

**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: Goods and Service Contract Date: 12/11/23

Statement of Purpose: NW Oceanview Dr. Storm Drain Repair

Department Head Signature: [Signature]

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

City Attorney Review and Signature: See email from David Allen Date: \_\_\_\_\_

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

						Name/Position	
						Date: _____	
Budget Confirmed:	Signature	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>1/16/23</u> <u>12/21/23</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: 4-20-24

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: \_\_\_\_\_

## David Allen

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**From:** David Allen  
**Sent:** Tuesday, April 9, 2024 6:34 PM  
**To:** Chris Beatty  
**Subject:** Re: Oceanview Emergency Fix Contract  
**Attachments:** Amendment to CBR Contract.doc; Staff\_Report\_\_12-21-23\_.pdf; CBR Final Oceanview Dr. Storm.pdf

Chris - I just noticed the attached amendment has a NTE amount of \$243,364.72 based on CBR's costs, but council approval on 12/21/2023 was for a NTE amount of \$250,000. So, you could change the NTE amount to \$250,000 in the amendment if that would make a difference. --David

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**From:** David Allen  
**Sent:** Tuesday, April 9, 2024 11:06 AM  
**To:** Justin Scharbrough; Chris Beatty  
**Cc:** Spencer Nebel; Erik Glover; Melanie Nelson  
**Subject:** Re: Oceanview Emergency Fix Contract

Chris - as we discussed over the phone yesterday, the attached amendment to CBR contract apparently was never signed. That still needs to be done, so you can use this e-mail to confirm review for a sign-off form, which should indicate council approval of the amendment at the 12/21/2023 special meeting. --David

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**From:** David Allen  
**Sent:** Thursday, January 11, 2024 4:21 PM  
**To:** Justin Scharbrough  
**Cc:** Spencer Nebel; Erik Glover; Chris Beatty; Melanie Nelson  
**Subject:** Re: Oceanview Emergency Fix Contract

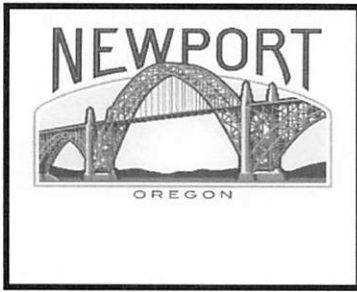
Thanks, and the attached looks okay. Was unavailable all last week into early this week, but go ahead and have the contractor and Spencer sign/date the attached amendment (even though the additional work had started/finished). --David

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**From:** Justin Scharbrough  
**Sent:** Thursday, January 4, 2024 7:39 AM  
**To:** David Allen  
**Cc:** Spencer Nebel; Erik Glover; Chris Beatty; Melanie Nelson  
**Subject:** RE: Oceanview Emergency Fix Contract

Hi David. I've attached an amendment for your review, along with the staff report dated December 21, 2023. After all is approved I will combine into a final version.

I've also added in the new insurance form that was recieved yesterday afternoon.



**STAFF REPORT  
CITY COUNCIL AGENDA ITEM**

Meeting Date: December 21, 2023  
(Special Meeting)

**Title:** Oceanview Drive Slide Repair Update

**Prepared by:** Chris Beatty - Acting City Engineer  
Justin Scharbrough - Acting Public Works Director

**Recommended Motion:**

I move that the City Manager and City Council amend a current contract with Construction-Building-Road, LLC (CBR) in the amount of \$150,000 with an increase of \$100,000 for the Oceanview Drive Slide Repair. The new not-to-exceed contract amount to be \$250,000.

**Background Information:**

The initial roadway slide on Oceanview Drive occurred in October 2023. The temporary slide repair, consisting of placing rock armoring on the slope in the immediate area of the initial slide along with replacing a damaged 8” sanitary sewer pipe (approx. 40-feet long, refer to Exhibit 1), was completed.

Construction of the permanent slope repair plan (refer to Exhibit 2) had begun when the Newport area experienced extreme rainfall amounts over a period of several days. During this period, a second, larger slide occurred damaging more of the 8” sanitary sewer pipe (approximately 80-feet, refer to Exhibit 1).

Contacts were in-place for repair of the initial roadway slide in the total not-to-exceed amount of \$150,000 for each Road & Driveway (R&D) and CBR for a total of \$300,000. R&D is constructing the rock armoring of the slope and CBR is constructing all pipe work. Since the second slide occurred, additional costs relating to the sewer repair are necessary for the additional sewer pipe replacement. In turn, this will increase construction costs for CBR which exceeds the maximum amount that can be authorized by the City Manager. Therefore, City Council approval is required to increase CBR’s contract. CBR’s costs are as follows:

Original Sewer Repair on Oceanview Drive	\$ 13,300.82 (work completed to-date)
24” Storm Crossing on Oceanview Drive	\$ 75,020.16 (work completed to-date)
Additional Cost for 12” Storm to Walmart	\$ 52,537.07 (work completed to-date)
<b>Subtotal of work completed to-date</b>	<b>\$140,858.05</b>
CDF Filling of Manhole/Pipes	\$ 10,000.00 (remaining)
Additional Sewer Repair on Oceanview Drive **	\$ 87,606.67 (remaining)
Other Known Miscellaneous Costs	\$ 4,900.00 (remaining)
<b>Total Remaining Work</b>	<b>\$102,506.67</b>
<b>Total CBR Costs</b>	<b>\$243,364.72</b>

**\*\* It was decided by the Acting City Engineer and Acting Public Works Director, that it was in the best interest of the City to replace the entire section of sewer pipe from manhole to manhole with new 8" PVC pipe (approx. 220-feet long, refer to Exhibit 1) to avoid having several splices in a deteriorated truss pipe that is very fragile. The City Manager agreed.**

Any remaining or additional work required by R&D will be covered by their current \$150,000 budget.

The remaining tentative schedule is as follows:

Rock armoring of slope completed	Friday, December 22
Existing manholes and pipes abandonment	Friday, December 22
Sanitary sewer pipe replacement	Tuesday December 26 - Friday December 29
Surface restoration	Following all work above, weather dependent

**Alternatives:**

Replace only the damaged sections of sewer pipe.

**Attachments:**

Exhibit 1- Sanitary Sewer Pipe Repair  
Exhibit 2 - Staff Report from 12-4-23 City Council Meeting  
Exhibit 3 - Project Photos

**AMENDMENT TO GOODS AND SERVICES CONTRACT BETWEEN  
THE CITY OF NEWPORT AND CONSTRUCTION-BUILDING-ROADS, LLC**

**NW Oceanview Dr. Storm Drain Repair**

The agreement dated December 15, 2023, between the City of Newport and Construction-Building-Roads, LLC, is hereby amended as follows:

**Exhibit A-** Request for Quotes – N/A- See Attached Declaration of a Limited Emergency No. 2023-02, as extended to Jan. 3, 2024, **and Staff Report dated December 21, 2023.**

**Section 3 Compensation – 3.1 Basis of Payment.**

Contractor shall complete project as defined above and in the attached exhibits for the prices in Exhibit B, with an estimated total fee not to exceed a total cost of \$250,000 for ALL work completed on the NW Oceanview Dr. Storm Drain Repair Project during the emergency declaration.

Except as expressly set forth herein, all provisions of the December 15, 2023 agreement shall continue and remain in full force and effect.

CITY OF NEWPORT

CONSTRUCTION-BUILDING-ROADS, LLC



\_\_\_\_\_  
Spencer R. Nebel, City Manager

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

04-20-24

Date

\_\_\_\_\_  
Date

**AMENDMENT TO GOODS AND SERVICES CONTRACT BETWEEN  
THE CITY OF NEWPORT AND CONSTRUCTION-BUILDING-ROADS, LLC**

**NW Oceanview Dr. Storm Drain Repair**

The agreement dated December 15, 2023, between the City of Newport and Construction-Building-Roads, LLC, is hereby amended as follows:

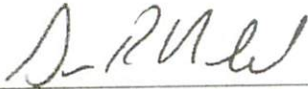
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**Section 3 Compensation – 3.1 Basis of Payment.**

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Except as expressly set forth herein, all provisions of the December 15, 2023 agreement shall continue and remain in full force and effect.

CITY OF NEWPORT



Spencer R. Nebel, City Manager

04-20-24

Date

CONSTRUCTION-BUILDING-ROADS, LLC



Name/Title:

4/22/2024

Date

# CITY OF NEWPORT, OREGON GOODS AND SERVICES CONTRACT

## NW Oceanview Dr. Storm Drain Repair

BASED UPON the proposal submitted in response to a request for emergency work on the NW Oceanview Dr. Storm Drain Repair, as issued and administered by City of Newport (City), City and Construction-Building-Roads, LLC (Contractor) hereby enter into a contract for services in accordance with the specifications and proposal provided.

All terms of the following exhibits are hereby incorporated by reference into this Contract, and Contractor agrees to comply with each:

- (1) Exhibit A – Request for Quotes - N/A. See attached Declaration of a Limited Emergency No. 2023-02, as extended to Jan. 3, 2024
- (2) Exhibit B – Contractor Proposal and Rate Sheet
- (3) Exhibit C – Oregon Public Contracting Requirements

To the extent there are any inconsistencies or conflicts between this document and Exhibit B, this document shall control and prevail.

1. **Term.** The term of this Contract shall extend from its execution to project completion, unless extended for additional periods of time upon written mutual agreement of both parties. Notwithstanding this Term, City reserves the right to terminate this Contract as outlined in this Agreement.
2. **Scope of Work.** Contractor shall provide all materials, labor, equipment, and all other services and facilities necessary for the services specified in the attached Exhibits A and B (Project). Work shall be completed within 60 days of the date given in the Notice to Proceed.
3. **Compensation.**
  - 3.1 **Basis of Payment.** Contractor shall complete Project as defined above and in the attached exhibits for the prices in Exhibit B, with an estimated total fee not to exceed \$75,020.16 for proposed repair and up to an additional not to exceed \$61,675 based on time and material at prevailing wage rates including any change orders approved by the City.
  - 3.2 **Invoices.** Payments shall be based upon Contractor's invoices submitted to City, detailing the previous month's fees and costs.
    - a. City will review Contractor's invoice and within ten (10) days of receipt notify Contractor in writing if there is a disagreement or dispute with the invoice or

Project. If there are no such disputes, City shall pay the invoice amount in full within thirty (30) days of invoice date, subject to a five percent (5%) retainage to be paid only after full performance and acceptance by City.

b. If City fails to make any payment due Contractor for services and expenses within thirty (30) days of the date on Contractor's invoice therefore, late fees will be added to amounts due Contractor at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.

4. Permits. City will be responsible for obtaining all permits, approvals and authorizations necessary for Contractor's performance.
5. Termination for Convenience. This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Upon termination under this paragraph, Contractor shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Contractor. Pursuant to this paragraph, Contractor shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Contractor. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Contractor can show good cause beyond its control for the delay.
6. Termination for Cause. City may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:
  - 6.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
  - 6.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
  - 6.3 If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.



7. Termination for Default. Either City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Contractor fails to perform in the manner called for in this Contract or if Contractor fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be affected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor shall be paid the Contract price only for equipment installed and services performed in accordance with the manner of performance as set forth in this Contract.

8. Remedies. In the event of breach of this Contract, the parties shall have the following remedies:

8.1 If terminated under paragraph 7 by City due to a breach by Contractor, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to City the amount of the reasonable excess.

8.2 In addition to the above remedies for a breach by Contractor, City also shall be entitled to any other equitable and legal remedies that are available.

8.3 If City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

8.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

8.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Contractor shall immediately cease all activities related to the services and work under this Contract.

9. Standard of Care. Contractor warrants that the work to be performed pursuant to this Contract shall be done in a good and workmanlike manner and will conform to the highest standards prevalent in the industry or business most closely involved in providing the equipment and services City is purchasing.

10. Reports. The Contractor shall provide City with reports as detailed in Contractor's proposal, at a minimum of once per month, outlining the Project progress, issues of concern and budget status.
11. Change Orders. Contractor and City reserve the right to order changes to the equipment and services to be provided herein. Contractor and City shall determine a fair and equitable cost and, if required, additional time for such changes. All such changes shall be ordered and agreed to in writing by both parties.
12. Confidentiality. Contractor shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Contract. Contractor warrants that its employees assigned to this Contract shall maintain necessary confidentiality.
13. Security and Substance Check. Contractor agrees that each of its employees and subcontractor's employees involved in this Project may, at the option of City and in compliance with Contractor policy, be subject to a security background check and/or substance abuse testing.
14. Access to Records. For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.
15. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

CITY:

CONTRACTOR:

City of Newport  
 169 SW Coast Highway  
 Newport, OR 97365  
 Phone: (541) 574-3366  
 Fax: (541) 265-3301

Construction-Building-Roads, LLC

██████████  
 ████████████████████  
 ████████████████████  
 ████████████████████

16. Warranty. Contractor's warranty is as stated within Exhibit B. Contractor further warrants that all materials, equipment, and/or services provided under this Agreement shall be fit for the purpose(s) for which intended, for merchantability, that material and

equipment shall be properly packaged, that proper instructions and warnings shall be supplied, and that the Project shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by City shall not alter or affect the obligations of Contractor or the rights of City.

17. **Insurance.** Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

17.1. **Commercial General Liability Insurance**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<b><u>Coverage</u></b>	<b><u>Limit</u></b>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,300,000
Personal & Advertising Injury	\$1,300,000
Errors & Omissions	\$1,300,000
Each Occurrence	\$1,300,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

17.2. **Commercial Automobile Insurance**

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,300,000.

17.3. **Workers' Compensation Insurance**

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are either subject employers that will comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage

for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

**17.4. Additional Insured Provision**

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

**17.5. Notice of Cancellation**

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days prior notice of cancellation to the City

**17.6. Certificates of Insurance**

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

**17.7. Primary Coverage Clarification**

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

**17.8. Cross-Liability Clause**

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

18. **Indemnity.** To the extent permitted by law, Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the negligence of City. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.
19. **Force Majeure.** This section applies in the event that either party is unable to perform the obligations of this Agreement because of a Force Majeure event as defined herein, to the extent that the Agreement obligation must be suspended. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body which prevents performance. Should either party suffer from a Force Majeure event and be unable to perform, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance. Upon receipt of such notice, the parties shall be excused from such performance as it is affected by the Force Majeure event for the period of such event. If such event effects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such event.
20. **Independent Contractor.** It is the intention and understanding of the parties that Contractor is an independent contractor and that City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of Contractor shall not be deemed to convert this contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that City is not the exclusive user of the services that Contractor provides.
21. **Assignment.** Contractor shall not assign or subcontract any of its obligations under this Agreement without City's prior written consent, which may be granted or withheld in City's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. City's consent to any assignment or subcontract shall not release Contractor from liability under this Agreement or from any


obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

22. **Non-Waiver.** The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.
23. **Non-Discrimination.** Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
24. **Errors.** Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delay and without additional cost.
25. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles.
26. **Consent to Jurisdiction.** Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.
27. **Public Contracting Requirements.** Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C, attached hereto and incorporated herein by this reference.
28. **Arbitration.** If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) 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 five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable

rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

29. Attorney Fees. If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, 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 City to incur the services of an attorney to enforce any provision of this Agreement without initiating litigation, Contractor agrees to pay City'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.
30. Severability/Counterparts. In the event any provision of this Agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect. This Agreement may be executed in counterparts and a signed copy transmitted by facsimile or other electronic means, each of which will be deemed an original, but all of which taken together will constitute one and the same agreement.
31. Entire Agreement. This Agreement shall be the exclusive agreement between the parties with respect to the included terms and for the Project. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.
32. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.

CITY OF NEWPORT

By: 

Title: City Manager

Date: 12-15-23

Construction-Building-Roads, LLC

By: 

Title: MEMBER

Date: 12-15-23

**EXHIBIT A**  
**Emergency No. 2023-02**



**Emergency # 2023-02**  
**DECLARATION OF A LIMITED EMERGENCY**

Findings:

1. Section 1.70.050 of the Newport Municipal Code reads:
  - A. A limited emergency is defined, but not limited to, an emergency that is limited in effect, such as a landslide that affects only one area, or a water shortage that affects only water supply and usage.
  - B. The City Manager, or Acting City Manager, has the authority to declare a limited emergency. It is the obligation of the City Manager, or Acting City Manager, to notify the City Council of the declaration of a limited emergency.
  - C. If the anticipated cost for addressing the limited emergency is no greater than \$250,000, the limited emergency shall be effective until the next regularly scheduled City Council meeting. In the event that the anticipated cost will likely exceed \$250,000, the City Manager, or Acting City Manager, will schedule a meeting of the City Council to be held as soon as possible. The City Council may extend or terminate the emergency at that time.
2. The City to take any of the following necessary actions during the emergency:
  - A. Procure goods and services without compliance with normal procurement procedures.
  - B. Use any available city funds for emergency purposes.
  - C. Close or limit the use of streets and other public places.
  - D. Order and assist the evacuation of people to protect safety or health.
  - E. Turn off water, gas, or electricity.
  - F. Control, restrict, and/or regulate the sale of goods and services, including the imposition of price controls.

IT IS RESOLVED:

On October 25, 2023 at 08:09 P.M. Public Works was notified of the occurrence of a landslide/sinkhole on NW Oceanview Drive just north of NW 25<sup>th</sup> St intersection. On October 25, 2023 public works crews responded and discovered that the sinkhole/landslide eliminated approximately one-half of the southbound lane and had undermined the remaining half of the lane. Subsequent erosion has further undermined the entire southbound lane and is endangering the northbound lane. In addition, crews

determined that communication lines, and a sanitary sewer line ran through the affected area and were exposed/unsupported, but did not fail. On October 25, 2023 Public Works crews closed off NW Oceanview Drive from NW 25<sup>th</sup> St. to the Agate Beach Wayside. Public Works has had geotechnical consultant on site to obtain an analysis on the repair.

On November 02, 2023 crews will begin work to provide emergency support for the suspended sanitary sewer line, and shoring of the slide area.

The Limited Declaration of Emergency is declared to facilitate immediate temporary repairs to the landslide/sink hole area to mitigate the risk of further erosion to the roadway surface, a sanitary sewer or communications line failure, and to facilitate the process to bring contractors onsite to effect permanent repairs to the slide/sinkhole area allowing the section of NW Oceanview Drive to be opened.

At the City Council meeting to be held on Monday, November 06, 2023, the City Council will be asked to extend or terminate the emergency.



Spencer R. Nebel, City Manager



Date

\*At the November 6, 2023 meeting the City Council extended the limited emergency to November 21, 2023.

\*At the November 20, 2023 meeting the City Council extended the limited emergency to January 3, 2024.

**EXHIBIT B**  
**Contractor Proposal and Rate Sheet**



Construction-Building-Roads, LLC

██████████  
 ██████████

# Proposal

Date	Estimate #
11/28/2023	68

Name / Address
City of Newport

Project
Oceanview Repair

Description	Qty	Rate	Total
Oceanview Repair Bid includes digging in 24" 30/34 storm pipe from outlet to man hole and connecting to man hole approx 110'. All equipment, personnel and material to complete installation  Exclusions: No asphalt No concrete No material testing No erosion control No permits or fees		75,020.16	75,020.16
		<b>Total</b>	\$75,020.16

# Construction-Building-Roads, LLC

██████████  
██████████

<u>Equipment name</u>	<u>Rate per Hour</u>	
Case Rubber Track Excavator or E42	\$133.00	PW \$204.00
CX57 with Masticator Head	\$190.00	PW \$260.00
Komatsu Excavator 138	\$190.00	PW \$260.00
Komatsu Excavator 170	\$194.00	PW \$264.00
Komatsu 170 with wheel	\$217.00	
Komatsu PC270ILC-8 Excavator	\$223.00	
Skid Steer	\$133.00	PW \$204.00
Skid Steer with brush	\$157.00	
Brush Cutter New Holland	\$169.00	
D-5M CAT XL Crawler Dozer	\$164.00	
650 JD Crawler Dozer	\$164.00	
CAT CS563C Vibratory Roller	\$150.00	
John Deere 770C Grader	\$172.00	
Komatsu WA-320 Front End Loader	\$126.00	
Water Truck	\$110.00	
Daily Service Truck	\$100.00	
Shop Truck	\$108.00	
Bobtail Dump Truck	\$115.00	PW \$161.00
Dump Truck & Trailer	\$140.00	
Belly Dump	\$140.00	
Dump Truck & Tilt Bed Equipment Trailer	\$176.00	
Mobilization Equipment	Lump Sum per Job	
Off Road Truck/Haul Truck	\$199.00	
Feller Buncher	\$230.00	
Cutter - Per Hour	\$150.00	
Flagger	\$75.00	PW \$130.00
Laborer	\$70.00	PW \$125.00
Pipelayer	\$80.00	PW \$137.00
Per Diem – Per Day	\$95.00	
Reimbursement For All Materials	Cost + 15%	
Reimbursement For Lodging	Cost + 15%	

A fuel charge of 10% will be added if the price is over \$5.00 a gallon and 10% more for every .50 increment over \$5.00 a gallon

Contact information:

Office (Jolene Ostling) - ██████████

Tom Runions- ██████████ ██████████

Alex Runions - ██████████ ██████████

Jason Chewning - ██████████

Eric Brandon - ██████████ ██████████

**EXHIBIT C**  
**Oregon Public Contracting Requirements**  
**ORS CHAPTERS 279B AND 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. ORS 279B.220(1); 279C.505(1)(a)
- (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. ORS 279B.220(2); 279C.505(1)(b)
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the 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. ORS 279B.220(3); 279C.505(1)(c)
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. ORS 279B.220(4); 279C.505(1)(d)
- (5) Contractor agrees that 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 City 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 City is unable to determine the validity of any claim for labor or material furnished, the City 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. ORS 279C.515
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, 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. ORS 279B.230(1); 279C.530(1)
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2); 279C.530(2)
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29

USC 201, et seq). ORS 279B.235(3); 279C.520(3)

- (9) 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. ORS 279B.235(2); 279C.520(2)
- (10) 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. ORS 701.430
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women, service-disabled veterans, or emerging small business or disadvantaged business enterprises in obtaining any required subcontractors. ORS 279A.110
- (14) As used in this section, “nonresident contractor” means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a “resident bidder” under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120
- (15) If the contract price exceeds \$50,000 and this contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. The applicable prevailing rate of wage may be accessed online at: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. ORS 279C.830
- (16) If the project is subject to both the Davis-Bacon Act and state prevailing rate of wage, Contractor and every subcontractor shall pay workers not less than the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830
- (17) Contractor and every subcontractor must have a public works bond filed with the Oregon Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). ORS 279C.830