PUBLIC IMPROVEMENT CONTRACT

815 SW 13th Street Sidewalk

THIS CONTRACT is made this 11 day of February, 2014, between City of Newport, hereinafter called Owner, and Tradenet LLC, hereinafter called Contractor. In consideration of mutual covenants hereinafter set forth, the parties agree as follows:

1. **Work**. Contractor shall complete all work as specified in the contract documents, in conformance with all Owner public works design and construction standards, and in accordance with the documents and drawings provided for the 815 SW 13th Street Sidewalk project.

2. **Materials**. Contractor will furnish, provide and pay for all materials, supplies, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

3. **Contract Time**. The Work will be completed by Contractor within 14 days after the date of Owner's Notice to Proceed, unless the time for completion is extended otherwise by the Contract Documents or by written agreement of the parties.

4. **Contract Price**. Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents.

5. **Compensation**. Owner will pay the Contract Price upon final completion and City's acceptance of Contractor's Work.

6. **Contract Documents**. The term "Contract" or "Contract Documents" means and includes the following:

    a) Request for Competitive Quote;
    b) Contractor's submitted Quotation Form;
    c) Public Improvement Contract;
    d) ORS 279C Requirements (attached);
    e) Notice of Award;
    f) Notice to Proceed;
    g) Change Orders (if any);

    All Contract Documents are attached hereto, and incorporated herein by this reference. In the event of a conflict, this Contract will prevail over other Contract Documents as modified by any change orders, followed by ORS 279C requirements, the Notice to Proceed, Owner Request for Competitive Quote, then Contractor's submitted Quotation Form, in that order of precedence.

8. **Materials and Equipment**. Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

9. **Contractor's Representations**. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

   a) Contractor has familiarized itself 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 which, in any manner, may affect cost, progress, or performance of the Work;

   b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of the Work which were relied upon in the preparation of the drawings and specifications;

   c) Contractor has made or has caused to be made examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in (b) which it deems necessary for the performance of the Work, determination of the contract price, completing the building within the contract time 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;

   d) Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents;

   e) Contractor has given the Owner's representative written notice of all conflicts, errors or discrepancies which he has discovered in the Contract Documents and the written resolution thereof by the Owner's representative is acceptable to the Contractor.

10. **Insurance**. Before undertaking any work on the project, Contractor shall provide Owner with Certificates of Insurance including comprehensive general liability and other insurance as will provide protection for the claims set out below, which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor or any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

    a) Claims under workers' compensation or other similar employee benefits;

b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;

c) Claims for damages because of bodily injury, sickness, disease or death of any person other than Contractor's employees;

d) Claims for damages covered by personal injury liability insurance, sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;

e) Claims for damages other than to the Work itself because of injury or destruction of tangible property, including loss of use resulting therefrom;

f) Claims for damages because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The limits of such liability shall be as follows:

1) Comprehensive general liability	$1,300,000
2) Automobile	$1,000,000
i) Bodily injury	$1,000,000
ii) Property Damage	$1,000,000

Owner shall be named as an additional insured on the certificates of insurance. Such policies shall not be canceled or allowed to expire nor material changes permitted, until Contractor has provided at least 30 days written notice to Owner.

11. **Changes to the Work and Contract Amendments.** Changes to the Work, price and other contract amendments shall be in writing, signed by both parties and made in accordance with Owner Public Contracting Rules 137-049-0160 and 137-049-0910.

12. **Warranty**. This project is warranted against any and all failures for a period of one year from the date of completion. Contractor agrees to be responsible for all such repairs. If Contractor does not perform repairs within 30 days after notice provided by the Owner, the Owner may perform repairs and bill Contractor. Contractor shall be liable for payment of all such sums, as billed.

13. **Suspension of Work, Termination Delay**.

a) If Contractor is adjudged as bankrupt or insolvent or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if it repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if it repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment, or if it disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the Work, or if it disregards the authority of the Owner's representative or if it otherwise violates any provision of the contract documents, then the Owner may, without prejudice to any other right or remedy, after giving the Contractor and its surety a minimum of five days' notice from delivery of the written notice, terminate the services of the Contractor and take possession of the Project and all materials, equipment, tools, construction equipment, machinery thereon owned by Contractor and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If the costs exceed such unpaid balances, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Owner and incorporated in a change order.

b) Where the Contractor's services have been so terminated by the Owner, the termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.

c) After five days from delivery of written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.

14. **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend Owner and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Contractor's negligent performance and provision of materials and/or fault of Contractor, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of Owner and Contractor, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Contractor shall defend Owner from claims covered under this indemnification section at Contractor's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determines that Owner is liable in whole or in part for the loss or claim caused by Owner's negligence or (2) until Owner and Contractor mutually agree to allocate the liability.

15. **Miscellaneous**.

    a) 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 parties sought to be bound; and specifically but without limitation, monies which may become due and monies which 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.

    b) This Contract shall be binding upon all parties hereto and their respective partners, successors, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

16. **Arbitration.** If any disputes, disagreements or controversies arise between the parties pertaining to the interpretation, validity, rescission or enforcement of this Contract, the parties shall, upon the request of either party, submit such dispute to binding arbitration. Except as otherwise provided in this Contract, arbitration shall be requested by delivering to the other party a written request for arbitration. Within 10 days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within 10 days, an arbitrator may be appointed by the Circuit Court for the County in which Owner is located, upon the request of either party submitted in accordance with Oregon's Uniform Arbitration Act, ORS 36.600, et seq. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall have the discretion to adopt rules for the arbitration, and the arbitrator's decision shall be binding upon the parties. All arbitration shall take place in Lincoln County, Oregon unless the parties both agree to have the matter arbitrated elsewhere.

17. **Attorney Fees**. If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for Owner to incur the services of an attorney to enforce any provision of this Contract without initiating litigation, Contractor agrees to pay Owner's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

THIS CONTRACT is effective on the 11 day of February, 2014.

OWNER:

By: _____
Spencer R. Nebel, City Manager

ATTEST:

_____

Address for giving notices:

City of Newport

169 NW Coast Highway

Newport, OR 97365

CONTRACTOR:

By: _____

Name/
Title: Michael Dean/Owner

ATTEST:

_____

Address for giving notices:

8633 E. Fivemile River Rd.

Tidewater, Or. 97390

Agent for Service of Process:

_____

ORS 279C REQUIREMENTS

1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.

   a) ORS 279C.580(3)(a) requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the prime contractor by the public contracting agency; and

   b) ORS 279C.580(3)(b) requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within thirty (30) days after receipt of payment from the public contracting agency.

   c) ORS 279C.580(4) requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.

2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.

3) Contractor shall not permit any lien or claim to be filed or prosecuted against the public contracting agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.

4) A notice of claim on contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.

5) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

6) Contractor shall demonstrate to the Public Contracting Agency that an employee drug-testing program is in place within ten (10) days of receiving a Notice of Award.

7) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public contracting agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by

reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the public contracting agency is unable to determine the validity of any claim for labor or material furnished, the public contracting agency may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

8) If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from the public contracting agency or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is thirty (30) days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.

9) If the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

10) Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

11) Contractor shall employ no person for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540.

12) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.

13) All employers, including Contractor, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of it subcontractors complies with these requirements.

14) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.

15) The contract may be canceled at the election of public contracting agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.

16) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.

17) Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.

18) In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies.

19) Contractor certifies that all subcontractors performing construction work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaper Contractors Board in accordance with 701.035 to 701.055 before the subcontractors commence work under this contract.

20) In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Owner has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- Agriculture, Department of
- Forest Service
- Soil Conservation Service
- Defense, Department of
- Army Corps of Engineers

- Environmental Protection Agency
- Interior, Department of
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- Bureau of Land Management
- Bureau of Indian Affairs
- Bureau of Reclamation
- Labor, Department of
- Occupational Safety and Health Administration
- Transportation, Department of
- Coast Guard
- Federal Highway Administration

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Soil and Water Conservation Commission
- State Engineer
- State Land Board
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts

QUOTATION FORM

Project Name: 815 SW 13th Street Sidewalk

Quotation Deadline: 12:00 Noon, Friday, February 7, 2014

Submit Quotes to: City of Newport Public Works - Engineering
Attn: Olaf Sweetman, Assistant City Engineer
169 SW Coast Highway
Newport, OR 97365
Fax: 503-265-3301
E-mail: o.sweetman@newportoregon.gov

I (am) (am not) a resident bidder as defined in ORS 279.029. If not a resident bidder, enter state of residency: _____

I acknowledge receipt of the following addenda (if any):
Addendum #'s: _____ Initial: _____

I propose to perform all work associated with this project, as described in the scope of work, for the following lump sum price: $ 1720.00

Legal Name of Contractor (person or firm): Tradenet LLC

Construction Contractor's Board Registration Number: 189478

Address: 8633 E Five Rivers Rd
Tidewater, Or 97390

Telephone Number: 541-528-3700

Fax Number:

E-mail Address: Ttally@gmail.com

By (signature): [signature]

Name / Title: Michael Dean / owner

Date: 2-2-14