PUBLIC IMPROVEMENT CONTRACT

NW 3rd St Sewer Pipebursting (SSMH 6263 to 6034)

THIS CONTRACT is made this 11th day of April, 2016, between City of Newport, hereinafter called Owner, and K & R Plumbing Construction Co., Inc., hereinafter called Contractor. In consideration of mutual covenants hereinafter set forth, the parties agree as follows:

1. **Work**. Contractor shall complete all work as specified in the Contractor's Proposal, and in conformance with all Owner public works design and construction standards.

2. **Materials**. Contractor will furnish, provide and pay for all materials, supplies, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

3. **Contract Time**. The Work will be completed by Contractor within 30 days after the date of Owner's Notice to Proceed, unless the time for completion is extended otherwise by the Contract Documents or by written agreement of the parties.

4. **Contract Price**. Owner shall pay Contractor for performance of the Work in accordance with the quoted lump sum price in the Contractor's Proposal.

5. **Compensation**. Owner will pay the Contract Price upon final completion and City's acceptance of Contractor's Work.

6. **Contract Documents**. The term "Contract" or "Contract Documents" means and includes the following:

    a) Contractor's submitted Proposal;
    b) Public Improvement Contract;
    c) ORS 279C Requirements (attached);
    d) Change Orders (if any);

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

8. **Materials and Equipment**. Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate

prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

9. **Contractor's Representations**. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

   a) Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations which, in any manner, may affect cost, progress, or performance of the Work;

   b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of the Work which were relied upon in the preparation of the drawings and specifications;

   c) Contractor has made or has caused to be made examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in (b) which it deems necessary for the performance of the Work, determination of the contract price, completing the building within the contract time in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes;

   d) Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents;

   e) Contractor has given the Owner's representative written notice of all conflicts, errors or discrepancies which he has discovered in the Contract Documents and the written resolution thereof by the Owner's representative is acceptable to the Contractor.

10. **Insurance**. Before undertaking any work on the project, Contractor shall provide Owner with Certificates of Insurance including comprehensive general liability and other insurance as will provide protection for the claims set out below, which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor or any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

    a) Claims under workers' compensation or other similar employee benefits;

    b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;

c) Claims for damages because of bodily injury, sickness, disease or death of any person other than Contractor's employees;

d) Claims for damages covered by personal injury liability insurance, sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;

e) Claims for damages other than to the Work itself because of injury or destruction of tangible property, including loss of use resulting therefrom;

f) Claims for damages because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The limits of such liability shall be as follows:

1)	Comprehensive general liability	$1,500,000
2)	Automobile	$1,500,000
	i) Bodily injury	$1,500,000
	ii) Property Damage	$1,500,000

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

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

12. **Warranty**. This project is warranted against any and all failures for a period of two (2) years from the date of completion. Contractor agrees to be responsible for all such repairs. If Contractor does not effect repairs within thirty (30) days after notice provided by the Owner, the Owner may effect repairs and bill Contractor. Contractor shall be liable for payment of all such sums, as billed.

13. **Suspension of Work, Termination Delay**.

a) If Contractor is adjudged as bankrupt or insolvent or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if it repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if it repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment, or if it disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the Work, or if it disregards the authority of the Owner's representative or if it otherwise violates any provision of the contract documents, then the Owner may, without prejudice to any other right or remedy, after giving the Contractor and its surety a minimum of five (5) days' notice from delivery of the written notice, terminate the services of the Contractor and take possession of the Project and all materials, equipment, tools, construction equipment, machinery thereon owned by Contractor and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If the costs exceed such unpaid balances, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Owner and incorporated in a change order.

b) Where the Contractor's services have been so terminated by the Owner, the termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.

c) After five (5) days from delivery of written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.

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

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

15. **Miscellaneous**.

    a) No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

    b) This Contract shall be binding upon all parties hereto and their respective partners, successors, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

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

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

THIS CONTRACT is effective on the 11th day of April, 2016.

OWNER:

By: _____
Spencer Nebel, City Manager

CONTRACTOR:

By: _____
Name/
Title: V.P.

Address for giving notices:

City of Newport
169 NW Coast Highway
Newport, OR 97365

Address for giving notices:

K&R Plumbing & Const.
14463 SE. 152nd Dr.
Clackamas OR 97015

Approved as to Form

_____
City Attorney

K& R Plumbing Construction Co., Inc.
14463 S.E. 152nd Drive Clackamas, OR 97015
Office: 503-658-3161 ● Fax: 503-658-8305
CCB# 3294

Proposal

To: John Richey
Date: March 10, 2016
Project: City of Newport Pipeburst

We hereby submit a proposal for the specified project. The work shall be done in accordance with the specifications with the type of work quoted and or as noted in the proposal below.

Item:
K&R Plumbing Construction will dig entrance pit & burst approximately 220 FT. of 10" HDPE (no laterals), grout manholes, backfill, and compact trench with ¾-0 in rock. We will supply traffic signs (no flaggers).

Proposal Price:

$17,500 lump sum.

Notes:
Pipe must be clean and have no collapsed areas, city to supply dump site for spoils, city to supply permits if needed. Assume flow can be by-passed with a 2" pump.

Exclusions:
No paving.

BID BASED ON SIGNING A MUTUALLY ACCEPTABLE CONTRACT AGREEMENT

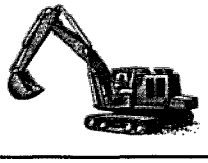
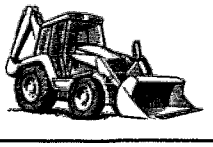
PAYMENT MADE AS FOLLOWS:

1. With estimated quantities and unit price quotes; the final billing will be based on completed quantities times the unit price for the item.
2. Payment in full shall be made within 30 days of completion of our work on the project.
3. Finance charges of 1.5% per month will be assessed on any unpaid balance.

Note: This proposal may not be valid if not accepted within 30 days.

Authorized Signature: RR Date: March 10, 2016

Acceptance of Proposal Signature: Date:



"Have Rig Will Dig"