

**CITY OF SWEET HOME  
CONSTRUCTION AGREEMENT  
FOR  
SANKEY PARK PHASE III PROJECT**

This Construction Agreement (“Contract”) is entered into between the City of Sweet Home, Oregon (“City”) and North Santiam Paving Co. (“Contractor”) for the Sankey Park Phase III Project (“Project”).

Terms used in this Contract have the meanings stated in the General Conditions.

City and Contractor agree as set forth below:

**The Contract Documents.**

The following documents (the “Contract Documents”) form the “Contract” and all are as fully a part of the “Contract” as if attached to this Agreement or repeated herein:

1. This Agreement
2. Request for Proposals (Exhibit A)
3. Proposal (Exhibit B)
4. General Conditions of the Contract (Exhibit C)
5. Drawings, Plans & Specifications (Exhibit D)
6. Payment & Performance Bonds (Exhibit E)
7. Approved Submittals
8. Addenda issued prior to, and all Modifications and Change Orders issued after execution of this Agreement

The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

**ARTICLE 1 – WORK**

**1.1.** Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**SANKEY PARK PHASE III PROJECT**

## **ARTICLE 2 – THE PROJECT**

**2.1.** The Project, of which the Work under the contract documents is a part, is generally described as follows:

The City of Sweet Home Sankey Park Phase III project includes sidewalks, paved paths, unpaved trails, site lighting, and an ADA-accessible path with switchbacks and viewing platforms that will connect the upper and lower portions of the park.

## **ARTICLE 3 – CONTRACT TIMES**

- 3.1.** Time is of the essence.
- 3.2.** The Work shall be commenced on the date stipulated in a written notice issued to Contractor by City (the “Notice to Proceed”).
- 3.3.** The Work shall be substantially complete on or before June 30, 2026, and completed and ready for final payment on or before July 15, 2026.
- 3.4.** Liquidated Damages
  - A. City and Contractor recognize that time is of the essence as stated in Paragraph 3.1 above and that City will suffer financial and other losses if the Project is not completed within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by City if the Project is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty):
    - 1. *Substantial Completion:* Contractor shall pay City \$500 for each day that expires after the time (as duly adjusted per the Contract) specified above for Substantial Completion, until the Work is substantially complete.
    - 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Project Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay City \$500 for each day that expires after such time until the Project is completed and ready for final payment.
    - 3. Liquidated damages for failing to attain timely Substantial Completion and Completion of Remaining Work are not additive and will not be imposed concurrently.
  - B. If City recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are City’s sole and exclusive remedy for such delay, and City is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Contract.

## **ARTICLE 4 – CONTRACT PRICE**

- 4.1.** City shall pay Contractor the amounts that follow for completion of the Work in accordance with the Contract Documents, subject to adjustment under the Contract:
- A. For all Work other than Additive and Deductive Unit Price Work, a lump sum of \$496,401.25.
  - B. For all other Work, at the prices stated in Contractor's Bid, attached hereto as Exhibit B.

## **ARTICLE 5 – PAYMENT PROCEDURES**

- 5.1.** Submittal and Processing of Payments
- A. Contractor shall submit Applications for Payment in accordance with Article 5 of the General Conditions. Applications for Payment will be processed by City as provided in the General Conditions.
- 5.2.** Progress Payments; Retainage
- A. City shall make progress payments on the basis of Contractor's Applications for Payment on or about the 10<sup>th</sup> day of each month during performance of the Work as provided in Paragraph 5.2.A.1 below, and in accordance with ORS279C.570, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirement of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions.
    - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as City may withhold, including but not limited to liquidated damages, in accordance with the Contract.
      - a. 95 percent of the value of the Work completed (with the balance being retainage).
      - b. 95 percent of the cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - B. Upon Substantial Completion of all work described in the Contract Documents, City shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less 200 percent of the City's estimate of the value of Work remaining to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- 5.3.** Final Payment
- A. Upon final completion and acceptance of the Work, City shall pay the remainder of the Contract Price.
- 5.4.** Consent of Surety
- A. City will not make final payment, or return or release retainage at

Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

## **ARTICLE 6 – REPRESENTATIONS, CERTIFICATONS, AND STIPULATIONS**

### **6.1. Contractor's Representations**

A. In order to induce City to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; and the Contract Documents; with respect to the effect of such information and observations on (a) the cost, progress and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an

incontrovertible representation by Contractor that without exception all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

**6.2. Contractor's Certifications**

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.2:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of City, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

**SECTION 7 – SEVERABILITY**

**7.1.** If any provision, or any portion thereof, contained in the Contract is held to be unenforceable, the remainder of this Contract or portion thereof shall be deemed severable and shall not be affected and shall remain in full force and effect. Any and all representations, promises, warranties, or statements by Contractor or Contractor's agents that differ in any way from the terms of the Contract shall be given no force and effect.

**SECTION 8 – NOTICES**

8.1. All notices shall be made in writing and may be given by personal delivery, mail, or email. Notices sent by mail should be addressed as follows:

**CITY:** City Manager  
3225 Main Street  
Sweet Home, OR 79386  
OR  
[jogden@sweethomeor.gov](mailto:jogden@sweethomeor.gov)

**CONTRACTOR:** North Santiam Paving Co.  
\_\_\_\_\_  
OR  
\_\_\_\_\_

When so addressed, such notices shall be deemed given upon deposit in the United States mail, postage-prepaid.

**ARTICLE 9 – MISCELLANEOUS**

- 9.1. 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 by 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 assignments will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.2. City and Contractor each by themselves, their partners, successors, assigns, and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect to all covenants, contracts, and obligations contained in the Contract Documents.
- 9.3. In the event a suit, arbitration, or other legal action is required by either the City or the Contractor to enforce any provisions of this Contract, each party shall cover their own attorney's fees.
- 9.4. Contractor agrees to protect, indemnify, and hold harmless the City, its officers, agents, and employees harmless against any and all loss, claims, or suits (including costs and attorney's fees) for or on account of injury to or death of persons, damage to, or destruction of property belonging to either the City or others occurring by reason of the act or neglect of the Contractor, Contractor's employees, or agents (including subcontractors) in connection with the performance of this Contract.
- 9.5. The Contract has been awarded as authorized by ORS 279C.335.

IN WITNESS WHEREOF, the City has caused this Contract to be executed by its duly authorized undersigned agent, and Employee has executed this Contract on the date written below.

CITY OF SWEET HOME

CONTRACTOR

\_\_\_\_\_  
Jason Ogden, City Manager

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

APPROVED AS TO FORM:

\_\_\_\_\_  
Title

\_\_\_\_\_  
W. Blair Larsen, City Attorney

\_\_\_\_\_  
Date

**EXHIBIT A**  
**REQUEST FOR PROPOSALS**

**EXHIBIT B**  
**PROPOSAL**

**EXHIBIT C**  
**GENERAL CONDITIONS**

**EXHIBIT D**  
**DRAWINGS, PLANS & SPECIFICATIONS**

**EXHIBIT E**  
**PAYMENT & PERFORMANCE BONDS**