

**ORDINANCE NO. 1309**

**AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH EAGLE-ELSNER, INC. FOR THE DARCY ESTATES ASPHALTIC CONCRETE PAVING; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby wishes to pave certain public streets within the Darcy Estates Subdivision; and

**WHEREAS**, in accordance with ORS Chapter 279 and Canby Public Purchasing rules as set forth in Ordinance No. 1170 and Resolution No. 897, the City of Canby has heretofore solicited bids for the project. The notice of call for bids was duly and regularly solicited through a formal request on April 7<sup>th</sup>, 2009; and

**WHEREAS**, bids were received and opened on April 21<sup>st</sup>, 2009 at 2:00 pm in the Planning Department Conference Room and the bids were read aloud:

**WHEREAS**, the bidders are as listed below and a detailed tabulation of all items is attached herein:

<b>Eagle-Elsner, Inc.</b>	P.O. Box 23294 Tigard, OR 97281	\$88,650.00
<b>Oregon Asphalt Paving Company</b>	21455 SW 120 <sup>th</sup> Avenue Tualatin, OR 97062	\$90,200.00
<b>Portland Road and Driveway Company</b>	10500 SE Jennifer Street Clackamas, OR 97015	\$104,800.00

**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, May 6<sup>th</sup>, 2009, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

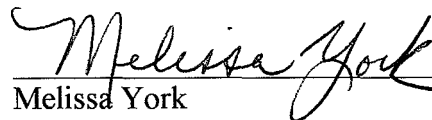
**WHEREAS**, the Canby City Council determined that the low responsive bid was that of Eagle-Elsner, Inc.; now therefore

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

Section 1. The Mayor and/or 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 Eagle-Elsner, Inc. for Darcy Estates Asphaltic Concrete Paving, for the bid amount of \$88,650.00. A copy of the contract with Eagle-Elsner, 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 6<sup>th</sup>, 2009; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, May 20<sup>th</sup>, 2009, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

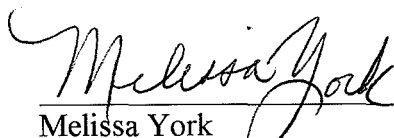
  
\_\_\_\_\_  
Melissa York  
Deputy City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 20<sup>th</sup> May, 2009 the following vote:

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Melody Thompson, Mayor

ATTEST:

  
\_\_\_\_\_  
Melissa York  
Deputy City Recorder

## CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the 21<sup>st</sup> day of May in the year 2009 by and between

CITY OF CANBY

(hereinafter called OWNER) and

EAGLE-ELSNER, 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

#### DARCY ESTATES ASPHALTIC CONCRETE PAVING

The project covers the placement of 2-inch thickness of asphaltic concrete paving over approximately 3,100 lineal feet of residential streets. The City reserves the right to adjust the paving quantity to be completed by the Contractor under this contract based on the bid unit price to match the available budget for this work. The City may accept the "ALTERNATE" if the price is deemed feasible.

### 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 30 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 15 days after the date when the issuance of the Certificate of Substantial Completion including punch list items.

- 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 279C.570

## **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.
- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

## **ARTICLE 8 - CONTRACT DOCUMENTS**

- 8.1 This Agreement

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 three counterparts of this Agreement.

This Agreement will be effective on May 21st, 2009.

OWNER:

**CITY OF CANBY**  
**170 NW 2<sup>nd</sup> Avenue**  
**Canby, OR 97013**

By: Melody Thompson

Name/Title: Melody Thompson Mayor

CONTRACTOR:

**EAGLE-ELSNER, INC.**  
**P.O. Box 23294**  
**Tigard, OR 97281**

By: Richard Eagle, Pres

Name/Title: Richard Eagle, President

Attest: Nancy Newrow SEC.

Address for giving notices:

Same as above

Phone: 503-628-1137