

CITY OF NEWPORT 2020 STREET OVERLAY PROJECT 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 Company ("Contractor").

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

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 a new standby generator, generator support pad and site grading.

ARTICLE 2—THE PROJECT

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

ARTICLE 3—ENGINEER

- 3.01 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 is 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: Days*

- A. The Work will be substantially complete within 120 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 150 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 and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. 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 \$850 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified 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 Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$550 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 Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for fines and penalties (if any) imposed on Owner as a direct result of Contractor's failure to attain Substantial Completion according to the Contract Times, (2) for fines and penalties (if any) imposed on Owner by an authority having jurisdiction for actions or inaction of Contractor arising from Contractor's performance of the Work (regardless of whether such event was connected with any delay in compliance with the Contract Times), and (3) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The Contractor is responsible for ensuring that no pipelines or utilities are damaged during their construction activities. If pipes or other utilities are damaged by the contractor and it that results in an unplanned shut down of the treatment plant, the Contractor will be fully responsible for any damages that result from the incident, including any immediate remediation efforts to supply drinking water to the Owner's distribution system.
- D. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

- 4.07 Owner reserves the right to withhold from payments due Contractor under the Contract amounts for liquidated damages (if any), special damages (if any), and performance damages (if any) in accordance with the Contract.

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:

- B. 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).

	Ref. Section	Bid Item	Unit	Est. Quantit y	Unit Price	Total Price
1	00210	Mobilization (<i>Not to exceed 10% of total bid</i>)	LS	1	\$19,065.00	\$19,065.00
2	00225	Temporary Work Zone Traffic Control, Complete	LS	1	\$34,487.50	\$34,487.50
3	00610	Excavation for Repair Patching	CY	710	\$60.88	\$43,224.80
4	00640	Base Aggregate	TON	940	\$17.22	\$16,186.80
5	00620	Cold Plane Pavement Removal, 0-3" Deep	SY	17900	\$4.09	\$73,211.00
6	00744	Level 3, 12.5 mm (1/2 inch) Dense, MHMAC Mixture	Ton	3,450	\$66.11	\$228,254.50
Total						\$414,254.60

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

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 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 the value of the Work completed (with the balance being retainage).**
 - 1) If 50 percent or more of the Work has been 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 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, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.**

6.04 Consent of Surety

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.**

6.05 Interest

- A. Not Used**

ARTICLE 7—CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of all of the following:**
- 1. This Agreement.**
 - 2. Bonds:**

- a. Performance bond (together with power of attorney).
- b. Payment bond (together with power of attorney).
- 3. General Conditions.
- 4. Supplementary Conditions.
- 5. Wage Determination Schedule.
- 6. Specifications as listed in the table of contents of the project manual (copy of list attached).
- 7. Drawings (not attached but incorporated by reference) consisting of Figure 1 & Figure 2 sheets with each sheet bearing the following general title: Vicinity Map and Road Sections.
- 8. Addenda (numbers [number] to [number], inclusive).
- 9. 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.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.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 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the

Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. 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 Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. 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.
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. 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.

8.02 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 8.02:
 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.**

8.03 *Standard General Conditions*

- A. **Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), 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 [indicate date on which Contract becomes effective] (which is the Effective Date of the Contract).

City of Newport

(typed or printed name of organization)

By: [Signature]
(individual's signature)

Date: 08-06-20
(date signed)

Name: Spencer Nebel
(typed or printed)

Title: City Manager
(typed or printed)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: Chris Tanigo
(typed or printed)

Title: Sr Project Manager
(typed or printed)

Address: 169 SW Coast Hwy
Newport, OR 97365

Phone: 541-270-7515

Email: c.tanigo@newport.oregon.gov

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

Contractor: Road and Driveway Company

Road and Driveway Co
(typed or printed name of organization)

By: [Signature]
(individual's signature)

Date: 8-4-20
(date signed)

Name: Bob Wienert
(typed or printed)

Title: General Manager
(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: [Signature]
(individual's signature)

Title: Sharon Tyler
(typed or printed)

Address for giving notices:

P.O. Box 730
Newport, OR 97365

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Phone: 541-265-9441

Email: rob@roadanddriveway.com

License No.: 16331
(where applicable)

State: Oregon



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/14/2020

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 have ADDITIONAL INSURED provisions or 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 Inc.
PO Box 10167
Eugene OR 97440

CONTACT NAME: Marcy Baker

PHONE: 541-887-1117

FAX: 541-342-8280

E-MAIL: marcy@wardinsurance.net

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Travelers Property Casualty Insurance Company of A

25674

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED
Road & Driveway Co
PO Box 730
Newport OR 97365

ROAD&DR-01

COVERAGES

CERTIFICATE NUMBER: 704229269

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.

PROD LTK	TYPE OF INSURANCE	ADDITIONAL INSURED	INSURER	POLICY NUMBER	POLICY EFF DATE (MM/DD/YYYY)	POLICY EXP DATE (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$2,500 PD Ded Per Occurrence GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	CO-2L687178	10/1/2019	10/1/2020	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Eo occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Logger's Broad Form COMBINED SINGLE LIMIT (Eo accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY	Y	Y	810-2L642089	10/1/2019	10/1/2020	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Eo occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Logger's Broad Form COMBINED SINGLE LIMIT (Eo accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP-2L68795A	10/1/2019	10/1/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE <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 (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder and all entities required by written contract are included as additional insureds on a primary and non-contributory basis with waiver of subrogation as respects to the general liability including completed operations and auto liability, including waiver of subrogation as required by written contract per attached endorsements. Subject to policy limits, terms, conditions and exclusions.

Project: 2020 Street Overlay Project

CERTIFICATE HOLDER

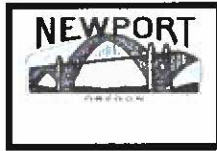
City of Newport
169 SW Coast Hwy
Newport OR 97365

CANCELLATION

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

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**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: 2020 Street Overlay Project - Agreement

Date: 8/5/20

Statement of Purpose: Agreement for construction contract on the 2020 Street Overlay Project.

Department Head Signature: *Trinity Davis*

Remarks, if any: _____

City Attorney Review and Signature: _____ Date: _____

Other Signatures as Requested by the City Attorney: _____

Name/Position

Date: _____

Budget Confirmed: Signature Yes ☒ No ☐ N/A ☐

Certificate of Insurance Attached: Yes ☒ No ☐ N/A ☐

City Council Approval Needed: Yes ☒ No ☐ Date: 8/3/20

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: *[Signature]* Date: 8/6/20

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: *[Signature]* Date: 8/19/2020

Date posted on website: 8/19/20