITY:		
Bodily Injury by Accident	\$500,000	each accident
Bodily Injury by Disease	\$500,000	each employee
Body Injury by Disease	\$500,000	policy limit

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS:

RE: 2013 Street Overlay Program

IMPORTANT:

The coverage described above is in effect as of the Issue date of this certificate. It is subject to change at any time in the future.

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. This certificate does not constitute a contract between the issuing insurer, authorized representative or producer and the certificate holder.

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED TO THE POLICYHOLDER AND CERTIFICATE HOLDER IN ACCORDANCE WITH THE POLICY PROVISIONS AND OREGON LAW. SAIF WILL ENDEAVOR TO PROVIDE WRITTEN NOTICE WITHIN 30 DAYS WHENEVER POSSIBLE.

AUTHORIZED REPRESENTATIVE

Brenda JP Reddick

President and CEO

400 High Street SE
Salem, OR 97312
P: 800.285.8525
F: 503.584.9812

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

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

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
<u>1</u>	<u>11-25-13</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.

- E. Based on the information and observations referred to in Paragraph 3.01.D above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- E. Bidder certifies that Bidder will comply with ORS 279C.838 or 279C.840 regarding prevailing wage rates.
- F. Bidder ☒ is ☐ is not a resident bidder as defined in ORS 279A.120.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following Unit price(s):

	Ref. Section	Bid Item	Unit	Est. Quantity	Unit Price	Total Price
1	00210	Mobilization (Not to exceed 10% of total bid)	LS	1	\$ 10620 ⁰⁰	\$ 10620.00
2	00225	Temporary Work Zone Traffic Control, Complete	LS	1	\$ 1450 ⁰⁰	\$ 1450.00
3	00610	Excavation for Repair Patching	CY	50	\$ 161 ⁶⁴	\$ 8082.00
4	00620	Cold Plane Pavement Removal, 2" Deep	SY	730	\$ 3 ⁸⁶	\$ 2817.80
5	00620	Tapered Edge Milling, 0"-3" Deep	LF	2,200	\$ 3 ⁸⁶	\$ 8492.00
6	00620	Tapered Edge Milling, 3.5"-8" Deep	LF	1,000	\$ 3 ⁸⁶	\$ 3860.00
7	00640	Base Aggregate	Ton	100	\$ 164 ⁶	\$ 1646.00
8	00640	Finish Grading for Aggregate Base	SY	3,300	\$ 2 ⁴⁴	\$ 8052.00
9	00744	Level 3, 12.5 mm (1/2 inch) Dense, MHMAC Mixture	Ton	1,860	\$ 69 ⁷⁴	\$ 129716.40

Total of Item Prices (numbers): \$ 174,736.20

Total of Item Prices (in words): One hundred seventy four thousand, Seven hundred thirty six and 20/100

- Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security in the form of a Bid Bond (EDCDC No. C-430).
- B. First-Tier Subcontractor Disclosure Form submitted with 2 hours after bid closing time.
- C. Oregon Construction Contractors Board License No.: 16331.

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

9.01 This Bid is submitted by:

An Individual

Name (typed or printed): NA

By: _____
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: NA

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: Road and Driveway Co. (SEAL)

State of Incorporation: Oregon

Type (General Business, Professional, Service, Limited Liability): General Business

By: Robert G. Wienert
(Signature -- attach evidence of authority to sign)

Name (typed or printed): Robert G. Wienert

Title: President

Attest: D. Wahlhelm

Date of Qualification to do business in Oregon is 9/1/60

A Joint Venture

Name of Joint Venture: NIA

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address PO Box 730,

121 NE Hanney St.

Newport, OR 97365

Phone No. 541-265-9441 Fax No. 541-265-9443

E-mail bob@roadanddriveway.com

Submitted on Dec 3rd, 2013

State Contractor License No. 116331

