

**ORDINANCE NO. 1179**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH KERR CONTRACTORS, INC. FOR CONSTRUCTION OF NE TERRITORIAL ROAD SANITARY SEWER EXTENSION; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore advertised and received five bids for the N.E. Territorial Road Sanitary Sewer Extension; and

**WHEREAS**, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on April 20<sup>th</sup>, 2005; and

**WHEREAS**, bids were received and opened on May 12<sup>th</sup>, 2005 at 2:00 pm in Canby City Hall Council Chambers and the following five bids were read aloud:

|                                   |   |              |
|-----------------------------------|---|--------------|
| <b>Kerr Contractors, Inc.</b>     | P.O. Box 1060<br>Woodburn, OR 97071                             | \$303,595.00 |
| <b>Dunn Construction, Inc.</b>    | 10340 N.E. Weilder Street<br>Portland, OR 97220                 | \$332,615.00 |
| <b>Moore Underground, Inc.</b>    | P.O. Box 2009<br>Fairview, OR 97024                             | \$351,445.00 |
| <b>Canby Excavating</b>           | P.O. Box 848<br>Canby, OR 97013                                 | \$376,757.80 |
| <b>Integrity Excavating, Inc.</b> | 30204 N.E. 103 <sup>rd</sup> Avenue.<br>Battle Ground, WA 98604 | \$474,650.00 |

**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, May 18<sup>th</sup>, 2005, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive and responsible bid be selected; and

**WHEREAS**, the Canby City Council determined that the low responsive and responsible bid was that of Kerr Contractors, Inc.; now therefore

**THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The Mayor and City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Kerr Contractors, Inc. for N.E. Territorial Road Sanitary Sewer Extension, for the bid amount of \$303,595.00. A copy of a contract with Kerr Contractors, Inc. is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 18<sup>th</sup>, 2005; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 1<sup>st</sup>, 2005, after the hour of 7:30 pm at the Council Chambers at the Canby City Hall, 182 N. Holly, Canby, Oregon.



Kimberly Scheafer, City Recorder

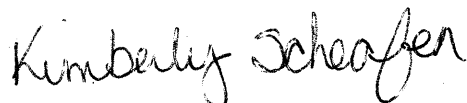
**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 1st day of June, 2005, by the following vote:

YEAS 5 NAYS 0



Melody Thompson, Mayor

ATTEST:



Kimberly Scheafer, City Recorder

## CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_ in the year 2005 by and between

CITY OF CANBY

(hereinafter called OWNER) and

KERR CONTRACTORS, INC.

(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents:

CITY OF CANBY

N.E. TERRITORIAL ROAD SANITARY SEWER EXTENSION

The Work is generally described as follows:

Construction of approximately 960 lineal feet of 8" sanitary sewer pipe including 255 lineal feet of 36" steel casing bore under the railroad and Hwy 99E. The improvements will also include the construction of five (5) manholes.

### ARTICLE 2 - ENGINEER

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### ARTICLE 3 - CONTRACT TIME

3.1 The Work will be substantially completed within 60 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 days after the date when the issuance of the Certificate of Substantial Completion including punch list items.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

- (a) 95 % of the Work completed; and
- (b) 95 % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the value of the Contract Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02 of the General Conditions.

5.2 Final Payment: 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 value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 14.07.

## **ARTICLE 6 - INTEREST**

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279.

## **ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS**

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself 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 that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and 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.

- 9.2 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 party sought to be bound; and specifically by 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.
- 9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have signed four counterparts of this Agreement.

This Agreement will be effective on June 1, 2005.

OWNER:  
CITY OF CANBY  
182 North Holly Street.  
Canby, OR 97011

CONTRACTOR  
KERR CONTRACTORS, INC.  
P.O. Box 1060  
Woodburn, OR 97071

By *Mark C. Adcock*  
 Name/Title Mark C. Adcock  
City Administrator

By *Brent J. Kerr* KJD  
 Name/Title Brent J. Kerr  
PRESIDENT

Attest *Kerr J. Dettler*

Address for giving notices  
Kerr Contractors, Inc.  
P.O. Box 1060  
Woodburn, OR 97071