

ORDINANCE NO. 1379

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO AWARD A CONTRACT WITH C.R. WOODS TRUCKING, INC IN THE AMOUNT OF \$229,800.50 FOR CONSTRUCTION OF THE NORTHWOOD PARK PROJECT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received four (4) bids for the Northwood Park Project; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on April 12, 2013 and April 17, 2013; and

WHEREAS, bids were received and opened on May 8, 2013 at 2:00 pm in the Planning and Development Conference Room of the City of Canby and the bids were read aloud:

WHEREAS, the bidders are as listed below and a detailed tabulation of all items is attached herein as Exhibit "B" and summarized as follows:

C. R. Woods Trucking, Inc.	\$229,997.50
T Edge Construction, Inc.	\$236,750.00
Columbia -Cascade Construction, Inc.	\$249,000.00
Brock Construction	\$299,800.00

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, June 5, 2013, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and


WHEREAS, the Canby City Council determined that the low responsive bid was that of C.R. Woods Trucking, Inc.; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and/or City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with C.R. Woods Trucking, Inc. for the construction of the Northwood Park Project in the amount of \$229,997.50. A copy of the contract with C.R. Woods Trucking, Inc. is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 5, 2013; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, June 19, 2013, after the hour of 7:30 p.m. at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.



Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of June 2013, by the following vote:

YEAS 6 NAYS 0



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT made and entered into this 19th day of June, 2013, by and between the **City of Canby**, herein called the **Owner** and C.R. WOODS TRUCKING, INC., herein called the **Contractor**.

IT IS AGREED:

ARTICLE 1. WORK

In consideration of the agreements herein made by the Owner and the sums of money to be paid to the Contractor by the Owner in the manner and form as provided in the attached Contract Documents, the Contractor agrees to furnish all labor, tools, appliances, equipment, plant and transportation, and any and all other expenses necessary or incidental to the performance of the work as specified or shown in the Contract Documents, including such alternates and additional bid items as are listed in Article 3.

The work is generally described as the Northwood Park Project (Project).

The Project consists of the following: Set up and installation of all playground equipment, including the foundation, curb, and fill required to surround the play structure, along with the construction of a concrete slab foundation, and set up and installation of a covered shelter. The project also includes the installation of a drinking fountain, two waste receptacles, and a portable restroom facility, including a concrete pad for the portable restroom to be located on. Site improvements to the project area include construction of a sidewalk access to all playground equipment, as well as landscaping involving the installation of bark mulch and 100 rose bushes.

The Contract Documents, which define the work covered by this agreement, are filed at the City of Canby, and identified by the signatures of the parties to this Agreement.

The work was designed by and the Contract Documents were prepared by Kennedy/Jenks Consultants herein referred to as the Design Engineer.

The Owner's Representative will be designated by the Owner prior to the start of construction. The Owner's Representative will assume the duties and responsibilities and will have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the work in accordance with the Contract Documents.

ARTICLE 2. CONTRACT TIME AND LIQUIDATED DAMAGES

- (a) Time of Performance. In accordance with the specifications, the Contractor further agrees to plan the work and to prosecute it with diligence and shall commence the work within ten (10) days after the date established in Notice to Proceed from the Owner, and shall Finally Complete the Work within the time allotted from date of commencement in the Notice to Proceed. The following times are allotted for Final Completion of the Work:

The time to Substantial Completion of Work shall be 150 calendar days from Notice to Proceed.

The time to Final Completion of Work shall be 180 calendar days from Notice to Proceed.

See Specification Section 01040 for additional coordination and project requirements.

- (b) Liquidated Damages: The Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the times specified in paragraph (a) above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the Owner Five Hundred dollars (\$500) for each day that expires after the time specified in Article 2 (a) for Completion until the Work is fully complete and the Owner issues a notice of Final Completion.

ARTICLE 3. CONTRACT PRICE

The Owner shall pay the Contractor for completion of the work in accordance with the Contract Documents in current funds as follows:

The total Contract Price for work awarded is:

Two hundred twenty nine thousand nine hundred ninety seven dollars and fifty cents
(\$229,997.50)

ARTICLE 4. RETAINAGE

- (a) The Owner will withhold 5% as retainage from each progress payment due to the Contractor. Retainage shall be paid to the Contractor at the time of Final Payment as set forth in paragraph 13.13 of the General Conditions.
- (b) In lieu of retainage, provisions may be made as provided in ORS 279C.560 for depositing with the Owner, approved bonds or securities of value equal to the retainage.

ARTICLE 5. PAYMENTS

- (a) Payments will be made to the Contractor for work performed at the times and in the manner provided in the Contract Documents, Article 13 of the General Conditions. Payment will be made at bid prices for awarded Bid Items, plus amounts of approved Change Orders.
- (b) The Owner shall retain a minimum of 5% of the amount of each progress payment as specified in Article 13 of the General Conditions. If recommended by the Engineer, payments may include 95% of the invoiced value of major equipment items that have been delivered, stored, and protected at the site and that meet other requirements of the General Conditions, Article 13, paragraph 13.3.
- (c) The period covered by each Application for Payment shall be one calendar month ending on the 25th day of each calendar month. On average, the Owner will make payment within 30 days after the Engineer issues a Recommendation for Payment.

ARTICLE 6. COMPONENT PARTS

This Contract shall consist of the following documents, each of which is on file in the office of the Owner and all of which are incorporated herein and made a part hereof by reference thereto:

- (a) This Agreement
- (b) Performance Bond
- (c) Payment Bond
- (d) Notice of Award
- (e) General Conditions
- (f) Supplementary Conditions
- (g) Addenda Numbered _____ through _____ inclusive
- (h) General Requirements
- (i) Contractors Bid and Instructions to Bidders
- (j) Documentation submitted by the Contractor with Bid
- (k) Prevailing Wage Rate Forms
- (l) First-Tier Subcontractor Disclosure Form
- (m) Technical Specifications
- (n) Drawings
- (o) Executed Change Orders, if any, which may be effective after the date of this Agreement
- (p) Required Insurance
- (q) Notice to Proceed
- (r) Non-Collusion Affidavit
- (s) Addendum to Agreement for Oregon Public Contracting requirements

There are no Contract Documents other than those listed above.

ARTICLE 7. CONTRACT REPRESENTATIONS

In consideration of the Owner entering into this Agreement, the Contractor makes the following representations:

- (a) The Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
- (b) The Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions, which are identified in the Information Available to Bidders, and accepts the limitations set forth in the General Conditions as to the extent to which the Contractor may rely on the information contained in such reports and drawings or otherwise provided by the Owner, the Design Engineer, or the Engineer.
- (c) The Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7 (b) above, which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance, or

furnishing of the work as the Contractor considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 3 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by the Contractor for such purposes.

- (d) The Contractor has reviewed and checked all information and data shown, or indicated on the Contract Documents with respect to existing facilities, existing utilities, existing underground or concealed utilities, and existing underground facilities at or contiguous to the site and accepts the limitations set forth in the General Conditions as to the extent to which the Contractor may rely on such information or on other information provided by the Owner, the Design Engineer, or the Engineer. No additional examinations, investigations, explorations, tests, reports, studies, or similar information or data in respect to said existing facilities, existing utilities, existing underground or concealed utilities, and underground facilities are or will be required by the Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Article 3 of the General Conditions.
- (e) The Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- (f) The Contractor has given the Engineer written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the written resolution therefore by the Engineer is acceptable to the Contractor.

ARTICLE 8. CONTRACTOR DECLARATIONS

The Contractor declares the work will be conducted pursuant to the following requirements of the State of Oregon:

(a) **Prevailing Wage Rates**

The contract is for public work subject to ORS 279C.800 through 279C.870, relating to minimum wage and compensation levels for employees, and the Contractor certified that all provisions shall be complied with, and certifies that employees shall be paid the BOLI or Davis-Bacon prevailing wage rate as determined by the Oregon Labor Commissioner or the Secretary of the United States Department of Labor, whichever is greater, and further agrees to pay such wages not less than once per week. Wage rate certifications shall be submitted as required by the statutes. The prevailing wage rate determinations are available on the Oregon Bureau of Labor and Industries website at: www.oregon.gov/BOLI/WHD/PWR/index.shtml. A hard copy of the prevailing wage rate determination may be obtained by calling BOLI at: 971-673-0761

(b) **Labor Regulations and Hours of Labor**

Pursuant to ORS 279C.520, Contractor may not employ a person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay: (a) for all overtime in excess of eight hours in

any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (b) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (c) for all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(c) First-Tier Subcontractor Disclosure Form

This form must be submitted, in a separate envelope, to the address receiving the Bid Document within (2) two working hours after the deadline when bids are due in accordance with ORS 279C.370. The First-Tier Subcontractor Disclosure Form may be submitted, in its own envelope, at the same time the Bid is submitted if desired.

(d) Pursuant to ORS 279C.505, which is hereby incorporated herein, the Contractor hereby agrees to: 1) Make payment promptly, as due, to all persons supplying contract labor or material for the prosecution of the work provided for in the contract; 2) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract; 3) Not permit any lien or claim to be field or prosecuted against the state county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished; and 4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(e) Deleted

(f) Deleted

(g) Contractor License

The Contractor declares that it possesses a valid State of Oregon Construction Contractors Board License in accordance with relevant OARs, at the time of signing this Agreement. The Contractor shall affirm its license numbers and expiration dates on this Agreement.

(h) Pursuant to ORS 279C.515, if 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 contracting agency 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.

(i) Pursuant to ORS 279C.515, if Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or Contractor, Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the

contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

- (j) Pursuant to ORS 279C.515, if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- (k) Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, 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.
- (l) Pursuant to ORS 279C.530, all subject employers working under this Contract must be either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (m) Contractor must include in each subcontract for property or services entered into by Contractor, including a material supplier, for the purpose of performing this contract:
 - 1. a payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the contracting agency under the contract; and
 - 2. an interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under subparagraph (a) of this paragraph.

Contractor may not be obligated to pay an interest penalty if the only reason that Contractor did not make payment when payment was due is that Contractor did not receive payment from the contracting agency when payment was due.

The interest penalty shall be: (A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and (B) Computed at the rate specified in ORS 279C.515(2).

Contractor must include in each of Contractor's subcontracts a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580(3) in each of the first-tier subcontractor's subcontracts and must require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

- (n) Contractor's obligation to pay a late payment interest penalty to a subcontractor under the payment terms of this Contract is not an obligation of the contracting agency. A contract modification will not be made for the purpose of providing reimbursement of such late payment interest penalty. Contractor will not include any amount for reimbursement of such late payment interest penalty in any cost reimbursement claim.

- (o) This Contract represents the entire agreement of the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral and written agreements with respect to such subject matter. No amendment, modification, or variation of the terms and conditions of this Contract shall be valid unless it is in writing and signed by all parties hereto.
- (p) If there is a conflict between the express terms of this Agreement and any other document or agreements which are a part of the Contract Documents, the terms of this Contract shall prevail.

ARTICLE 9. LIMITATION OF LIABILITY

The Contractor stipulates that it has carefully reviewed the Contract Documents and finds them fit and sufficient for preparation of its bid and for construction of the work. The Contractor agrees that neither the Contractor nor any of its subcontractors or suppliers will make a claim against the Owner, the Design Engineer, or any of their agents, consultants, officers, employees, or shareholders for damages in excess of that allowed per article 10 of Section 00700.

ARTICLE 10. MISCELLANEOUS

- (a) Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions.
- (b) No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

IN WITNESS WHEREOF, the Owner has caused these presents to be executed in triplicate by its officers, thereunto duly authorized, and the Contractor has subscribed same, all on the day and year first above written. One counterpart each has been delivered to the Owner, the Contractor, and the Design Engineer.

If the Contractor is a corporation, attach evidence of authority to sign.

ATTEST:

By J. T. Wellington
(Signature)

Name Jerry T. Wellington

Title Estimator / Project Manager
(Type or Print)

Address for giving notices P.O. Box 1488 Storwood, Or. 97146

J. T. Wellington
ACKNOWLEDGMENT

By a Corporation:

State of Clackamas Oregon
County of Clackamas

On this 5th day of July 2013, before me, a Notary Public in and for the County of Clackamas, State of Oregon, personally appeared Jerry T. Wellington, known to me to be the Representative of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and he or she acknowledged to me that such corporation executed the same, pursuant to its by-laws or a resolution of its board of directors.



(SEAL)

Susan A. Ryan
Notary Public in and for the County of Clackamas
State of Oregon

END OF AGREEMENT

City of Canby

By Greg Ellis
(Signature)

Name Greg Ellis
(Type or Print)

Title City Administrator

Address for giving notices: PO Box 930, Canby, OR 97013.

CONTRACTOR:

By Jerry T. Wellington
(Signature)

Name Jerry T. Wellington
(Type or Print)

Title Estimator/Project Manager

Address P.O. Box 1488

Sherwood, Oregon 97140

91-1783910
(Federal Employer Identification Number)

123973 7/1/2014

Oregon Construction Contractors Board License
Number and License Expiration Date

Telephone Number (503) 334-9892

(SEAL)

