CLACKAMAS COUNTY

DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD I OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with Moore Excavation Inc. for the
Otty Street Realignment Project

Purpose/Outcomes	This contract provides for construction of the Otty Street realignment project.
Dollar Amount and Fiscal Impact	The contract amount is $2,463,876.50.
Funding Source	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District – no County General Funds are involved.
Duration	This contract expires March 31, 2017.
Previous Board Action	The Board of County Commissioners previously approved the design contract for this project on October 30, 2014.
Strategic Plan Alignment	Ensure Safe, Healthy and Secure Communities Build a Strong Infrastructure
Contact Person	David Queener, Development Agency Supervisor 503.742.4322
Contract No.	N/A

BACKGROUND:
The Development Agency is prepared to begin construction of the Otty Street realignment project which will construct a new roadway that aligns with the intersection of 82nd Avenue and Otty Road. Otty Road east of 82nd Avenue will also be widened to Fuller Road in order to accommodate sidewalks, bike lanes and an additional turn lane.

The Development Agency advertised for construction bids with a submittal deadline of May 18th. Five bids were received and Moore Excavation submitted the low bid of $2,463,876.50. The next low bid was $2,519,856.00 and the engineer's estimate was $2,358,836.50.

The contract documents require substantial completion by December 15, 2016 and a contract expiration of March 31, 2017.

This contract has been reviewed and approved by County counsel.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve and sign the contract with Moore Excavation Inc. for construction of the Otty Street realignment project.

Respectfully submitted,

Dan Johnson, Manager
Development Agency

Placed on the ___June 16, 2016____ Agenda by the Purchasing Division

CLACKAMAS COUNTY

LANE MILLER
MANAGER

PURCHASING DIVISION

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

June 16, 2016

MEMORANDUM TO THE BOARD OF COUNTY COMMISSIONERS

Please place on the Board Agenda of **June 16, 2016** this contract with Moore Excavation Inc. for the **Otty Street Realignment Project** for Clackamas County Development Agency. This project was requested by David Queener, Project Manager. Bids were requested for all the materials and manpower necessary to complete specified work on the above-mentioned project. This project was advertised in accordance with ORS and LCRB Rules. Twenty-nine bid packets were sent out with five bids received: Moore Excavation - $2,463,876.50; Kodiak Pacific Construction - $2,521,251.00; R&R General Contractors - $2,724,999.00; Elting Northwest - $2,725,208.00; and Tapani - $2,759,994.00. After review of all bids, Moore Excavation Inc. was determined to be the lowest responsive and responsible bidder. The total contract amount is not to exceed $2,463,876.50. All work is to be substantially completed by December 15, 2016 with a contract completion date of March 31, 2017. This contract has been reviewed and approved by County Counsel. Funds for this project are covered under budget line 450-7491-00-481200-30002 for fiscal years 2015/2016 and 2016/2017.

Respectfully Submitted,

Kathryn M. Holder
Purchasing Staff

CLACKAMAS COUNTY

LANE MILLER
MANAGER

PURCHASING DIVISION

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

CONTRACT WITH MOORE EXCAVATION, INC. FOR THE OTTY STREET REALIGNMENT PROJECT

THIS CONTRACT made and entered into in triplicate by and between Clackamas County Development Agency a political subdivision of the State of Oregon hereinafter called "AGENCY" and **MOORE EXCAVATION, INC.** hereinafter called "CONTRACTOR", which parties do hereby agree as follows:

Section 1. Incorporation of Full Terms and Conditions: This Contract is the complete and exclusive statement of the agreement between the parties relevant to the purpose described herein, and supersedes all prior agreements or proposals, oral or written, and all other communications between the parties relating to the subject matter of this contract. This Contract, or any modification of this Contract, will not be binding on either party except as written and signed by authorized agents of both parties.

Section 2. Contract Documents: The complete Contract consists of the following documents: the Invitation to Bid, the Instructions to Bidders, the accepted Bid Proposal and Schedule of Prices, the Subcontractor List, the Bid Bond, the Performance Bond and the Payment Bond, the Certificate of Insurance, the Prevailing Wage Rates, the Standard Specifications and Special Provisions, the Plans, Drawings and Exhibits, this agreement including Sections 1-33, and any and all addenda prepared by or at the direction of and adopted by the AGENCY and entitled **SE OTTY STREET REALIGNMENT PROJECT,** and further identified by the signature of the parties to this Contract and all modifications thereof incorporated in the documents before their execution.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice-versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete Contract are sometimes hereinafter referred to as the Contract Documents.

Should any dispute arise respecting interpretation of the specifications during the performance of this Contract, such dispute shall be decided by the AGENCY and the decision shall be final and conclusive.

Section 3. Work to be Done: The CONTRACTOR agrees to furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete in good and workmanlike manner the project entitled **OTTY STREET REALIGNMENT PROJECT** for the contract price of **$2,463,876.50** in strict conformity with the Contract Documents. It is understood and agreed that said tools, equipment, apparatus, facilities, labor and material shall be furnished and the work performed and completed in accordance with specifications, and subject to the inspection and approval of the AGENCY.

Section 4. Completion Time and Duration of Contract. Time is of the essence in this Contract and the CONTRACTOR agrees that **all work shall be substantially completed by December 15, 2016 with a contract completion date of March 31, 2017.** The project is to commence within ten (10) calendar days after the date of Notice To Proceed by the AGENCY. If the Notice To Proceed is delayed, the time schedule will be adjusted accordingly. If said CONTRACTOR shall be delayed in said work by acts of God, or of the public enemy, fire, flood,

epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes, or neglect of said AGENCY, or its employees, or those under it by contract or otherwise, or by changes ordered in the work, or delay authorized by the AGENCY, then the time of completion shall be extended as outlined in Section 23 herein.

Section 5. Contract Payments: The AGENCY promises and agrees, upon the performance and fulfillment of the covenants aforesaid, to pay the CONTRACTOR for said work in the manner provided by law and in the specifications the prices fixed in the CONTRACTOR'S Bid Proposal for said work as set forth herein under the Schedule of Bid Prices. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent AGENCY contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice.

Section 6. Permits-Licenses-Safety: The CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work as required by the AGENCY. In the performance of the work to be done under this Contract, the CONTRACTOR shall use every reasonable and practicable means to avoid damage to property and injury to persons. The CONTRACTOR shall use no means or methods which will unnecessarily endanger either persons or property. The responsibility of the CONTRACTOR stated herein shall cease upon the work being accepted as complete by the AGENCY.

Section 7. Materials-Improvements: Title to materials, improvements and other property required of the CONTRACTOR by this Contract shall vest in and become the property of the AGENCY at the time such are tendered by the CONTRACTOR and accepted by the AGENCY. Only materials, improvements and property free and clear of all liens (including but not limited to workman's liens), claims and encumbrances shall be so furnished by the CONTRACTOR.

Section 8. Responsibility for Work: Prior to completion and final acceptance of work, the CONTRACTOR shall be responsible for any injury or damage to the work or to any part thereof by action of the elements, or from any cause whatsoever, and the CONTRACTOR shall make good all injuries or damages to any portion of the work.

Section 9. Final Inspection: Except as otherwise provided in the Special Provisions of this Contract, the AGENCY shall make final inspection of work done by the CONTRACTOR within 10 days after written notification to the AGENCY by the CONTRACTOR that the work is completed. If the work is not acceptable to the AGENCY, the AGENCY shall so advise the CONTRACTOR in writing as to the particular defects to be remedied before final acceptance by the AGENCY can be made.

Section 10. Materials from County Property: The CONTRACTOR shall not take, sell, use, remove or otherwise dispose of any sand, gravel, rock, earth, firewood, and/or other material obtained or produced from the project site, within the limits of rights-of-way, gravel pits, rock quarries or other property owned by or held by the AGENCY unless specially authorized by this Contract or by written consent of the AGENCY.

Section 11. <u>Prosecution of the Work:</u> The CONTRACTOR shall not commence work under this Contract until the CONTRACTOR and every subcontractor has a public works bond filed with the Construction Contractors Board in accordance with ORS 279C.830, all other bonding and insurance requirements have been met, and a Notice to Proceed has been issued.

Section 12. <u>Emergency Conditions-Suspension of Activities:</u> The AGENCY shall have the authority to suspend, wholly or in part, the activities of the CONTRACTOR and contractors and subcontractors of the CONTRACTOR under this Contract for such period or periods of time as the AGENCY may deem necessary when due to a fire or other hazard or emergency caused by any reason whatsoever.

OTHER PAYMENTS

Section 13. <u>Payments, Contributions and Liens:</u>

(1) Under the provisions of ORS 279C.505 the CONTRACTOR shall:

a. Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

b. Pay all contributions or amounts due the State Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

c. Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

d. Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.197.

(2) If the Contract is for a public improvement, the CONTRACTOR shall demonstrate that an employee drug testing program is in place.

(3) Under the provisions of ORS 279C.515, 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 this Contract as the claim becomes due, the proper officer representing the AGENCY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the CONTRACTOR by reason of the Contract. If a CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to make prompt payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the 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 (3) and (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 the 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 public contracting agency or from the CONTRACTOR, provided that the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.

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

Section 14. Medical Care: The CONTRACTOR shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, or hospital care or other needed care and attention incident to sickness or injury. The CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or deducted from the wages of his or her employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

LABOR LAWS - WAGE RATES

Section 15. Labor Laws and Prevailing Wages: **If** the Contract is for a public work subject to ORS 279C.800 to 279C.870 **or** the Davis-Bacon Act (40 U.S.C. 3141 et seq.), no bid will be received or considered by the public contracting agency unless the bid contains a statement by the bidder as a part of its bid that the provisions of ORS 279C.800 through ORS 279C.870 or 40 U.S.C. 3141 et seq. are to be complied with. Insofar as applicable to the work to be done under this Contract, the CONTRACTOR shall pay prevailing wages and comply with all State and Federal laws in the employment and payment of labor. Particular reference is made to the requirements of ORS chapter 279C, which relates to wage rates to be paid on public works. Under such laws, no person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where 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 one-half pay: (A) for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday; or (B) for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive days, Monday through Friday; and (C) for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. Employers must give written notice to employees of the days and hours of required work.

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.

(1) Each worker in each trade or occupation employed in the performance of the Contract either by the CONTRACTOR, subcontractor or other person doing or contracting for the whole or any part of the work on this Contract shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

(2) In the case of contracts for personal services as defined in ORS 279C.100, employees shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any

one week, except for individuals who are excluded under ORS 653.020 or under 29 USC Section 201 to 219 from receiving overtime.

INDEMNITY – INSURANCE – BONDS

Section 16. Indemnity: The CONTRACTOR agrees to indemnify, save harmless and defend the AGENCY, the STATE OF OREGON, the OREGON DEPARTMENT OF TRANSPORTATION, and each entity's officers, commissioners, agents and employees from and against all claims and action, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CONTRACTOR or the CONTRACTOR'S employees or agents.

Section 17. Insurance:

A. COMMERCIAL GENERAL LIABILITY

☒ Required by AGENCY ☐ Not required by AGENCY

The CONTRACTOR agrees to furnish the AGENCY evidence of commercial general liability insurance in the amount of not less than $4,000,000 combined single limit per occurrence/ $5,000,000 general annual aggregate for personal injury and property damage for the protection of the AGENCY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The AGENCY, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

☒ Required by AGENCY ☐ Not required by AGENCY

The CONTRACTOR agrees to furnish the AGENCY evidence of business automobile liability insurance in the amount of not less than $1,000,000 combined single limit for bodily injury and property damage for the protection of the AGENCY, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The AGENCY, at its option, may require a complete copy of the above policy.

C. PROFESSIONAL LIABILITY

☐ Required by AGENCY ☒ Not required by AGENCY

The CONTRACTOR agrees to furnish the AGENCY evidence of professional liability insurance in the amount of not less than $1,000,000 combined single limit per occurrence/$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the AGENCY, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use

thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. The AGENCY, at its option, may require a complete copy of the above policy.

D. POLLUTION LIABILITY INSURANCE

☒ Required by AGENCY ☐ Not required by AGENCY

The CONTRACTOR shall obtain, at the CONTRACTOR'S expense and keep in effect during the term of the Contract, CONTRACTOR'S Pollution Liability insurance covering the CONTRACTOR'S liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR while performing their operations under the Contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the AGENCY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in addition to or in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than $1,000,000 each loss / $1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this Contract. Any self-insured retention / deductible amount shall be submitted to the AGENCY for review and approval.

E. The certificate of insurance, other than the Worker's Compensation and Pollution Liability Insurance, shall include the AGENCY, the STATE OF OREGON, the OREGON DEPARTMENT OF TRANSPORTATION, and each entity's agents, officers, commissioners, and employees as additional insureds when and where required by written contract.

If the CONTRACTOR's insurance policy does not include a blanket endorsement for additional insured status when and where required by written contract, the insurance, except that noted in the preceding paragraph, shall include the AGENCY, the STATE OF OREGON, and the OREGON DEPARTMENT OF TRANSPORTATION and each entity's agents, officers, commissioners, and employees as additional insureds. Proof of additional insured status must be provided upon request in the form of an endorsement listing the AGENCY, the STATE OF OREGON, the OREGON DEPARTMENT OF TRANSPORTATION, and each entity's agents, officers, commissioners, and employees as additional insureds. Use Form CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the AGENCY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the AGENCY under this insurance. This policy(s) shall be primary insurance as respects to the AGENCY. Any insurance or self- insurance maintained by the AGENCY shall be excess and shall not contribute to it.

F. If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of $100,000 for each accident, $100,000 per disease for each employee, and $500,000 each minimum policy limit.

G. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided the coverage's retroactive date is on or before the effective date of this Contract.

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the CONTRACTOR to the AGENCY.

This policy(s) shall be primary insurance as respects to the AGENCY. Any insurance or self-insurance maintained by the AGENCY shall be excess and shall not contribute to it.

H. The CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the CONTRACTOR under this Contract, unless this requirement is expressly modified or waived by the AGENCY in writing.

Section 18. <u>Bonds:</u> The CONTRACTOR agrees to furnish to the AGENCY bonds covering the performance of the Contract and the payment of obligations each in the amount equal to the full amount of the Contract as it may be amended. Upon the request of any person or entity appearing to be a potential beneficiary of the bonds covering payment of obligations arising in the Contract, the CONTRACTOR shall promptly furnish a copy of the bonds or shall permit a copy to be made. The CONTRACTOR shall secure, include costs thereof in the bid, and pay for a performance bond and payments bond in compliance of ORS 279C.380 and other applicable revised statutes issued by a bonding company licensed to transact business in the State of Oregon in accordance with the bid and performance bonds forms provided or others acceptable to the AGENCY.

The CONTRACTOR also agrees that the performance bond to be furnished as specified shall be such as to stay in force for a period of three hundred sixty-five days (365), after acceptance of the work by the AGENCY as a guarantee of repair or replacement of any item(s) of work found to be defective by reason of faulty workmanship or defective materials.

The CONTRACTOR shall have a public work bond filed with the Construction Contractors Board prior to starting work on the project, in accordance with ORS279C.830. Additionally the CONTRACTOR shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work, in accordance with ORS 279C.830.

Section 19. <u>Acceptance of Bond and Insurance:</u> The bond and insurance required by this Contract shall be furnished to the AGENCY within 10 days of the date of this Contract, and no operation shall be started prior to written acceptance of said bond and insurance by the AGENCY.

ADMINISTRATION OF CONTRACT

Section 20. Extension of Time: An extension of time on this Contact may be made by the AGENCY only upon written request from the CONTRACTOR and with the written consent of the surety of the CONTRACTOR. Such extension will be granted only upon a showing by the CONTRACTOR that the failure to perform this Contract within the specified period was due to causes beyond the control of the CONTRACTOR and without fault or negligence of the CONTRACTOR. The written request must be received not later than 30 days prior to the expiration date of this Contract. Such request shall state the date to which the extension is desired and shall describe the conditions which have occurred to prevent the CONTRACTOR from completing this contract within the specified time.

Section 21. Alterations in Details: The AGENCY reserves the right to make, at any time during the progress of the work to be done, such changes or alterations as may be found to be necessary or desirable; provided however, such changes or alterations shall not change the character of the work to be done, nor increase the cost thereof unless the cost increase is approved in writing by both parties. Any changes or alterations so made shall not invalidate this Contract nor release the surety of the CONTRACTOR on the performance bond and the CONTRACTOR agrees to do the work as changed or altered as if it had been a part of the original contract.

Section 22. Adjustment of Contract: Notwithstanding any other provisions of this contract, the AGENCY may, pursuant to Oregon law, make adjustments in the Contract when material effect upon the volume and value of work to be done under the Contract is caused by major catastrophes or disasters resulting from act of God, terrorism, war, riot, windstorms, floods, fire or other acts of nature, which are beyond the control of the CONTRACTOR and in no way connected with negligent acts or omissions of the CONTRACTOR or the representatives, employees or contractors of the CONTRACTOR. Such adjustments may be made to place the parties in their original status under the Contract, insofar as possible; provided however, that any loss or cost to third parties is in no way recoverable from the AGENCY through action or otherwise by third parties, and provided further, the CONTRACTOR make written application to the AGENCY within 30 days after the event.

Section 23. Violations, Suspension and Cancellation: If the CONTRACTOR violates any of the provisions of this Contract, the AGENCY, may, after giving written notice, suspend any further operations of the CONTRACTOR under this Contract, except such operations as may be necessary to remedy any violations. If the CONTRACTOR fails to remedy other violations of this Contract within 10 days after receipt of the suspension notice given under this section, the AGENCY may, by written notice, cancel this Contract and take appropriate action to recover all damages suffered by the AGENCY by reason of such violations, including application toward payment of such damages of any advance payments and any performance bonds.

Section 24. Subletting of Contract: It is understood and agreed that if all or any part of the work to be done under this Contract is subcontracted such subcontracting done by the CONTRACTOR or otherwise shall in no way relieve the CONTRACTOR of any responsibility under this Contract. The CONTRACTOR shall notify the AGENCY, in writing, of the names and addresses of all subcontractors, prior to subletting any part of the work to be done under this Contract.

Section 25. <u>Assignment of Contract:</u> The CONTRACTOR agrees not to assign, transfer, convey or otherwise dispose of this Contract, or the right, title, or interest therein, either in whole or in part, or the power of the CONTRACTOR to execute this Contract, to any other person, firm, or corporation, without the prior written consent of the AGENCY.

Section 26. <u>Notices:</u> Any written notice to the CONTRACTOR which may be required under this Contract to be served on the CONTRACTOR by the AGENCY may be served by personal delivery to the CONTRACTOR or the designated representative or representatives of the CONTRACTOR, or by mailing the notice to the address of the CONTRACTOR as such is given in the Contract, or by leaving the notice at said address. Should the CONTRACTOR be required to notify the AGENCY concerning the progress of the work to be done, or concerning any matter or complaint which the CONTRACTOR may have to make regarding the Contract subject matter, or for any other reason, it is understood that such notification is to be made in writing, delivered to the designated representative of the AGENCY in person or mailed to the AGENCY.

Section 27. <u>Authorized Representative:</u> During any period of operations or activity on the project entitled **OTTY STREET REALIGNMENT PROJECT,** and during any period of doing the work required by this Contract on location, the CONTRACTOR shall have a designated representative or representatives available to the AGENCY on the area or work location, or both where such activity is separated, which representative or representatives shall be authorized to receive in behalf of the CONTRACTOR any notice or instructions from the AGENCY and to take such action as may be required in regard to performance of the CONTRACTOR under this Contract. The AGENCY shall designate to the CONTRACTOR, the authorized representative/project manager", or his or her designee as authorized field representative who shall be authorized to receive notices, inspect progress of work, and issue instructions in regard to performance under the terms of this Contract.

Section 28. <u>Inspection:</u> The AGENCY, through its authorized representative/project manager or his or her designee shall at all times be allowed access to all parts of the operations and work locations of the CONTRACTOR, and shall be furnished such information and assistance by the CONTRACTOR, or the designated representative or representatives of the CONTRACTOR, as may be required to make a complete and detailed inspection.

Section 29. <u>Removal of Equipment and Materials:</u> It is understood and agreed that the CONTRACTOR, upon completion of the requirements of this Contract, is to promptly remove from the work location, and other property owned or controlled by the AGENCY, all equipment, materials and other property the CONTRACTOR has placed or caused to be placed thereon that is not to become the property of the AGENCY. It is further understood and agreed that any such equipment, materials and other property that are not removed within 30 days after the day the project work is accepted by the AGENCY, or within such longer time as may be agreed upon in writing between the CONTRACTOR and the AGENCY, shall become the property of the AGENCY and may be used or otherwise disposed of by the AGENCY without obligation to the CONTRACTOR or to any party to whom the CONTRACTOR may seek to transfer title or whom have an interest, including a security interest, in such property. Nothing in this section shall be construed as relieving the CONTRACTOR from an obligation to clean up, and to burn, remove, or dispose of debris, waste materials, and such, in accord with other provisions of the Contract.

Section 30. <u>Liability of Public Officials:</u> In carrying out any of the provisions of this Contract, or in exercising any power or authority granted under this Contract, there will be no liability upon the Clackamas County Board of Commissioners Acting as the Governing Body of the Development Agency, its members, officers, agents, employees, or its authorized representatives, either personally or as public officials and employees; it always being understood that in such matters they act as agents and representative of the AGENCY.

Section 31. <u>Laws, Regulations and Orders, and Tax Law Covenant:</u>

(1) The CONTRACTOR at all times shall observe and comply with all federal and state laws and lawful regulations issued there under and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the CONTRACTOR under this Contract, and further shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the CONTRACTOR.

(2) The CONTRACTOR must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Any violation shall entitle the AGENCY to terminate this Contract, to pursue and recover any all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

a. Termination of this Contract, in whole or in part;

b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to the CONTRACTOR, in an amount equal to the AGENCY's setoff right, without penalty; and

c. Initiation of an action of proceeding for damages, specific performance, declaratory or injunctive relief. The AGENCY shall be entitled to recover any and all damages suffered as the result of the CONTRACTOR's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and the AGENCY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

(3) The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

a. All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316,317, and 318;

b. Any tax provisions imposed by a political subdivision of this state that applied to the CONTRACTOR, to the CONTRACTOR's property, operations, receipts, or income, or to the CONTRACTOR's performance of or compensation for any work performed by the CONTRACTOR;

c. Any tax provisions imposed by a political subdivision of this state that applied to the CONTRACTOR, or to goods, services, or property, whether tangible or intangible, provided by the CONTRACTOR; and

d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Section 32. <u>Description of a CONTRACTOR:</u> The CONTRACTOR is engaged hereby as an independent CONTRACTOR and will be so deemed for purposes of the following:

(1) The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.

(2) This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to AGENCY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability, insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Oregon Public Employees Retirement System).

(3) The CONTRACTOR certifies that at present, he or she, if an individual, is not a program, AGENCY, or federal employee.

Section 33. <u>Constitutional Debt Limitation:</u> This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

The undersigned, by its signature, agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this contract agree to the terms, conditions, and content expressed herein.

Moore Excavation, Inc.
PO Box 789
Fairview, OR 97024

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS Acting as the Governing Body of the Development Agency by:

Authorized Signature

Chair

Name / Title (Printed)

Recording Secretary

Date

Date

Telephone / Fax Number

CCB License Number

APPROVED AS TO FORM

090067-19
*Oregon Business Registry Number

County Counsel

DBC Oregon
Entity Type / State of Formation

Date

*Please do not provide assumed business names or trade names. Please provide only the correct legal name of the entity or individual entering into the Contract.