

**ORDINANCE NO. 1576**

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH ML HOUCK CONSTRUCTION CO. IN THE AMOUNT OF \$1,893,226.65 FOR CONSTRUCTION OF THE 2022 STREET AND UTILITY IMPROVEMENTS PROJECT**

**WHEREAS**, in accordance with the Public Contract requirements in ORS 279C, the City of Canby has heretofore formally advertised and received bids for the 2022 Street and Utility Improvements Project;

**WHEREAS**, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on April 27, 2022;

**WHEREAS**, five (5) bids were received and opened on May 19, 2022, at 2:00 pm in the City Hall Mt Hood Conference Room, and the bids were read aloud, with the summary of bids as listed below:

<b>1</b>	<b>ML Houck Construction Co.</b>	<b>\$1,893,228.65</b>
2	Eagle-Elsner, Inc.	\$2,005,499.50
3	Canby Excavating, Inc.	\$2,208,599.00
4	Icon Construction*	\$2,394,195.00
5	Pacific Excavation, Inc.	\$2,522,000.00

\*\* Icon Construction was deemed non-responsive for failure to submit a first tier disclosure

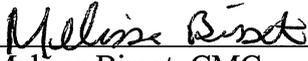
**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, June 1, 2022, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

**WHEREAS**, the Canby City Council determined that the low responsive bid was that of M. L. Houck Construction Company.

**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 ML Houck Construction Company for the 2022 Street and Utility Improvements Project in the amount of \$1,893,228.65.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 1, 2022; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 15, 2022, after the hour of 7:30 PM at the Council Meeting Chambers located at 222 NE 2<sup>nd</sup> Avenue, Canby, Oregon.

  
\_\_\_\_\_  
Melissa Bisset, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 15<sup>th</sup> day of June 2022, by the following vote:

YEAS 5

NAYS 0

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

ATTEST:

  
\_\_\_\_\_  
Melissa Bisset, CMC  
City Recorder

**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 1<sup>st</sup> day of June, 2022 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1576 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 3<sup>rd</sup> day of June, 2022, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

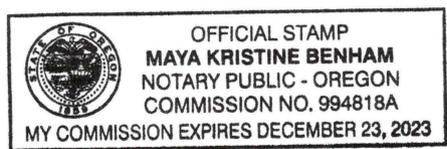
- 1. Canby Civic Building
- 2. Canby Post Office
- 3. City of Canby Web Page

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 15<sup>th</sup> day of June, 2022.

Melissa Bisset  
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 14<sup>th</sup> day of June, 2022.

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



**CONTRACT FOR CONSTRUCTION**

THIS AGREEMENT is dated as of the 3<sup>rd</sup> day of August in the year 2022 by and between

**CITY OF CANBY**

(hereinafter called OWNER) and

**ML HOUCK**

(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 & Utility Improvements**

The scope of work generally consists of the following:

- Sch A: Construction of approximately 100 feet of 8" Sanitary Sewer on NW 10<sup>th</sup> Ave
- Sch B: Construction of a new drywell and two catch basins on N Knott Street
- Sch C: Construction of 1,400 lineal feet of full street reconstruction on N Locust Street from NE 4<sup>th</sup> Ave to NE 10<sup>th</sup> Ave, including curb/gutter & sidewalk (one side only), sanitary sewer replacement, stormwater, lighting improvements and sanitary sewer on NE 9<sup>th</sup> Ave, Locust to Juniper Street
- Sch D: N Maple Lane at NE 10<sup>th</sup> Ave Sanitary Sewer Replacement and Street Overlay
- Sch E: NE Territorial Road, Logging Road Pedestrian Path to N Redwood Street Curb, Sidewalk and Storm Improvements

**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 **150** 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 calendar 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 11 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:

One Million Eight Hundred Ninety-Three Thousand Two Hundred Twenty-Eight Dollars & 25 Cents

(\$1,893,228.25) 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 15.01 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 15.03 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 visited and explored the site soil conditions or if attached 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 visited and explored the site soil conditions, made or caused to be made if attached 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 conversed with the ENGINEER regarding the site soil conditions or correlated if attached 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.
- 7.6 Large boulders are expected to be encountered on-site during trench excavation.

## **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 & Utility Improvements**
- 8.9 Addenda numbers 1 - 3.
- 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 8/3, 2022.

OWNER:

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

By: Scott Archer

Name/Title: Scott Archer  
City Administrator

Name/Title: \_\_\_\_\_

CONTRACTOR:

M. L. Houck Construction Co  
4444 22nd Ave NE  
Salem OR 97301

By: Michael Houck

Name/Title: Michael Houck President

Email: sarah@houckco.com

Attest: Sarah Kennedy  
Address for giving notices: \_\_\_\_\_