

## MATERIALS AND SERVICES CONTRACT

**BETWEEN:** City of St. Helens, a municipal corporation of the State of Oregon ("City")  
**AND:** Ken Leahy Construction, Inc. ("Contractor")  
**DATED:** August 25, 2021

### RECITALS

**A.** The City is in need of soil stabilization by cement amending the sub-grade in an area in Campbell Park, and Contractor is qualified and prepared to provide materials and services to fill that need.

**B.** The purpose of this Contract is to establish the materials and services to be provided by Contractor and the compensation and terms for such materials and services.

**NOW, THEREFORE,** the parties mutually agree as follows:

**1. Engagement.** The City hereby engages Contractor to furnish the materials ("Materials") and services ("Services") specified in Attachment A, Scope of Work, attached hereto and incorporated herein by reference, and Contractor accepts such engagement. The principal contact on behalf of Contractor shall be Chuck Leahy, phone 503-519-4631.

**2. Scope of Work.** The duties and responsibilities of Contractor, including a schedule of performance, shall be as described in Attachment A. Any changes to this Contract shall be in writing, signed by both parties, and shall be attached to and become a part of this Contract. The scope of work may include supplying "goods," as defined in ORS 72.1050. References to "Work" herein refer to the provisions of both Materials (or goods) and Services.

**3. Contract Documents.**

**3.1** The term "Contract Document" means this form, the Scope of Work, and any specifications, quotation, extensions, amendments, exhibits and documents incorporated by reference.

**3.2** This Contract shall constitute the entire agreement between the parties concerning the Materials and Services. References to "this Contract" or "the Contract" include all Contract Documents.

**3.3** Each party shall notify the other party of inconsistencies in the Contract Documents. If inconsistencies occur, the document or provision that will result in a better quality of Services shall have priority. Amendments have priority over all other Contract Documents, including amendments of an earlier date. Specifications have priority over this form. This form and specifications have priority over the quotation. The City may issue a written interpretation to resolve any inconsistencies in the Contract Documents, which shall be binding on Contractor so long as such interpretation is not unreasonable.

3.4 If any term or provision of a Contract Document is held by a court of competent jurisdiction to be invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract Document did not contain the particular term or provision held to be invalid.

3.5 Notwithstanding Subsection 3.1, Contract Documents include any amendments or addenda issued by the City with the Request for Quotations that are attached to this form as attachments. After this Contract is signed, the Contract Documents may be changed only by written amendments signed by authorized representatives of both parties.

#### 4. Contract Term.

4.1 The initial term of this Contract begins on July 20, 2021, and ends on September 30, 2021 ("Contract Term"). The parties may agree to extend the Contract Term for two (2) successive periods of twelve (12) months each. Such extension shall begin on the day following the end of the initial term or the first extension. Extensions must be set forth in writing and signed by authorized representatives of both parties. The party requesting the extension must deliver a request for extension at least sixty (60) days before the Contract Term is scheduled to end.

4.2 A schedule of performance may be included in the specifications.

4.3 Notwithstanding Subsection 4.1, this Contract may be terminated before the end of the Contract Term, as provided in the Contract Documents.

5. **Approvals.** If the Contract Documents require approval of any thing, act, or document, the request for approval and the response must be given by persons with proper authority under the Contract Documents in the same manner as notices under Section 6. Approval will not be withheld unreasonably.

#### 6. Notices.

6.1 Notices required by this Contract must be given in writing by personal delivery or by United States mail, first-class postage-prepaid, unless some other means or method of notice is required by law.

6.2 All notices to the City must be directed to the City Administrator. The City's address for notices is:

City of St. Helens  
Attn: City Administrator  
265 Strand Street  
St. Helens OR 97051

6.3 Contractor's address for notices is:

Ken Leahy Construction, Inc.  
Attn: Chuck Leahy  
PO Box 489  
Cornelius, OR 97113  
503-357-2193

6.4 Each party shall notify the other of any change of address for notices.

**7. Contractor's Responsibility for the Work.**

7.1 Time is of the essence on this Contract. Contractor shall perform the Work promptly and efficiently and in accordance with the provisions set forth in Attachment A. Contractor shall provide all labor, materials, tools, equipment and incidentals that are necessary for proper performance of the Work, including items that may be inferred from the specifications or from prevailing custom or trade usage as being necessary to produce the intended results.

7.2 Unless the specifications require certain means or methods, Contractor shall be responsible for the means and methods used for the Services.

7.3 Materials provided by Contractor must be of good quality and will be subject to the warranties provided by ORS 72.3120, ORS 72.3130, ORS 72.3140 and ORS 72.3150.

7.4 Contractor shall provide and properly supervise qualified workers. Workers must have any licenses and certificates required by applicable laws.

7.5 Contractor shall not assign any interest in this Contract or enter into subcontracts for the Services without the prior written approval of the City.

**8. Use of Premises.**

8.1 Provisions of this Contract that refer to "the Premises" will apply to the Work only if it is performed at the Premises, defined as real property, including buildings or other improvements that are owned or occupied by the City.

8.2 Contractor shall confine the Work performed at the Premises to areas and times stated in Attachment A, and Contractor shall avoid any unnecessary interference with the use of the Premises.

8.3 Contractor shall take reasonable precautions to prevent injury to persons and damage to property that may result from Contractor's use of the Premises. Contractor shall remedy any damage to the Premises and other property of the City resulting from the Work.

**9. Hazardous Chemicals.** Contractor shall implement and bear the cost of precautions required for protection from "hazardous chemicals," as defined in ORS 654.750 or OAR Chapter 437, that may be encountered at the Premises or used for the Work. The City and Contractor shall exchange material safety data sheets, label information, and instructions for precautionary measures for hazardous chemicals kept at the Premises by the City or used for the Work by Contractor. The City may prohibit use of particular hazardous chemicals.

**10. Liability of City's Officers, Employees and Agents.** Officers, employees and agents of the City shall not have any direct, personal liability to Contractor.

**11. No Agency.** Contractor is engaged by the City as an independent contractor in accordance with ORS 670.600. Contractor, subcontractors, and their principals, employees and agents are not agents of the City as that term is used in ORS 30.265.

## **12. Indemnification.**

**12.1** Except as provided in Subsection 12.2, or as otherwise provided by applicable law, Contractor shall defend and indemnify the City and the City's officers, elected officials, volunteers, employees and agents from all third-party claims arising from the Work, including third-party claims arising from injury to any person or damage to property, breach of this Contract by Contractor, or violation of applicable law by Contractor.

**12.2** Contractor shall not be responsible for third-party claims resulting solely from the negligence or other wrongful acts or omissions of the City or the City's officers, elected officials, volunteers, employees or agents.

## **13. Liability Insurance.**

**13.1** At all times while Contractor is performing Work at the Premises, Contractor shall, at Contractor's expense, maintain in force insurance policies as set forth in Attachment B, which is attached hereto and incorporated herein by reference.

**13.2** Prior to starting Work at the Premises, Contractor shall provide certificates of insurance for coverage required by this section, which will be subject to review and approval by the City Attorney. Each certificate must obligate the insurer to give written notice to the City thirty (30) days prior to termination or restriction of coverage. The City may reject a certificate which states that the insurer will merely "endeavor to mail" written notice.

**14. Governing Laws.** This Contract shall be interpreted and construed in accordance with the laws of the State of Oregon.

## **15. Compliance with Law.**

**15.1** Contractor shall comply with all applicable federal, state and local statutes, ordinances, administrative rules, regulations and other legal requirements in performance of this Contract.

**15.2** Contractor shall comply with applicable laws, including ORS 279B.020, ORS 279B.220, ORS 279B.225, ORS 279B.230 and ORS 279B.235, which are incorporated herein.

**15.3** Pursuant to ORS 279B.020, no person shall be employed for the Work for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency, or when the public policy absolutely requires it. Except for persons who are exempt from overtime pay, persons who perform the Work shall be paid at least time and a half pay for legal holidays specified in a collective bargaining agreement or in ORS 279B.020(1)(b) and for time worked in excess of ten (10) hours a day or in excess of forty (40) hours a week, whichever is greater.

**15.4** If Contractor is a nonresident bidder, as defined in ORS 279A.120(1)(a), and the compensation, as set forth in Attachment A attached hereto and hereby incorporated by reference, exceeds Ten Thousand Dollars (\$10,000), Contractor shall comply with ORS 279A.120(3).

**15.5** Pursuant to ORS 279A.120(2)(a), Contractor shall use products that have been manufactured in Oregon, provided that price, fitness, availability and quality are otherwise equal.

**15.6** Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of the City in connection with this Contract in violation of ORS Chapter 244.

**15.7** Contractor is a "subject employer," as defined in ORS 656.005, and shall comply with ORS 656.017. Contractor shall provide workers' compensation coverage for "subject workers," as defined in ORS 656.005(28), employed to perform the Work. Before performing any Work, Contractor shall provide a certificate of insurance for workers' compensation coverage or other proof of coverage, or certify that no subject workers will perform Work.

**15.8** Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement. [Business License No. 00379].

**16. Nondiscrimination.**

**16.1** Contractor shall comply with all applicable federal, state and local laws, rules and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions or disability.

**16.2** Contractor shall comply with the Americans with Disabilities Act of 1990 (Pub. Law No. 101-336), ORS 30.670 through ORS 30.685, ORS 659A.425, and all regulations and administrative rules established pursuant to those laws, in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training, educational or otherwise, conducted by Contractor.

**17. Compensation.** The terms of compensation shall be as provided in Attachment A. The compensation stated in Attachment A constitutes the total compensation payable to Contractor for the Work.

**18. Payment.**

**18.1** Unless otherwise provided in Attachment A, Contractor shall be paid on a time and materials basis.

**18.2** Contractor shall make and keep reasonable records of Work performed pursuant to this Contract and, unless provided otherwise in Attachment A, shall provide detailed monthly billings to the City. Following approval by the City Administrator, billings shall be paid in full within thirty (30) days of receipt thereof. The City shall notify Contractor of any disputed amount within fifteen (15) days from the date of the invoice, give reasons for the objection, and promptly pay the undisputed amount. Disputed amounts may be withheld without penalty or interest pending resolution of the dispute. Payment to Contractor shall be complete once the City pays compensation as provided in Section 17.

**18.3** The City may suspend or withhold payments if Contractor fails to comply with the requirements of this Contract.

**18.4** The City's obligation to make payments is conditioned upon appropriation of funds pursuant to ORS 294.305 through 294.565. The City certifies that funds for this Contract are included in the City's budget for the current fiscal year, which ends on June 30 next following the date that this Contract is signed. If funds are not appropriated for this Contract for any subsequent fiscal year during the Contract Term, the City shall notify Contractor and this Contract shall be terminated on June 30 of the last fiscal year for which funds are appropriated.

**18.5** Any provision of this Contract that is held by a court to create an obligation that violates the debt limitation of Article XI, Section 9 of the Oregon Constitution shall be void.

**19. Waiver.** Compliance with the provisions of this Contract may be waived only by a written waiver signed by the party waiving its rights. Waiver of compliance with one provision shall not be deemed to waive compliance with any other provision.

**20. Default.**

**20.1** A party will be in default under this Contract if that party fails to comply with any provision of this Contract within ten (10) days after the other party gives written notice specifying the breach. If the breach specified in the notice cannot be completely cured within the ten (10)-day period, a default will not occur if the party receiving the notice diligently begins curative action within the ten (10)-day period and proceeds to cure the breach as soon as practicable.

**20.2** Notwithstanding Subsection 20.1, the City may declare a default immediately by written notice to Contractor if Contractor intentionally or repeatedly breaches material provisions of this Contract or if Contractor's breach of contract creates unreasonable risk of injury to any person or damage to property.

**20.3** Should a dispute arise between the parties to this Contract, it is agreed that such dispute will be submitted to a mediator prior to any litigation. The parties shall exercise good-faith efforts to select a mediator who shall be compensated equally by both parties. Mediation shall be conducted in St. Helens, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good-faith efforts to resolve disputes covered by this section through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, a mediator shall be appointed by the presiding judge of the Circuit Court of the State of Oregon for Columbia County upon request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section. Nothing in this section shall preclude a party from seeking equitable relief to enjoin a violation of this Contract.

**20.4** If a default occurs, the party injured by the default may terminate this Contract and enforce any remedies available under Oregon law. Litigation shall be conducted in the Circuit Court of the State of Oregon for Columbia County. Litigation initiated by the City must be authorized by the St. Helens City Council.

**21. Attorney Fees.** If legal action is commenced in connection with this Contract, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred herein at trial and on appeal.

22. **Termination for Convenience.** The City may terminate this Contract if the City determines in good faith that termination is in the best interest of the public. The City shall endeavor to give Contractor written notice thirty (30) days prior to the date of termination under this section, but failure to give notice will not invalidate the decision to terminate. Termination under this section will not affect the rights of the parties existing at the time of termination. If Contractor is not in default, Contractor shall be paid for Work in progress at the time of termination, and Contractor shall be reimbursed for reasonable costs resulting directly from termination. Contractor shall not be entitled to recover lost profits or overhead for Work that is precluded by termination under this section.

23. **Action Upon Termination.** Upon receiving notice of termination, Contractor shall cease performance of the Work and terminate subcontracts.

**CITY:**

**CONTRACTOR:**

**CITY OF ST. HELENS**

**KEN LEAHY CONSTRUCTION, INC.**

Signature: Matthew Brown  
Print: MATTHEW BROWN  
Title: Asst. City Admin  
Date: 8-25-21

Signature: [Signature]  
Print: Slade Leahy  
Title: Vice President  
Date: August 25, 2021

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Recorder

**ATTACHMENT A**  
**Scope of Work**  
**Terms of Compensation**





## **Cost Estimate**

**FOR**

**Cement Amending Campbell Park  
City of St. Helens, OR  
Revised**

**July 13, 2021**



Construction, Inc.

P.O. Box 489 • 915 S. 12<sup>th</sup> Ave. • Cornelius, Oregon  
(503) 357-2193 • FAX (503) 357-3649

July 13, 2021

Tim Underwood  
City of St. Helens, OR

Attn: Mr. Underwood

Re: Campbell Park St. Helens, Oregon

Please find following our Revised Cost Estimate for the Cement Amending Sub-Grade at Campbell Park Ken Leahy Construction is ready to proceed with work under this quotation immediately.

**PROPOSED SCOPE OF WORK**

- I.) General – Pricing is based on working 50 hours a week, Monday thru Friday**  
***Base Bid assumes dry weather earthwork conditions.***  
Pricing is also based on private wage rates - No prevailing wage rates have been used.

PLEASE INITIAL

*SD on*

**A. General**

- a. Mobilization of resources necessary to accommodate our scope of work.
- b. General Supervision, Project Manager, and Safety Coordinator included.

**II.) Site Work**

**A. Grade Prep and Cement Amending of Subgrade**

- a. Grade Prep
  - i. Minor prep of existing ground for cement Amending process
- b. Furnish, spread, mix, and compact Cement for Amending Subgrade
  - i. Option 1 is based on 12" depth @ 5% cement with soil weight of 100 lbs./CF
  - ii. Option 2 is based on 18" depth @ 5% cement with soil weight of 100 lbs./CF
  - iii. Additive Items 9000 and 9500 are for additional 1% of Cement for various depths of cement amending

**TOTAL BASE BID OPTION 1** **\$21,829.98**

**TOTAL BASE BID OPTION 2** **\$26,848.98**



**Additive Items**

*Item # 9000 – Add to increase cement at 1% for 12” Depth of Amendment*

*Item # 9500 – Add to increase cement at 1% for 18” Depth of Amendment*

*Item # 9800 – Add for Water Truck & Driver \$95.00/HR*

**V.) Exclusions**

- A. Permits (including trade specific), fees, bonds, testing, engineering or inspections.
- B. Survey, staking, layout, record as-builts or replacement of disturbed pins or benchmarks, except as noted above.
- C. Proposal is Based on Private Wage Rates and excludes BOLI – Prevailing Wages
- D. Water for construction if required to be furnish at no charge from City
- E. Any and all work related to installation of any gas lines.
- F. Removal/relocation of existing utilities not shown or are found to be in conflict with plan improvements.
- G. Site Dewatering for other trades
- H. All Erosion Control including Inspections and or Documentation
- I. Testing and/or disposal of water pumped from project excavations.
- J. Over-excavation of utility trenches, structural footings or project subgrades
- K. Sleeves, excavation or backfill for work of other trades.
- L. Any provision for impacts to existing structures or utilities that may be affected by mass excavation.
- M. Hazardous and or contaminated material handling and or disposal.
- N. Any provision for cost escalation beyond our control.
- O. Any work not included in above scope.
- P. Any Rock Excavation

**VI.) Qualifications**

- A. No replacement of installed site base rock anticipated if later deemed unsuitable following use by owner’s contractor and/or subcontractors.
- B. Estimate valid for thirty days.

We appreciate the opportunity to provide you with this proposal. Please call with any questions.

Regards,



Mike Moore  
Senior Estimator

# BID PROPOSAL (Saturday Overtime)



**Ken Leahy Construction, Inc.**

P. O. Box 489 915 S. 12th Ave.  
Cornelius, OR. 97113

Quote To:

Phone:

Email:

Project Name:

Campbell Park Cement Amending

Plan Date:

N/A

Today's Date:

August 20, 2021

OR CCB#

44159

Quote From:

Slade Leahy  
Vice President

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1000	Mobilization	1.00	LS	8,869.06	8,869.06
2000	Site Prep for Cement Amending	1.00	LS	1,722.08	1,722.08
3000	Cement amend 14" @ 6%	2,200.00	SY	10.59	<del>23,298.00</del>

**GRAND TOTAL**

**\$33,889.14**

PLEASE INITIAL



*Ken Leedy*

2106MM2

Campbell Park City of St. Helens

Mike Moore

**BID PROPOSAL**

Bid Item	Description	Quantity	Units	Unit Price	Bid Total
<b>Option #1 - 5% Cement @ 12" Depth</b>					
1000	Mobilization	1.000	LS	6392.88	\$6,392.88
2000	Site Prep for Cement Amending	1.000	LS	1325.1	\$1,325.10
3000	Option 1 cement amend 12" @ 5%	2,100.000	SY	6.72	\$14,112.00
<b>Total Base Bid Option #1</b>					<b>\$21,829.98</b>
<b>Option #2 - 5% Cement @ 18" Depth</b>					
1000	Mobilization	1.000	LS	6392.88	\$6,392.88
2000	Site Prep for Cement Amending	1.000	LS	1325.1	\$1,325.10
3500	Option 2 Cement Amend 18" @ 5%	2,100.000	SY	9.11	\$19,131.00
<b>Total Base Bid Option #2</b>					<b>\$26,848.98</b>
<b>Additive Items</b>					
9000	Add for Additional Cement 12" @ 1%	2,100.000	SY	1.17	\$2,457.00
9500	Add for Additional Cement 18" @ 5%	2,100.000	SY	1.58	\$3,318.00
9800	Add for Water Truck & Driver	1.000	HR	95	\$95.00

## ATTACHMENT B INSURANCE REQUIREMENTS

Contractor and its subcontractors shall maintain insurance acceptable to the City in full force and effect throughout the term of this Contract.

It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance provided by Contractor. The policy or policies of insurance maintained by Contractor and its subcontractors shall provide at least the following limits and coverage:

TYPE OF INSURANCE	LIMITS OF LIABILITY		REQUIRED FOR THIS CONTRACT
General Liability	Each occurrence	\$1,000,000	YES
	General Aggregate	\$2,000,000	
	Products/Comp Ops Aggregate	\$2,000,000	
	Personal and Advertising Injury	\$1,000,000	
		w/umbrella or \$1,500,000 w/o umbrella	
Please indicate if Claims Made or Occurrence			
Automobile Liability	Combined Single – covering any vehicle used on City business	\$2,000,000	YES
Workers' Compensation	Per Oregon State Statutes If workers compensation is not applicable please initial here _____. State the reason it is not applicable: _____		YES
Professional Liability	Per occurrence	\$500,000 or per contract	NO
	Annual Aggregate	\$500,000 or per contract	

Contractor's general liability and automobile liability insurance must be evidenced by certificates from the insurers. The policies shall name the City, its officers, agents and employees, as additional insureds and shall provide the City with a thirty (30)-day notice of cancellation.

Workers' compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured, but must list the City as a certificate holder and provide a thirty (30)-day notice of cancellation to the City.

Certificates of Insurance shall be forwarded to:

City Administrator  
City of St. Helens  
265 Strand Street  
St. Helens, OR 97051

Contractor agrees to deposit with the City, at the time the executed Contract is returned, Certificates of Insurance and Binders of Insurance if the policy is new or has expired, sufficient to satisfy the City that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the City during the entire term of this Contract. Such certificates and/or binders must be delivered prior to commencement of the Work.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. 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 Contract.