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**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Agreement for CIP Project #15017

Date: July 19, 2022

Statement of Purpose: South Beach Undergrounding - Phase 2 Project

Department Head Signature: [Signature]

Remarks, if any: _____

City Attorney Review and Signature: [Signature] Date: 7/29/2022

Other Signatures as Requested by the City Attorney: _____

	Signature	Name/Position
Budget Confirmed:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Date: _____
Certificate of Insurance Attached:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>	
City Council Approval Needed:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Date: <u>6/20/2022</u>	

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 8/2/2022

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

NOTICE OF AWARD

Date of Issuance: June 28, 2022
Owner: City of Newport Owner's Project No.: 2015-017
Engineer: Civil West Engineering Services, Inc. Engineer's Project No.: 2302-045
Project: South Beach Utility Undergrounding – Phase 2
Bidder: Extreme Excavation, Inc.
Bidder's Address: 24580 S. China Street, Canby, OR 97013

You are notified that Owner has accepted your Bid dated **June 2, 2022** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Construction of the South Beach Utility Undergrounding – Phase 2 Project

City of Newport, Oregon

The Contract Price of the awarded Contract is **\$540,676.07**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

One (1) unexecuted counterpart of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner Three **(3)** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **City of Newport, Oregon**

By (signature):



Name (printed): Spencer Nebel

Title: City Manager

Copy: Tim Gross – Civil West Project Engineer

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Newport** ("Owner") and **Extreme Excavating, Inc.** ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

All work related to the installation and construction of conduit, pull boxes and transformer bases for the undergrounding of electric, telecommunication, and cable television utilities along US Hwy 101 (Pacific Coast Highway) between SE Ferry Slip Road and SE 40th Street. All work related to the installation of conduit, pull boxes, and concrete light pole bases associated with the installation of streetlights along SE 32nd Street between US Hwy 101 (Pacific Coast Highway) and SE Ferry Slip Road, and along SE Ferry Slip Road between SE 32nd Street and SE Marine Science Drive (OSU Drive). Conduit installation will include the installation of pull rope, but conductors, coaxial cable, telecommunication wire, fiberoptic cable, and light poles shall be by others.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **South Beach Utility Undergrounding, Phase 2**

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained **Civil West Engineering Services, Inc.** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by **Engineer**.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.03 *Contract Times: Days*
- A. The Work will be substantially complete within **120** days after the date when the Contract Times commence 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 **150** days after the date when the Contract Times commence to run.

4.05 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion*: Contractor shall pay Owner \$250 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
 4. Liquidated damages for failing to timely attain Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Total of all Extended Prices for Unit Price	\$540,676.07
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The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit – **Article 3 – BASIS OF BIDS – UNIT PRICES.**

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. 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.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **5th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **95%** percent of the value of the Work completed (with the balance being retainage).
 - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. **0%** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **98%** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **100%** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of **0** percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the table of contents of the project manual (copy of list attached).
 - 6. Drawings (not attached but incorporated by reference) consisting of **15** sheets with each sheet bearing the following general title: **South Beach Utility Undergrounding – Phase 2.**
 - 8. Addenda #1, inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. **ARTICLE 3 – BASIS OF BID – UNIT PRICES**
 - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 7.12.2022 (which is the Effective Date of the Contract).

Owner:

Spencer City of Newport
(typed or printed name of organization)

By:

R. M. Nebel
(individual's signature)

Date:

08/12/22
(date signed)

Name:

Spencer R. Nebel
(typed or printed)

Title:

City Manager
(typed or printed)

Attest:

Melanie Nelson
(individual's signature)

Title:

Sr. Exec. Asst.
(typed or printed)

Address for giving notices:

169 SW Coast Hwy.
Newport, OR 97365

Designated Representative:

Name:

Aaron Collett
(typed or printed)

Title:

City Engineer
(typed or printed)

Address:

169 SW Coast Hwy.
Newport, OR 97365

Phone:

541-574-3375

Email:

a.collett@newportoregon.gov

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

Extreme Excavating Company
(typed or printed name of organization)

By:

R. Zimmerman
(individual's signature)

Date:

7.12.2022
(date signed)

Name:

Ryan Zimmerman
(typed or printed)

Title:

Senior Operations Manager
(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

M. O. O. O.
(individual's signature)

Title:

Controller
(typed or printed)

Address for giving notices:

24580 S China St, Canby, OR 97013

Designated Representative:

Name:

Ryan Zimmerman
(typed or printed)

Title:

Senior Operations Manager
(typed or printed)

Address:

24580 S China St, Canby, OR 97013

Phone:

503.781.0048

Email:

r.zimmerman@EXCcharge.com

License No.:

149829
(where applicable)

State:

Oregon

ARTICLE 3—BASIS OF BID—UNIT PRICES**3.01 Unit Price Bids**

A. Bidder will perform the following Work at the indicated unit prices:

Item No.	Description	Unit	Estimated Qty.	Bid Unit Price	Bid Amount
1	Mobilization, Bonding, and Insurance	LS	1	\$15000	\$15000
2	Construction Facilities & Temporary Controls	LS	1	\$5000	\$5000
3	Demolition and Site Preparation	LS	1	\$2500	\$2500
4	Landscape Restoration and Cleanup	LS	1	\$4000	\$4000
5	Concrete Light Pole Base and Pull Box (metal base and pull box supplied by others)	EA	18	\$1400	\$25200
6	Connect to Ex. Utility Vault/Pull Box/transformer base/switch stand	EA	7	\$1020	\$7140
7	Installation of transformer base (supplied by others)	EA	8	\$1020	\$8160
8	Installation of electrical switch stand (Supplied by others)	EA	2	\$1020	\$2040
9	Installation of Precast Utility Vault, 444-LA by Oldcastle, (3'x3'x3') (Supplied by others)	EA	2	\$1020	\$2040
10	Installation of Precast Utility Vault, (13'4"x8'x8'10") (Supplied by others)	EA	1	\$13120	\$13120
11	Pre-cast Utility Vault, 444-LA by Oldcastle, (3'x3'x3') (Supplied by contractor)	EA	1	\$4119.07	\$4119.07
12	Installation of Grade Level Boxes/Utility Pull Box (supplied by others)	EA	37	\$320	\$11840
13	2" Electrical Conduit, HDPE by Direction Drilling (Supplied by contractor)	LF	626	\$18	\$11268
14	2" Electrical Conduit, HDPE by directional drilling or Schedule 40 by Open Cut (Supplied by contractor)	LF	243	\$18	\$4374
15	2" Electrical Conduit (lighting circuit), HDPE by directional drilling or Schedule 40 by Open Cut (Supplied by contractor)	LF	2275	\$18	\$40950
16	2" Telecommunication Conduit, HDPE by Direction Drilling (Supplied by contractor)	LF	865	\$18	\$15570

EJCDC® C-410, Bid Form for Construction Contract.

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17	2" Telecommunication Conduit, HDPE Directional Drilling or Schedule 40 by Open Cut (Supplied by contractor)	LF	6938	\$18	\$124884
18	3" Telecommunications Conduit, HDPE by Direction Drilling (Supplied by contractor)	LF	75	\$21	\$1575
19	3" Electrical Conduit, HDPE by Directional Drilling or Schedule 40 by Open Cut (Supplied by contractor)	LF	3364	\$21	70644
20	3" Telecommunication Conduit, HDPE by Directional Drilling or Schedule 40 by Open Cut (Supplied by contractor)	LF	340	\$21	\$7140
21	4" Electrical Conduit, HDPE by Directional Drilling (Supplied by contractor)	LF	210	\$26	\$5460
22	4" Electrical Conduit, HDPE by Directional Drilling or Schedule 40 by Open Cut (Supplied by contractor)	LF	6102	\$26	\$158652
Total of All Unit Price Bid Items:					\$540,676.07

Total of Base Bid Item Prices: \$ \$540,676.07

(Numbers)

Total of Base Bid Item Prices: Five hundred forty thousand six hundred seventy six and seven cents

(In words)

B. Bidder acknowledges that:

1. each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and
2. estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 4—TIME OF COMPLETION

- 4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 4.02 Bidder agrees that the Work will be substantially complete within 120 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and will be completed and ready for final payment in accordance with Paragraph 15.06

