

ORDINANCE NO. 1572

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH EAGLE- ELSNER, INC. IN THE AMOUNT OF \$888,888.88 FOR CONSTRUCTION OF THE 2022 STREET MAINTENANCE PROJECT.

WHEREAS, the City of Canby has heretofore advertised and received three (3) bids for the 2022 Street Maintenance;

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on March 28, 2022;

WHEREAS, bids were received and opened on April 19, 2022, at 2:00 pm via zoom meeting and the bids were read aloud;

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

The summary of cost for each of the three (3) bidders is listed below:

1.	Eagle-Elsner, Inc.	\$888,888.88
2.	S-2 Contractors, Inc.	\$920,140.00
3.	North Santiam Paving	\$1,001,912.50

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, May 4, 2022, 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 City Administrator is 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 the 2022 Street Maintenance in the amount of \$888,888.88. A copy of the contract with Eagle-Elsner, Inc. is attached hereto and incorporated herein.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 4, 2022; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, May 18, 2022, after the hour of 7:30 pm at the Council Meeting Chambers located at 222 NE 2nd Avenue, Canby, Oregon.

Melissa Bisset
Melissa Bisset, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 18th day of May 2022, by the following vote:

YEAS 6

NAYS 0

Brian Hodson
Brian Hodson, Mayor

ATTEST:

1 Melissa Bisset
Melissa Bisset, CMC
City Recorder

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the 12 day of July in the year 2022 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
2022 Street Maintenance Project**

The City reserves the right to adjust the basic bid quantities if the submitted low responsive bid exceeds the available budget. All adjusted quantities will be paid based on the bid unit prices.

The scope of work generally consists of the following:

- Approximately 3,600 tons of asphaltic concrete pavement at 2" and 4" thickness.
- Approximately 2,400 lineal feet of 6-foot-wide panel grinding at 0"-2" depth, approximately 6,600 lineal feet of 7-foot-wide panel grinding at 0"-2" depth and approximately 3,800 SY area at 2"-4" depth.
- Retrofit an estimated 21 ADA ramps, including curbs and sidewalks
- Restore approximately 30,000 lineal feet of 4" and 8" wide stripes, including legends such as arrows, continental crosswalks, stop bars, bike stencils, etc.
- Fully reconstruct approximately 3,800 square yards of pavement.
- Approximately 22,000 SY of type II micro-surface slurry seal for Public Works and Police Department parking lots, with 3,000 LF of crack sealing at the Police Department.

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 75 calendar days after the date when the Contract Time commences 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 30 days after the date when the issuance of the Certificate of Substantial Completion including punch list items.
- 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 Article 12 of 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

Eight Hundred Eighty-Eight Thousand Eight Hundred Eighty-Eight and 88/100 Dollars

(\$888,888.88) as shown in the attached 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.

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 15.01 of the General Conditions.

5.2 Final Payment: 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 value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 15.06.

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
- 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 Drawings & Specifications bearing the following general title:
- City of Canby
2022 Street Maintenance
- 8.9 Addenda numbers 1.
- 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 bind 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 7/12, 2022.

OWNER:

City of Canby
P.O. Box 930
Canby, OR 97013

By: [Signature]

Name/Title: Scott Archer
CITY ADMINISTRATOR

Name/Title: _____

CONTRACTOR:

Eagle-Elsner, Inc.
17400 SW Hillsboro Hwy
Sherwood, OR 97140

By: [Signature]

Name/Title: Richard Eagle, President

Attest: [Signature]

Address for giving notices:

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) ss:
)
CITY OF CANBY)

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 4th day of May, 2022 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1572 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

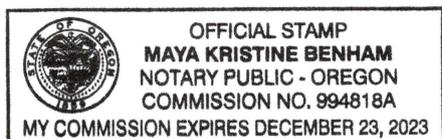
Thereafter, on the 6th day of May, 2022, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

- 1. Canby Civic Building
- 2. Canby Post Office
- 3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of more than five (5) days and until the very 18th day of May, 2022.

Melissa Bisset
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 26th day of May, 2022.



Maya Kristine Benham
Notary Public for Oregon
My Commission Expires: 12/23/2023