



3453

**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 #22039

Date: February 27, 2023

Statement of Purpose: Schooner Landing Sewer Bypass Project

Department Head Signature: [Signature]

Remarks, if any: \_\_\_\_\_

City Attorney Review and Signature: See attached e-mail Date: \_\_\_\_\_

Other Signatures as Requested by the City Attorney: \_\_\_\_\_

	Signature				Name/Position
					Date:
Budget Confirmed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>		
Certificate of Insurance Attached:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>		
City Council Approval Needed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>		Date:	<u>2/21/2023</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: 3/22/23

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: \_\_\_\_\_

## Chris Beatty

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**From:** David Allen  
**Sent:** Tuesday, March 21, 2023 9:42 AM  
**To:** Chris Beatty  
**Cc:** Aaron Collett; Clare Paul  
**Subject:** Re: Schooner Landing Sewer Bypass Project - Authorization Form for Agreement

The agreement looks okay, and you can use this e-mail to confirm review. However, can you obtain a more current version of the EJCDC C-520 agreement form for future use (I recall the 2013 version has been updated)? Also, the COI should have the 'Project' box marked under 'Gen'l aggregate limit applies per' in the commercial general liability section. --David

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From: David Allen  
Sent: Monday, March 20, 2023 8:16 AM  
To: Chris Beatty  
Cc: Aaron Collett; Clare Paul  
Subject: Re: Schooner Landing Sewer Bypass Project - Authorization Form for Agreement

I have some questions regarding the attached and will stop by later this afternoon when I'm at city hall. --David

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From: Chris Beatty  
Sent: Monday, March 13, 2023 3:15 PM  
To: David Allen  
Cc: Aaron Collett  
Subject: Schooner Landing Sewer Bypass Project - Authorization Form for Agreement

David,

Attached are several files for the project. I believe I have included everything that you need to be able to review and complete the Authorization Form. If not, please let me know what I am missing. Hopefully, I'm not sending too much information. If so, let me know. I have been trying to document correct procedures for all types of contracts.

For your review please note that Article 7 – Contractor's responsibilities, Section SC-7.02B Work Hours has been revised from 7AM – 7PM to 9AM – 7PM based on the request of the Schooner Landing Association. The Contractor was fine with this change and has signed the revised Supplementary Conditions on the Cover of Section C-800.

Thanks!

Chris Beatty, PE  
Senior Project Manager  
City of Newport, Oregon  
169 SW Coast Highway, Newport, OR 97365  
C.Beatty@newportoregon.gov  
Office: 541-574-3376  
Cell: 541-270-7515

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**NOTICE TO PROCEED**

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Owner:	City of Newport	Owner's Contract No.:	2020.019
Contractor:	Earth Works Excavating	Contractor's Project No.:	N/A
Engineer:	Harper Houf Peterson Righellis Inc.	Engineer's Project No.:	NEW-11
Project:	Schooner Landing Sewer Bypass Project	Contract Name:	Schooner Landing Sewer Bypass Project

Effective Date of Contract: March 23, 2023

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**TO CONTRACTOR:**

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on, **March 23, 2023**. [see Paragraph 4.01 of the General Conditions]

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the number of calendar days to achieve Substantial Completion is 90, and the number of days to achieve readiness for final payment is 120.

Before starting any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

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Owner: *City of Newport*

By: *[Signature]*  
Authorized Signature

Title: *City Manager*

Date Issued: *03-22-23*

Copy: HHPR Project Engineer

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

Prepared by



Issued and Published Jointly by



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

THIS AGREEMENT is by and between City of Newport, Oregon ("Owner") and  
Earth Works Excavation ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

**This Project will be bid on a Lump Sum basis.**

A brief description of the scope of work is provided below:

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Schooner Landing Sewer Bypass Project, City of Newport, Oregon.

The sewer bypass-system project consists of the installation of a pump station that will be connect to an existing upstream 8" sewer pipe. Downstream from the pump station, a short force main and gravity overflow pipe will discharge to a terminal manhole. From the terminal manhole an 8" HDPE gravity sewer line will be installed and connected to an existing downstream manhole. The following are major items that are required to complete the project:

- Furnish and install one (1) prefabricated pump station and accessories.
- Furnish Extra Pump to the City of Newport for future use.
- Furnish and Install one (1) 48" diameter terminal manhole.
- Furnish and Install approx. 320 lineal feet of 8" HDPE pipe.
- Furnish and Install approx. 20 lineal feet of 2" Schedule 80 force main.
- Furnish and Install approx. 100 lineal feet of 3" electrical conduit.
- Trench excavation and backfill for piping.
- Excavation and backfill for structures.
- Concrete curb, AC pavement, and landscaping removal and replacement.
- Connections to existing pipe and manhole.

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Harper Houf Peterson Righellis Inc.

3.02 *The Owner has retained Harper Houf Peterson Righellis Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned*

*to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.*

#### **ARTICLE 4 – CONTRACT TIMES**

##### **4.01 Time 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.

##### **4.02 Contract Times: Dates**

- A. The Work will be substantially completed on or before 90 calendar days after Notice to Proceed, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before 120 calendar days after Notice to Proceed.

##### **4.03 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 times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. 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 \$500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A 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 Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
  - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

#### **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 Work other than Unit Price Work, a lump sum of: **\$ 0.00.**

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. 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):

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
1	Mobilization, Bonding, and Insurance	LS	1	\$16,952.00	\$16,952.00
2	Erosion Control	LS	1	\$1,804.00	\$1,804.00
3	Traffic Control	LS	1	\$4,482.00	\$4,482.00
4	Construction Surveying	LS	1	\$3,105.00	\$3,105.00
5	Furnish & Install 48" Terminal Manhole w/Flat Top, Base, and Grout Channel. Includes Excavation, Backfill, and Surface Removal/Replacement	LS	1	\$11,059.00	\$11,059.00
6	Furnish, Inspect, Start Up & Test pump Station Equipment	LS	1	\$7,420.00	\$7,420.00
7	Install Wet Well, Equipment, Controls, and Accessories	LS	1	\$67,605.00	\$67,605.00
8	Install Piping Connections to Wet Well. Includes Excavation, Backfill, and Surface Removal/Replacement	LS	1	\$3,150.00	\$3,150.00
9	Furnish & Install 8" HDPE Sewer Pipe by Directional Drilling or Open Trench. Includes Excavation, Backfill, and Surface Removal/Replacement Depending on Installation Method	LF	320	\$185	\$59,200.00
10	Furnish & Install 2" Schedule 80 Force Main by Directional Drilling or Open Trench. Includes Excavation, Backfill, and Surface Removal/Replacement Depending on Installation Method	LF	20	\$49.00	\$980.00
11	Furnish & Install 3" Electrical Conduit by Directional Drilling or Open Trench. Includes Excavation, Backfill, and Surface Removal/Replacement Depending on Installation Method	LF	100	\$33.00	\$3,300.00
12	Core Drill and Modify Existing Manhole	LS	1	\$2,200.00	\$2,200.00



- I. Contractor shall defend, hold harmless and indemnify Owner, its officers, agents, engineers, attorneys and employees from any and all losses, liability, damages, costs, expenses (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs), claims, suits or actions whatsoever in nature, including intentional acts, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Contract.
- J. Failure of Owner to enforce any provision of this Contract shall not constitute a waiver by the Owner of that or any other provision.

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

This Agreement will be effective on March 9, 2023 (which is the Effective Date of the Contract).

OWNER: City of Newport

Spencer R. Nobel

By: Spencer R. Nobel

Title: City Manager

Attest: Melanie Nelson

Title: Sr. Exec. Asst.

Address for giving notices:

City of Newport

169 SW Coast Highway

Newport, OR 97365

CONTRACTOR:

William F. Howard

By: William F. Howard

Title: Owner

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Cynthia Livingston

Title: Office Manager

Address for giving notices:

Earth Works Excavation  
24675 Hwy 101 S.  
Cloverdale, OR 97112

License No.: 141765  
(where applicable)

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
	Furnish & Install Drop Assemblies, Kor-N-Seal Boots, and Accessories	LS	1	\$2,424.00	\$2,424.00
14	Connect to Existing Sewer Pipes	EA	1	\$4,111.00	\$4,111.00
15	Plug and Abandon 6" or 8" Pipe	EA	3	\$480	\$1,440
16	Hydroseeding and Planting	LS	1	\$4,205.00	\$4,205.00
17	Furnish Extra Pump to City	EA	1	\$9,705.00	\$9,705.00
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					<b>\$203,142.00</b>

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.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) **\$203,142.00.**
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto above.

## 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 account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25<sup>th</sup> 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 Work completed (with the balance being retainage). If the Work has been 50 percent 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. 95 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 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 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 in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

### **ARTICLE 7 – INTEREST – NOT USED**

### **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. 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.

- G. 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.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. 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.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
  - 1. This Agreement.
  - 2. Performance bond.
  - 3. Payment bond.
  - 4. General Conditions.
  - 5. Supplementary Conditions.
  - 6. Specifications as listed in the table of contents of the Project Manual.
  - 7. Drawings consisting of 6 sheets with each sheet bearing the following general title: **Schooner Landing Sewer Bypass Project**.
  - 8. Addenda (numbers 1 to 2, inclusive).
  - 9. Exhibits to this Agreement (enumerated as follows):
    - a. None.
  - 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.
- B. The documents listed in Paragraph 9.01.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 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

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

### **10.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

### **10.03 Successors and Assigns**

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **10.05 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 10.05:
  - 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.

## 10.06 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, 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.
- B. Pursuant to ORS 279C.505(1) – Contractor shall make payment promptly, as due, to all persons supplying the Contractor with labor or materials for the performance of the work provided for in the contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.
- C. Pursuant to ORS 279C.505(2) – Contractor certifies that it has an employee drug testing program in place.
- D. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. Other provisions of ORS 279C.515 and ORS 279C.580 concerning payments also apply.
- E. Contractor shall comply with hours of labor rules Pursuant to ORS 279C.520, 279C.540, and 279C.545.
- F. Per ORS 279C.530, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All subject  
Employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- G. Contractor shall pay workers not less than the applicable prevailing wage rate.
- H. Public Works Bond – Contractor shall have a public works bond filed with the Oregon Construction Contractors Board before starting Work on the Project unless exempt under ORS 279C.836. Contractor shall include in every subcontract a provision requiring every subcontractor to have a public works bond filed with the Oregon CCB before starting Work on the project unless exempt under ORS 279C.836.