

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

THIS AGREEMENT is by and between City of Newport ("Owner") and  
Enterprise Northwest Inc. D/B/A Earth Works Excavation ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Installation of 7,039 lineal feet of common trench with 40,752 lineal feet of conduit for electrical and communication systems. All wire and final connections to be performed by Central Lincoln PUD, and Pioneer, Wave, and Charter Communication companies. The work will include installing 5 utility vaults, 12 transformers, 19 switchstands, and 7 pull boxes provided by others, installing 12 contractor provided pull boxes, and 57 stub ups at locations for future handholes or other structure, or as required at existing utility poles or structures. The work includes temporary construction controls, erosion and sediment BMP's, traffic control, asphalt trench patch, sidewalk and ADA repair and replacement and other miscellaneous surface restoration activities.

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

South Beach Conduit Upgrades Phase 1

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by SHN Consulting Engineers & Geologists, Inc.

3.02 The Owner has retained SHN Consulting Engineers & Geologists, Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have 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 *Contract Times: Dates*

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within 150 working days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 180 working days after the date when the Contract Times commence to run. Working days are defined as Monday through Friday, excluding federal and state holidays.

#### 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 and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding 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):
1. **Substantial Completion:** Contractor shall pay Owner \$1,500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. **Completion of Remaining Work:** After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,500 for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

### ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

CONTRACTOR'S BID ATTACHED

### ARTICLE 6 – PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 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, provided that such

Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.

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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
  - 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. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E 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 punch list of items to be completed or corrected prior to final payment.

#### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

### ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

### ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to

the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Contractor has considered the information known to Contractor itself; 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; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
- 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.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. This Agreement
  - 2. Performance Bonds
  - 3. Payment Bonds
  - 4. Other bonds: (pages \_\_ to \_\_, inclusive).
  - 5. General Conditions
  - 6. Supplementary Conditions
  - 7. Drawings (not attached but incorporated by reference) consisting of \_\_ sheets.
  - 8. Addenda
  - 9. Contractor's Bid
  - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.

- b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. The Contract Documents may only be amended, modified, or supplemented as provided in 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. Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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 successors, assigns, and legal representatives to the other party hereto, its 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 anything 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. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 10/22/2019 (which is the Effective Date of the Contract).

OWNER: [Signature]  
By: Spencer R. Nobel  
Title: City Manager

Attest: Melanie Nelson  
Title: Exec. Asst.  
Address for giving notices:  
169 S. Coast Hwy  
Newport, OR 97365

CONTRACTOR:  
ENTERPRISES NORTHWEST INC.  
By: William F. Howard  
Title: PRESIDENT  
*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*  
Attest: Gene Straessle  
Title: OFFICE ASST / WITNESS  
Address for giving notices: D/B/A  
Earth Works Excavation  
24675 Hwy 101 S.  
Cloverdale, OR 97112  
License No.: 141765 EXP 3/20  
*(where applicable)*

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

Reference: 617062.300

# South Beach – Conduit Upgrades – Phase 1

## Volume 1

## Bid Documents

Prepared for:

**City of Newport**

169 SW Coast Highway

Newport, OR 97365



EXPIRES: 6-30-21

Prepared by:



275 Market Avenue

Coos Bay, OR 97420-2228

541-266-9890

July 2019

QA/QC:RFS

**BID FORM**

**CITY OF NEWPORT**

**South Beach – Conduit Upgrades – Phase 1**



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**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

City of Newport  
Attention: Chris Janigo  
169 SW Coast Highway  
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

2.02 Successful BIDDER will sign the AGREEMENT and submit the Contract Security and other documents required by the contract documents within fifteen (15) days after the date of OWNER's Notice of Award.

**ARTICLE 3 – BIDDER'S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
<u>#1</u>	<u>8-27-19</u>
<u>#2</u>	<u>8-30-19</u>
<u>#3</u>	<u>9-18-19</u>

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself 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 itself; 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 any 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; and (3) Bidder's safety precautions and programs.

- E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price 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 confirms that 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 and furnishing of the Work.
- I. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **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 anything 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.

**ARTICLE 5 - BASIS OF BID**

**UNIT PRICE BID**

Item No.	Description	Unit	Qty	Bid Unit Price	Bid Price
1	Mobilization, Bonds, & Insurance	LS	1	\$17,075.00	\$17,075.00
2	Construction Controls	LS	1	\$18,279.00	\$18,279.00
3	Erosion and Sediment Controls	LS	1	\$6,025.00	\$6,025.00
4	Temporary Traffic Control	LS	1	\$65,618.00	\$65,618.00
5	2-inch Communication Conduit	LF	18,826	\$14.60	\$274,859.60
6	3-inch Communication Conduit	LF	371	\$36.50	\$13,541.50
7	2-inch Electrical Conduit	LF	553	\$36.00	\$19,908.00
8	3-inch Electrical Conduit	LF	15,002	\$17.50	\$262,535.00
9	4-inch Electrical Conduit	LF	6759.00	\$13.50	\$91,246.50
10	Ground Wire	LF	2,253	\$0.75	\$1,689.75
11	Switchstand (Installation only)	EA	12	\$989.00	\$11,868.00
12	Transformer (Installation only)	EA	11	\$735.00	\$8,085.00
13	PUD Stub Up (Installation only)	EA	24	\$645.00	\$15,480.00
14	Vault (Installation only)	EA	5	\$1,703.00	\$8,515.00
15	Communication Stub Up	EA	75	\$248.00	\$18,600.00
16	ADA Ramp (Sheet C-5 only)	SF	611	\$34.25	\$20,926.75
17	ADA Truncated Domes (Sheet C-5 only)	SF	60	\$35.75	\$2,145.00
18	Concrete Sidewalk Replacement (Sheet C-5 only)	SF	134	\$36.00	\$4,824.00
19	Concrete Curb Replacement (Sheet C-5 only)	LF	138	\$103.00	\$14,214.00
20	Cleanup	LS	1	\$3,265.00	\$3,265.00
<b>Total of All Unit Price Bid Items \$</b>					<b>\$878,700.10</b>

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) 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 within 150 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 180 calendar days after the date when the Contract Times commence to run.

**ARTICLE 7 - ATTACHMENTS TO THIS BID**

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

A. Public Works Bond

B. Contractors License No.: 141765 Exp 3/20  
RGC/CGG level 2

EJDC\* C-410, Bid Form for Construction Contracts

**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**

BIDDER: *(Indicate correct name of bidding entity)* d/b/a  
ENTERPRISES NORTHWEST INC - EARTH WORKS/ EXCAVATION

By: William J Howard  
*(Signature)*

William Howard  
*(Printed name)*

*(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)* Included

~~Attest:~~ Witness Rene Straessle  
*(Signature)*

RENE STRAESSLE  
*(Printed name)*

Title: OFFICE ASST.

Submittal Date: Sept 25, 2019

Address for giving notices: 24675 Hwy 101 S.

ClOVerdale, OR 97122

Telephone Number: 503-398-2814

Fax Number: 503-398-2815

Contact Name and e-mail address: Bill Howard

bill@earthworks-us.com

Bidder's License No.: 1A1765 Exp 3/20 R6C/CGC Level 2



**STATE OF OREGON**  
**STATUTORY PUBLIC WORKS BOND**

Surety bond #: 812349C

CCB # (if applicable): 141765

We, Enterprises Northwest, Inc DBA Earth Works Excavation, as principal, and Developers Surety and Indemnity Company, a corporation qualified and authorized to do business in the State of Oregon, as surety, are held and firmly bound unto the State of Oregon for the use and benefit of the Oregon Bureau of Labor and Industries (BOLI) in the sum of thirty thousand dollars (\$30,000) lawful money of the United States of America to be paid as provided in ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, for which payment well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by this agreement.

WHEREAS, the above-named principal wishes to be eligible to work on public works project(s) subject to the provisions of ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and is, therefore, required to obtain and file a statutory public works bond in the penal sum of \$30,000 with good and sufficient surety as required pursuant to the provisions of section 2, chapter 360, Oregon Laws 2005, conditioned as herein set forth.

NOW, THEREFORE, the conditions of the foregoing obligations are that if said principal with regard to all work done by the principal as a contractor or subcontractor on public works project(s), shall pay all claims ordered by BOLI against the principal to workers performing labor upon public works projects for unpaid wages determined to be due, in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and OAR Chapter 839, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of wage claims ordered by BOLI to workers performing labor upon public works projects in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date it is executed by both the principal and surety and shall continuously remain in effect until depleted by claims paid under ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, unless the surety sooner cancels the bond. This bond may be cancelled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal, the Construction Contractors Board, and BOLI. Cancellation shall not limit the responsibility of the surety for the payment of claims ordered by BOLI relating to work performed during the work period of a contract entered into before cancellation of this bond.

IN WITNESS WHEREOF, the principal and surety execute this agreement. The surety fully authorizes its representatives in the State of Oregon to enter into this obligation.

SIGNED, SEALED AND DATED this 4th day of August, 2018

Surety by:

Developers Surety and Indemnity Company (Seal)  
*Company Name*

*Signature*

Taylor Renae Kornell Attorney-in-Fact  
*Title (e.g. Attorney-in-Fact)*

Principal by:

Enterprises Northwest, Inc DBA Earth Works Excavation  
*Name*

*Signature*

PRESIDENT  
*Title*

**SEND BOND TO:** Construction Contractors Board  
PO Box 14140  
Salem, OR 97309-5052  
Telephone: (503) 378-4621

24675 Hwy 101 South  
*Address*

Cloverdale OR 97112  
*City State Zip*

**STATE OF OREGON  
CONSTRUCTION CONTRACTORS BOARD  
LICENSE CERTIFICATE**

**LICENSE NUMBER: 141765**

This document certifies that:

**ENTERPRISES NORTHWEST INC  
24675 HWY 101 S.  
CLOVERDALE OR 97112**

is licensed in accordance with Oregon Law as a Residential General Contractor and a Commercial General Contractor Level 2.

**Business Names:**

**EARTH WORKS EXCAVATION**

**License Details:**

**EXPIRATION DATE: 03/30/2020  
ENTITY TYPE: Corporation  
INDEP. CONT. STATUS: NONEXEMPT  
RESIDENTIAL BOND: \$20,000  
COMMERCIAL BOND: \$20,000  
INSURANCE: \$1,000,000 / \$2,000,000  
RMI: WILLIAM FLOYD HOWARD  
HOME INSPECTOR CERTIFIED: NO**

Evidence of Authority  
To Sign  
1 of 4

**UNANIMOUS CONSENT RESOLUTION IN LIEU OF ORGANIZATIONAL MEETING  
OF THE INCORPORATOR AND DIRECTORS  
OF  
ENTERPRISES NORTHWEST, INC.**

In accordance with the provisions of ORS 60.057, the following actions were taken in the order listed by and with the unanimous consent of the Incorporator and all individuals constituting the initial Board of Directors of Enterprises Northwest, Inc., an Oregon Corporation, in Lieu of an Organizational Meeting:

The Incorporator reported that the Articles of Incorporation were filed in the office of the Oregon Secretary of State on February 22, 2000.

**ARTICLES OF INCORPORATION**

RESOLVED that the true copy of the filed Articles of Incorporation of the corporation shall be placed in the minute book of the corporation.

**DIRECTORS**

RESOLVED that the following people are elected by the incorporator as members of the board of directors of the corporation, each such director's term to commence immediately and continue until the director's successor is elected and qualified:

**William F. Howard**

**Margaret A. Howard**

**BYLAWS**

RESOLVED that the bylaws in the form presented to the directors are adopted as the bylaws of the corporation, and a copy of the bylaws shall be placed in the minute book of the corporation.

**OFFICERS**

RESOLVED that the following people are appointed to the corporate offices set forth opposite their respective names, each to serve until their respective successors are elected and qualified:

NAME

OFFICE

**William F. Howard**

**President**

**Margaret A. Howard**

**Vice-President/Secretary**



BANKING

RESOLVED that Western Bank, Tillamook, Oregon, (the "Bank") is designated as the banking depository of the corporation, with authorized signatures on accounts at the Bank to be the following each with authority to sign a loan:

<u>NAME</u>	<u>TITLE</u>
William F. Howard	President
Margaret A. Howard	Vice-President/Secretary

Such authority shall remain in force until revoked by written notice to the Bank of action taken by the Board of Directors of the corporation.

FURTHER RESOLVED that the standard form of corporate resolution furnished and required by the Bank is adopted, and the secretary is authorized to certify such adoption and is directed to place a copy of the form resolution in the minute book of the corporation as part of the record of this action.

FORM OF STOCK CERTIFICATE

RESOLVED that the form of specimen stock certificate presented to the directors is adopted as the stock certificate to be used to evidence the issuance of the fully paid and non-assessable common stock of the corporation, and the secretary is directed to place in the minute book of the corporation such specimen form of stock certificate.

ISSUANCE OF STOCK

RESOLVED that William F. Howard and Margaret A. Howard shall each be permitted to purchase one share of no par value common stock of the corporation in exchange for their respective one-half interest in the property listed on Exhibit "A" attached hereto and incorporated hereat by this reference. The board of directors determines that the consideration to be received is adequate, and the corporation calls for immediate payment in full.

FURTHER RESOLVED that on full payment for the shares, the president and secretary are authorized and directed to issue, sign, and deliver to the subscribers stock certificates representing their respective shares.

INCORPORATION EXPENSES

RESOLVED that the officers are authorized to pay the expenses incurred in the incorporation and organization of the corporation, including those incurred before incorporation and before the

date of this meeting, and to reimburse the officers, directors, and shareholders who have paid any such expenses.

FURTHER RESOLVED that beginning with the month in which the corporation begins business, the corporation shall amortize its organizational expenses ratably over a period of 60 months, in accordance with IRC §248.

#### ACCOUNTANT FOR CORPORATION

RESOLVED that the corporation retain John Puttnam of Puttnam & Teague, CPA, as accountant for the corporation until further action of the Board of Directors. The president is to instruct the accountant to prepare for execution by the corporation and thereafter file on behalf of the corporation, necessary forms and notices with the Internal Revenue Service, Oregon State Department of Revenue, any other public agency with which filing is necessary for tax or withholding purposes.

#### ATTORNEY FOR CORPORATION

RESOLVED that the corporation retain The Law Office of Alan K. Andrews as attorney for the corporation until further action of the Board of Directors. The president is to instruct the attorney, where determined appropriate on behalf of the corporation, to prepare documents and take other actions as advisable on behalf of the corporation concerning its legal affairs.

#### OTHER APPROPRIATE ACTIONS

RESOLVED that the officers of the corporation are authorized and directed to take all actions and to execute such documents and instruments as are necessary or appropriate to organize the corporation in accordance with the foregoing resolutions.

#### CONTRACTS

RESOLVED that all contracts and agreements of the corporation, including accounts payable, notes, drafts and other negotiable instruments, leases, and mortgages, shall be entered into or executed on behalf of the corporation by its president. However, in the event of the death, disability, incapacity, or temporary unavailability of the president, the vice-president of the corporation, if any, may enter into or execute such contracts and agreements on behalf of the corporation.

#### DISALLOWANCE OF CORPORATE DEDUCTIONS

RESOLVED that, except as may otherwise be provided in an individual employee's employment agreement with the corporation, any payments made to an employee of the corporation

for compensation, education, entertainment, or other expenses that shall be disallowed in whole or in part as a deductible corporate expense by the IRS shall be reimbursed by the employee to the corporation to the full extent of such disallowance, the board of directors waiving any right to excuse such reimbursement. It shall be the duty of the board of directors to enforce payment by such amount disallowed. In lieu of payment by such employee, subject to the determination of the board of directors, money may be withheld from the employee's future compensation until the amount owed to the corporation is recovered.

#### S CORPORATION ELECTION

RESOLVED that, provided all shareholders of the corporation so agree, the president of the corporation is authorized to cause to be prepared, signed, and filed with the IRS a Form 2553 by which the corporation elects to be an S Corporation under IRC §1361 and following.

#### FISCAL YEAR

RESOLVED that the corporation's fiscal year shall end on December 31<sup>st</sup> of each year beginning with the year 1999, subject to change as may be indicated on the corporation's first federal income tax return.

#### LEASE

RESOLVED that the proposal that the corporation sublease a portion of the lease of Margaret A. Howard from Fred Smith, the premises known as 6335 Pacific Avenue, Pacific City, Oregon, at such rentals, for such term and on such other conditions as are set forth in the Sublease presented to the directors, is approved, and the president of the corporation is authorized and directed to execute and deliver the Sublease and to cause an executed copy of it to be placed in the minute book of the corporation.

#### EMPLOYMENT AGREEMENT

RESOLVED that the proposed employment agreements between the corporation and William F. Howard in the form presented to the directors, providing for the compensation, duties, and other terms of such person's employment with the corporation, is approved, and the president of the corporation is authorized and directed to execute and deliver such employment agreement and to cause an executed copy of it to be placed in the minute book of the corporation.

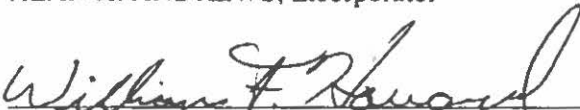
#### LOAN

RESOLVED that the proposal that the corporation borrow from William and Margaret Howard the sum of \$10,000.00 for the purpose of operating capital is approved, and the president

of the corporation is authorized and directed to execute and deliver the note evidencing such corporate obligation in the form presented to the directors, and to cause executed copies of the loan documents to be placed in the minute book of the corporation.

IN WITNESS WHEREOF, the undersigned being the incorporator and the initial director of the above named corporation, has subscribed her name hereto for the purpose of consenting to the adoption of foregoing resolutions and does hereby waive any requirement of notice or the holding of an organizational meeting of the directors, and does hereby consent to the transaction of the foregoing corporate business as of the 15<sup>th</sup> day of March, 2000.

  
ALAN K. ANDREWS, Incorporator

  
WILLIAM F. HOWARD, Director

  
MARGARET A. HOWARD, Director