

**ORDINANCE NO. 1459**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY EXCAVATING, INC. FOR THE MULINO AND WILLOW CREEK PUMPING STATION IMPROVEMENTS; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore advertised and received bids for the 2017 Sanitary Sewer Pumping Station Improvements; and

**WHEREAS**, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on March 3, 2017; and

**WHEREAS**, bids were received and opened on March 23, 2017 at 2:00 PM in the City Hall Conference Room and the following six bids were read aloud:

	<i>Bidder</i>	<i>Sch. A Mulino PS</i>	<i>Sch. B Willow Cr PS</i>	<i>Total Bid</i>
<b>1</b>	<b>Canby Excavating</b>	<b>\$ 806,715.00</b>	<b>\$ 317,760.00</b>	<b>\$1,124,475.00</b>
<b>2</b>	McClure & Sons, Inc.	829,227.00	409,231.00	1,238,458.00
<b>3</b>	Stettler Supply Company.	886,672.00	401,111.00	1,287,783.00
<b>4</b>	J.W. Fowler Co.	877,738.00	415,608.00	1,293,346.00
<b>5</b>	R.L. Reimers Co.	915,720.00	381,715.00	1,297,435.00
<b>6</b>	Emery & Sons	1,099,098.00	357,880.00	1,456,978.00

**WHEREAS**, the Canby City Council, acting as the City’s Contract Review Board, met on Wednesday, April 5, 2017, 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 Canby Excavating, Inc.; and

**WHEREAS**, the Canby City Council on November 16, 2016 approved Resolution 1251 creating an Advance Financing District to reimburse the Sewer Reserve Fund a portion of the cost of this project for construction of the gravity sewer line on SE 13th Avenue; 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 Canby Excavating Inc. for the 2017 Sanitary Sewer Pumping Station Improvements, for the bid amount of \$1,124,475. A copy of a contract with Canby Excavating, 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.

Section 3. Due to the need to provide prompt and continuous sanitary sewer collection to support growth and maintain the peace, health and safety of the community, an emergency is hereby declared to exist, and this ordinance shall be effective upon its passage by the Council.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, April 5, 2017 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, April 19, 2017 commencing at the hour of 7:30 PM in the Council Meeting Chambers located at 222 NE 2nd Avenue, 1<sup>st</sup> Floor, Canby, Oregon.

  
\_\_\_\_\_  
Kimberly Scheafer, MMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of April 2017, by the following vote:

YEAS 5 NAYS 0

  
\_\_\_\_\_  
Brian Hodson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly Scheafer, MMC  
City Recorder

**CONTRACT FOR CONSTRUCTION**

THIS AGREEMENT is dated as of the 3<sup>rd</sup> day of May in the year 2017, by and between the:

CITY OF CANBY

(Hereinafter called OWNER) and

CANBY EXCAVATING, 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**

Sanitary Sewer Pumping Station Improvements:

Sch. A: MULINO PUMP STATION

Sch. B: WILLOW CREEK PUMP STATION

The scope of work consists of construction of two pumping stations and associated controls, piping and site improvements:

Schedule A: The Mulino Road Pump Station work includes construction of approximately 1,400 lineal feet of 8" gravity sewer line, including 100 feet of a 14" casing bored under an existing railroad, a 350 gpm duplex submersible pumping station with a 10 foot diameter by 20 foot deep fiberglass wet well, CMU control building with engine generator, and approximately 2,400 lineal feet of 6" force main and utility services in a common trench.

Schedule B: The Willow Creek Pump Station includes a 350 gpm duplex submersible pumping station with a 10 foot diameter by 20 foot deep fiberglass wetwell, auxiliary generator with environmental enclosure, controls and approximately 670 lineal feet of 6" HDPE force main installed by pipe bursting an existing 4" PVC force main.

**ARTICLE 2 - ENGINEER**

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who are 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 successful bidder agrees to be substantially complete with all work on:

**Schedule A: Mulino Pump Station within 150 days of the Notice to Proceed; and  
Schedule B: Willow Creek Pump Station within 180 days of the Notice to Proceed,**

and to achieve final completion of both schedules A and B within 30 calendar days after issuance of the Notice of Substantial Completion on each phase.

3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER or the OWNER may withhold from amounts due the CONTRACTOR Four Hundred Dollars (\$400.00) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion until the Work is substantially complete AND/OR for each day of delay beyond the deadline for Final Completion.

### **ARTICLE 4 - CONTRACT PRICE**

4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds by check, an amount totaling

One Million, One Hundred Twenty Four Thousand, Four Hundred Seventy Five Dollars

(\$1,124,475.00) as shown in the Bid Proposal.

### **ARTICLE 5 - PAYMENT PROCEDURES**

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.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 2.03 of the General Conditions.

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

8.2 Exhibits to this Agreement.

8.3 Performance and other Bonds

8.4 Notice of Award.

8.5 General Conditions of the Construction Contract

8.6 Supplementary Conditions

8.7 Technical Specifications as listed in the Table of Contents.

8.8 Specifications bearing the following general title:

**CITY OF CANBY**  
Sanitary Sewer Pumping Station Improvements:  
Sch. A: MULINO PUMP STATION  
Sch. B: WILLOW CREEK PUMP STATION

8.9 Addenda number(s) .

8.10 CONTRACTOR'S Bid

8.11 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the General Conditions).

**ARTICLE 9 - MISCELLANEOUS**

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

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 three counterparts of this Agreement.

This Agreement will be effective on May 3, 2017.

OWNER:

**CITY OF CANBY**  
222 NE 2nd Ave  
P.O. Box 930  
Canby, OR 97013

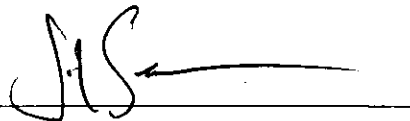
Signed: 

Name: Richard Robinson

Title: City Administrator

CONTRACTOR:

**CANBY EXCAVATING, INC**  
P.O. Box 848  
Canby, OR 97013

Signed: 

Name: JOEL SPRAGUE

Title: OPERATIONS MANAGER

Attest: 