Tuesday, May 26, 2020
3:00 p.m. Special Meeting

**NOTE SPECIAL DATE & TIME**

Livestreamed on YouTube at:
https://www.youtube.com/channel/UCwNz5TMyHTN4itpJm_efb9Q
Constituent input may be submitted via email to boc@co.lincoln.or.us

I. CALL TO ORDER

II. SOUND CHECK

III. ROLL CALL - ESTABLISHMENT OF A QUORUM

IV. RECOGNITION/PROCLAMATION

V. ADOPTION OF CONSENT CALENDAR

A. Minutes of Board of Commissioners Meeting
   1. Order #5-20- BOC Meeting Minutes 5.4.2020

B. Commission Appointments and Resignations

C. License Applications or Renewals

D. Tax Foreclosure, Right-of-Way, Sales and Deeds

E. General Budget Resolutions
   1. Resolution #20-26-5A Adjusting the 19-20 Budget for Animal Services District, Lincoln County General Fund, Public Works Fund, Self-Insurance Fund, and Public Health Fund

F. Acting as Governing Body of County Wide Service Districts

G. Documents and Recording Matters in the Commissioners Journal

H. Execution of Documents
   1. Resolution #20-26-5_ Declaring Certain County Owned Vehicles Surplus

I. Recordation of Documents
   2. Order #5-20- Agreement between Lincoln County and Rachael Maddock-Hughes for Services (effective until 6/30/2020)
   3. Order #5-20- Oregon Department of Justice Victims of Crime Act 2018-2020 Grant Award #VOCA-FI-2018-LincolnCo.CAC-00086 (effective 10.1.18-9.30.20; not to exceed
4. Order #5-20- VOCA/CFA Grant #VOCA/CFA-2019-LincolnCo.DAVAP-00045 Amendment (Increase of $10,000 for COVID related expenses)

VI. REPORTS
A. Lincoln County Public Health COVID-19 Update – Presented by Nicole Fields, Public Health Deputy Director
B. Incident Management Team Update – Presented by Rachael Maddock-Hughes, Wiley Thompson,
C. Commissioners

VII. DECISION/ACTION
1. Reopening Lincoln County Discussion and Directions – Presented by Board and Staff
2. Order #5-20- Awarding a Bid for the North Beaver Creek Bridge Replacement – Presented by Roy Kinion, Public Works Director
3. Order #5-20- Bid Award: 2020 with Asphalt Concrete – Presented by Roy Kinion, Public Works Director

VIII. DISCUSSION/INFORMATION

IX. ADJOURN

X. OTHER SCHEDULED MEETINGS AND APPOINTMENTS OF THE BOARD
Monday, June 1, 2020 – 9:00 a.m. – Office Meeting and Board Briefing in the Commissioner’s Small Meeting Room, Lincoln County Courthouse Room #110, 225 West Olive Street, Newport; meeting to cover office priorities, operations, procedures, and workflow

Monday, June 1, 2020 – 3:00 p.m. – Board of Commissioners Meeting

For special physical, language, or other accommodations at Board’s meeting, please contact the Board at 265-4100 (voice) or dial 7-1-1 Relay Service and include e-mail as soon as possible, but at least 48 hours before the meeting.
BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY OREGON

In the Matter of: ) ORDER NO. ____________

Awarding a Bid for the North Beaver Creek Bridge Replacement

WHEREAS, on April 8th and 10th, 2020, the Lincoln County Public Works Department (Public Works) issued an invitation to bid (the project) for the North Beaver Creek Bridge replacement at mile post .125 on Wolkau Road; and

WHEREAS, the notice and solicitation were made in accordance with the Lincoln County Code; and

WHEREAS, the specifications for the project were prepared by OTAK Engineering, an engineering firm licensed in the State of Oregon; and

WHEREAS, the Lincoln County Public Works Department received and opened three bids on May 6, 2020 for the project; and

WHEREAS, the low bid for the project was from Waldron and Sons, Inc., in the amount of $581,431.47; and

WHEREAS, the low bid was accompanied by the required bid bond and the first tier subcontractor identification form; and

WHEREAS, the bid was reviewed by the Assistant County Public Works Director Steve Hodge who found that the bid was in order, met all the bid requirements, and was therefore acceptable.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The bid for the North Beaver Creek Bridge replacement at mile post .125 on Wolkau Road be awarded to Waldron and Sons, Inc., in the amount of $581,431.47.

2. The Public Works Director be authorized to execute the necessary documents and contracts to undertake this project on behalf of the County.

Order # ____________ Page 1 of 2
3. Copies of this order be provided to Roy Kinion, Public Works Director; Steve Hodge, Assistant Public Works Director and Wayne Belmont, County Counsel.

DATED this _________ day of _____________, 2020.

LINCOLN COUNTY BOARD OF COMMISSIONERS

___________________________________
Kaety Jacobson, Chair

___________________________________
Claire Hall, Commissioner

___________________________________
Doug Hunt, Commissioner
MEMORANDUM

DATE: 05/14/2020
TO: Board of Commissioners
FROM: Roy Kinion, Public Works Director
RE: Bid Award: North Beaver Creek Bridge Replacement

Bids were received on May 6, 2020 at 2 pm and publicly read at that time. The bridge, located at mile post .125 on Wolkau Road, is an 18-foot-wide by 50-foot-long wood structure supported on timber piling. The replacement bridge will be a 20-foot-wide by 65-foot-long single span concrete slab structure supported on steel pipe piles. The bridge will have integral abutments and 20.3-foot-long approach panels. The centerline of the new bridge will approximately match the current centerline and the road elevation will approximately match the current grades. The existing bridge is at the end of its useful life and needs to be replaced. Funds from the Local Agency Bridge fund (ODOT) were obtained for this purpose.

Three qualified contractors submitted bids for this work with the low apparent bid submitted by Waldron and Sons, Inc. Bid amounts were as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waldron and Sons, Inc</td>
<td>$581,431.47</td>
</tr>
<tr>
<td>Farline Bridge, Inc</td>
<td>$682,881.50</td>
</tr>
<tr>
<td>Bent, LLC</td>
<td>$689,554.00</td>
</tr>
</tbody>
</table>

I have examined the bids and found only minor discrepancies in the low bid. However, the errors were not significant and did not change the ranking of bids. The low bid is approximately 2% lower than the engineer's estimate ($593,641) and is within an acceptable range of variance. It is my recommendation that a contract be awarded to Waldron and Sons, Inc in the amount of their bid, $581,431.47.

Please contact me should you have any questions.

XC: Legal Counsel
File.

NORTH BEAVER CREEK BRIDGE REPLACEMENT - BOC Recommendation 05/25/2020
AGREEMENT

Project:  North Beaver Creek Bridge Replacement
Project #:  8066
Contractor:  Waldron and Sons, Inc
Tax ID #:  93-1039883  Construction Contractor's Board #:  147687

PROJECT DESCRIPTION

Scope of Work (detailed):

The work to be done under this contract consists of the following:

1. Implement erosion/ sediment control measures.
2. Perform construction surveying
3. Bridge Removal
4. Construct temporary detour road and bridge.
5. Drive steel piles
6. Place scour protection.
7. Construct concrete abutments and wingwalls.
8. Place 26-inch precast, prestressed concrete bridge slabs.
9. Install guardrail.
10. Provide stormwater control measures.
11. Remove temporary detour road and bridge.
12. Provide right of way and fence repairs.
13. Provide traffic control.

B. Date of Commencement and Substantial Completion:  All work shall be completed by October 30, 2020.

C. Contract Sum, Payment Terms and Schedule (Progress Payments, Retainage, etc.):

Per proposal, County will pay $581,431.47 based on the estimated quantities of work to be performed or the County will pay said Contractor the amount earned, as determined from actual quantities of work performed and the prices and other bases of payment specified, and to make such payment as provided in the Contract Documents.  Invoices received by the 25th of the month will be paid by the 10th of the following month.

D. Other Requirements:

The Contract Documents consist of this agreement, including the General Conditions, and (check those that apply; list document name where appropriate):

- General and Supplementary Conditions
- BOLI Prevailing Wage Rate Schedule (Available on-line).
- Exhibit ___ (ODOT STANDARD SPECIFICATIONS FOR CONSTRUCTION, 2015)
- Exhibit ___ (Negotiated Amended Proposal)
- Exhibit ___ GEOTECHNICAL REPORT
- Other (Drawings and specifications as developed by County Engineer)
AGREED:

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their respective seals as of the date first above written.

APPROVED:

LINCOLN COUNTY PUBLIC WORKS

By: [Signature]

Public Works Director

Date: 5/19/2020

APPROVED AS TO FORM ONLY
Approved as to Form by M. Gerard Herbage via email on 5/20/20

Assistant Legal Counsel

EXECUTED BY THE CONTRACTOR IN THE PRESENCE OF:

[Signature]

[Signature]

[Signature]

Line County, by and through its Board of County Commissioners

BY

Chair

BY

Commissioner

BY

Commissioner

WALDRON AND SONS, INC.

BY

Elroy Waldron - President
General Conditions

1. **CONTRACT DOCUMENTS** can be modified only in writing signed by both parties. The Contract Documents are complementary and what is required in one shall be binding as if required by all. If there is a conflict between terms of the documents, the more specific requirement shall hold over the more General and Supplementary Conditions. Under no conditions shall any term to the contrary waive or supersede a legally mandated term of this agreement required under ORS Chapters 279A, 279B and 279C, or the Model Oregon Administrative Rules promulgated to implement ORS Chapters 279A, 279B and 279C.

2. **PERFORMANCE AND PAYMENT BONDS** - Unless otherwise waived in accordance with law and as expressly set forth in the agreement, Contractor shall provide County with performance and payment bonds, in a form complying with law and acceptable to County, equal to the full contract price conditioned on the Contractor's faithful performance of the Contract in accordance with the plans, specifications, and conditions of this Contract, and to protect claimants under ORS 279C.600. [ORS 279C.380]. Contractor is _X_/ is not__ required to furnish and maintain in effect at all times, until released by Lincoln County, performance and payment bond in accordance with ORS 279C.380, furnished by a surety company authorized to do business in the State of Oregon, and in a form acceptable to Lincoln County.

3. **LIABILITY INSURANCE** - Contractor shall obtain, at Contractor's expense, and maintain Comprehensive or Commercial General Liability (including auto) Insurance covering bodily injury and property damage and including coverage's for personal injury, contractual liability coverage for indemnification requirements in paragraph 6 above, property damage, and products/completed operations liability, in amounts not less than those required under ORS Chapter 30 for a public entity. Lincoln County, its officials, agents, and employees shall be added as additional named insured with respect to Contractor's activities under these Contract Documents. A Certificate of Insurance shall be provided to Lincoln County prior to receiving a notice to proceed, specifying Additional Named Insured's, coverage's, and requiring at least 30 days notice to Lincoln County of any cancellation or material change to the policy.

4. **PERMITS** - Contractor will_/ will not_X_ be responsible for obtaining necessary permits, inspections and approvals required for construction, use and occupancy of Project. "Obtaining" includes payment by Contractor of all required fees.

5. **ASBESTOS REMOVAL** - Project does___/ does not_X_ involve asbestos removal. (See Supplemental Conditions if involves asbestos.)

6. **INDEPENDENT CONTRACTOR** - The parties intend that an independent contractor relationship will be created by this agreement. Lincoln County is interested only in the results to be achieved, and the conduct and control of all services or work will lie solely with the Contractor. No agent, employee, subcontractor, or other person or firm engaged by Contractor shall be (or be deemed to be) an employee, agent, servant or otherwise of Lincoln County for any purpose nor shall any such person be entitled to any benefits that Lincoln County provides for County employees. In the performance of the services herein contemplated, the Contractor is an independent contractor with the authority to control and direct the performance and details of the work, Lincoln County being interested only in the results obtained; however, the work contemplated herein must meet the approval of Lincoln County pursuant to the terms of the Contract Documents under which the services and work were let to the Contractor.

7. **HOLD HARMLESS** - Contractor shall be responsible to Lincoln County, its officials, agents and employees for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of this work under any agreement with Contractor. Contractor shall indemnify, hold harmless and defend Lincoln County, its consultants, officials, agents and employees from any and all liability, loss, or damage that they may suffer as the result of claims, demands, actions, damages, or injuries of every kind and nature whatsoever by or to any and all persons or property, including reasonable attorney's fees, or judgments against them which result from, arise out of, or are in any way connected with the services rendered or performed by Contractor under the terms of this agreement. The Contractor agrees that it shall defend against any claims brought or actions filed with respect to this agreement, whether they are rightfully or wrongfully filed.

8. **EXTRA WORK** - The fee includes all work necessary for the design and construction of the PRE-CAST PIPE ARCH as described in the Scope of Work. Any work performed which is not identified by the proposal and accepted by the County as inclusive of the work required to provide the storage building, complete and without further engineering or construction, will be paid as Extra Work. Compensation for Extra Work will be limited to work authorized in writing, in the form of a Change Order, and actually performed as specified. Work performed prior to written authorization shall be at the Contractor's risk. Extra Work will be paid for by _X_ negotiated price or ___force account. Force account
costs will include the actual materials, equipment and special services costs incurred by the Contractor plus 15% and the actual labor costs incurred by the Contractor (wages, required contributions and required benefits) plus 20%.

9. QUALITY OF WORK - Contractor warrants that materials and equipment furnished under the contract will be new and of good quality unless otherwise permitted by the Contract Documents, and that all work, whether by Contractor or its Subcontractors, will conform to the requirements of the Contract Documents. Work not conforming to these requirements may be considered defective and be subject to replacement by Contractor with work conforming to the Contract Documents at no extra cost to owner Lincoln County.

10. WARRANTY - Work failing to conform to the Contract Documents shall be deemed defective, promptly removed and replaced by Contractor at Contractor's expense, without any loss or expense to Lincoln County. Neither the final payment by County nor any provisions of the Contract Documents shall relieve Contractor from responsibility for defective work. Unless otherwise specified in the Contract Documents, Contractor shall warrant and correct any defects that appear in the Contractor's work (including but not limited to materials, equipment, labor, or incidentals) within a period of one year from final completion, except for latent defects which will be remedied by the Contractor at any time they become apparent. Lincoln County shall give Contractor reasonable notice of defects. Contractor's warranties shall not limit or negate warranties for longer periods otherwise required for specific installation, materials, processes, equipment, or fixtures and are in addition to manufacturer's warranties passed on to the County.

11. CONTRACT PAYMENTS - Payments shall be made in accordance with the agreement of the parties, provided however that payments may be withheld on account of (1) defective work (including but not limited to materials, equipment, labor, or incidentals); (2) claims filed by third parties; (3) failure of Contractor to make prompt payments to Subcontractors or labor, material or equipment; (4) reasonable belief that the project cannot be completed for the unpaid balance of the Contract Price or on time; (5) damage to Lincoln County; and (6) persistent failure to carry out project work in accordance with the Contract Documents. Final payment shall not become due until Contractor has delivered to Lincoln County a complete release of all liens arising out of this Agreement or receipts in full covering all labor, materials and equipment for which a lien could be filed, or has a bond in accordance with paragraph 2 above.

12. PROJECT TERMINATION/COMPLETION - If Contractor defaults or fails or neglects to carry out the work in this project in accordance with the Contract Documents or fails to perform a provision of the Contract Documents, Lincoln County, after seven days' written notice to the Contractor and without any prejudice to any other remedy available to Lincoln County may make good such deficiencies and may deduct the cost thereof, including in-house and consultants' expenses made necessary thereby, from the payment then or thereafter due Contractor. Alternatively, Lincoln County may terminate the Contract and take possession of the site and of all materials, equipment, and incidentals and complete the work by whatever method Lincoln County deems expedient. If the costs of finishing the work exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to Lincoln County.

13. SUBCONTRACTORS - Contractor shall be responsible for the work and actions of all its suppliers and subcontractors involved in the project. Subcontractors include any person or entity who has a contract, whether written or otherwise, to perform a portion of the work on the project. Contracts between the Contractor and any subcontractor shall require the subcontractor to be bound by the terms and conditions of the Contract Documents to the extent of the subcontractor's work to be performed, but shall not serve to relieve the Contractor from any obligations towards Lincoln County under this agreement.

14. COUNTY OWNERSHIP - All Contractor's work product accomplished under this agreement, whether in the form of designs, drawings, as built, diagrams, specifications, reports, or other writings, shall become the exclusive property of Lincoln County, which will also become the owner of any copyrights thereto, upon County's payment to Contractor. Contractor shall also permit Lincoln County, the State of Oregon and the Federal Government (if state or federal funding are involved) to have access for a period of not less than three years after final acceptance of the work, to all pertinent books, documents, papers and records of Contractor which are pertinent to this project for purposes of making audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.

15. PROTECTION - Contractor shall at all times maintain adequate protection of its work from damage and shall protect both the County's and County employees' property from damage or loss. Contractor must protect any portions of exposed work at all times from weather which might damage County property, including building contents. Contractor will be responsible for any subsequent damage. Contractor shall erect and maintain adequate dust and noise controls to protect County, clients and visitors during the project. Contractor shall take special care not to endanger the public or county employees during the course of Contractor's operations on this project.

16. STATE LAW REQUIREMENTS Contractor shall, in accordance with Oregon Revised Statutes (ORS):.

a. Make prompt payment, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in this Contract. [ORS 279C.505(1)(a)]
b. Pay all contributions or amounts due the State Industrial Accident Fund and State Unemployment
Compensation Trust Fund from Contractor and any and all subcontractors incurred in the performance of the
Contract. [ORS 279C.505(1)(b)]

c. Not permit any lien or claim to be filed or prosecuted against Lincoln County on account of any labor or material
furnished for this project. [ORS 279C.505(1)(c)]

d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS
279C.505(1)(d)]

e. Demonstrate that it has an Employee Drug Testing Program in place as per ORS 279C.505(2).

f. If Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or
materials in connection with this contract within 30 days after receipt of payment from the County,
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.
Contractor shall place this condition in all first-tier subcontracts. [ORS 279C.515(2)]

g. If Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or
materials in connection with this 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. [ORS 279C515(3)]

h. 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 this Contract as such claim becomes due,
the proper officer(s) representing Lincoln County may pay the claim and charge the amount of the payment
against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not
relieve the Contractor or the Contractor’s surety from obligation with respect to any unpaid claims. [ORS
279C.515(1) and (4)]

i. Any person employed under this Contract may not work 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, unless the employee is paid at least time and a half pay:

1. (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) For 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

2. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Contractor must give notice in writing to employees working under this Contract, either at the time of hire or
before commencement of work on the agreement, or by posting a notice in a location frequented by employees,
of the number of hours per day and days per week that the employees may be required to work. [ORS
279C.520 (1) and (2)]

j. Contractor shall comply, to the extent applicable to its employees and subcontractors, with the requirements of
ORS 279C.540 and 279C.545, concerning maximum hours of work, holidays, overtime and claims for overtime.
[ORS 279C.540 and 279C.545]

k. Contractor shall adhere to all state, local and federal environmental regulations applicable to the work under this
Contract. County shall have available such recourse as if found in ORS 279C.525, which by this reference is
incorporated herein as if fully set forth, if delays or additional work is required. [ORS 279C.525]

l. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation
furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury,
to the employees of the Contractor, of all sums the Contractor agrees to pay for such services and all moneys
and sums which the Contractor has collected or deducted from the wages of employees pursuant to any law,
contract or agreement for the purpose of providing or paying for such services. [ORS 279C.530(1)]

m. Contractor and any other employers, subcontractors, assigns or agents working under this Contract are subject
employers that will comply with the workers’ compensation provisions of ORS 656.017. Contractor shall insure
that its subcontractors comply with these requirements. [ORS 279C.530(2)]
n. Contractor shall include in each subcontract for property or services entered into by Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing under 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 County under this Contract; and

(2) An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from County, 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 paragraph (1) of this subsection. Contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that Contractor or first-tier subcontractor did not make payment when payment was due is that the Contractor or first-tier subcontractor did not receive payment from the County or Contractor 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).

ORS 279C.580 (3)

o. This contract _X_ is _ is not subject to the retainage requirements for progress payments under ORS 279C.570. [ORS 279C.570]

p. Contractor shall include in each of Contractor's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards in paragraph “n” above in each of the first-tier subcontractor’s subcontracts and to require each of the first-tier subcontractor’s subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier. [ORS 279.580(4)]

q. A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause from paragraphs “n” and “p” included in the subcontract does not constitute a dispute to which the County is a party. County may not be included as a party in any administrative or judicial proceeding involving such a dispute. Except as provided herein, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient performance or nonperformance by a subcontractor. Provided, however, that Contractor’s obligation to pay a late payment interest penalty to a subcontractor under these provisions is not intended to be an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such late payment interest penalty. [ORS 279C.580(2)(9) and (10)]

r. Nothing in paragraphs “n” and “p” above are intended to impair the rights of Contractor or a subcontractor at any tier to negotiate provisions authorized under ORS 279C.580(5), et seq. [ORS 279C.580(5)-(8)]

s. This contract _X_ is ____ is not subject to the Prevailing Wage Rates under ORS 279C.800 to 279C.870. If subject to Prevailing Wage Rates, Contractor shall adhere to all requirements under Oregon Law for calculation, payment and reporting of prevailing wages. Contractor shall pay all workers subject to Prevailing Wage Rates not less than the specified minimum hourly rate of wage. [ORS 279C.800 to 279C.870] This provision is a term of the contract that shall be binding upon Contractor.

ORS 279C.825 (1) and administrative rules adopted by the Commissioner. [ORS 279C.830(2)]

u. By execution of this Contract, Contractor certifies, under penalty of perjury, that Contractor is, to the best of its knowledge, not in violation of any tax laws of the state of Oregon described in ORS 305.380(4). [ORS 305.380(6)]

v. By execution of this Contract, Contractor certifies that its work and all work of all subcontractors of whatever tier performing “construction work” as defined in ORS 701.005 or landscape work under ORS 701.035 to 701.055, shall be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board, as required by law, prior to Contractor or any subcontractors commencing work under this Contract.

ORS 701.005, et seq.

w. Contractor shall comply with, and give notices required by, laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of this agreement.
BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY OREGON

In the Matter of: Awarding a Bid for the 2020 Asphalt Overlay Project

WHEREAS, on February 19th and 21st, 2020, the Lincoln County Public Works Department (Public Works) issued an invitation to bid (the project) for the 2020 Asphalt Overlay project; and

WHEREAS, the notice and solicitation were made in accordance with the Lincoln County Code; and

WHEREAS, the specifications for the project were prepared by Steve Hodge, Assistant County Public Works Director; and

WHEREAS, the Lincoln County Public Works Department received and opened two bids on April 29th, 2020 for the project; and

WHEREAS, the low bid for the project was from Road and Driveway, in the amount of $234,511.30; and

WHEREAS, the low bid was accompanied by the required bid bond and the first tier subcontractor identification form; and

WHEREAS, the bid was reviewed by the Assistant County Public Works Director Steve Hodge who found that the bid was in order, met all the bid requirements, and was therefore acceptable.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The bid for the 2020 Asphalt Overlay Project be awarded to Road and Driveway, in the amount of $234,511.30.

2. The Public Works Director be authorized to execute the necessary documents and contracts to undertake this project on behalf of the County.
3. Copies of this order be provided to Roy Kinion, Public Works Director; Steve Hodge, Assistant Public Works Director and Wayne Belmont, County Counsel.

DATED this __________ day of ______________, 2020.

LINCOLN COUNTY BOARD OF COMMISSIONERS

___________________________________
Kaety Jacobson, Chair

___________________________________
Claire Hall, Commissioner

___________________________________
Doug Hunt, Commissioner
MEMORANDUM

DATE: 04/30/2020

TO: Board of Commissioners

FROM: Roy Kinion, Public Works Director

RE: Bid Award: 2020 Overlay with Asphalt Concrete

Bids were received on April 29, 2020 at 2 pm and publicly read at that time for the overlay of 2.45 miles of rural roads within Lincoln County. This project requires the application of 1050 tons of asphalt concrete on Western Loop Road, 1320 tons of asphalt on Fruitvale Road and 1006 tons of asphalt on Sunnyridge Road along with other associated tasks. Two qualified contractors submitted bids for the work with the low apparent bid submitted by Road and Driveway. Bid amounts were as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road and Driveway</td>
<td>$234,511.30</td>
</tr>
<tr>
<td>Knife River</td>
<td>$322,883.60</td>
</tr>
</tbody>
</table>

I have examined the bids and found no irregularities. The low bid is approximately 31% less than the engineer’s estimate ($342,250). This variance is primarily due to the cost of asphalt. Road and Driveway’s unit cost is extremely competitive and is likely a result of the historically low oil prices seen throughout the world at this time. It is my recommendation that a contract be awarded to Road and Driveway in the amount of their bid.

Please contact me should you have any questions.

XC: Legal Counsel
File.
AGREEMENT

Project:  2020 ASPHALT OVERLAYS WITH ASPHALT CONCRETE

Contractor:  ROAD AND DRIVEWAY

Tax ID #:  93-0495713  Construction Contractor’s Board #:  16331

PROJECT DESCRIPTION

Scope of Work (detailed):

Asphalt concrete overlay of:

WESTERN LOOP – Co. Rd 450.
Beginning at the intersection with US20 and proceeding north-east approx. .75 miles to the intersection with OR-229. Work consists of placing approximately 1050 tons of Level 3, ½ inch Dense HMAC as a 2-inch overlay on a 20-foot-wide rural road, and approximately 62.5 tons on roadside approaches, intersections, and mailbox turnouts.

FRUITVALE ROAD – Co. Rd 507.
Beginning at the intersection with US20 and proceeding north approx. .85 miles to the end of pavement. Work consists of placing approximately 1320 tons of Level 3, ½ inch Dense HMAC as a 2-inch overlay on a 22-foot-wide rural road, and approximately 55 tons on roadside approaches, intersections, and mailbox turnouts.

SUNNYRIDGE ROAD – Co. Rd 607.
Beginning at the intersection with US20 and proceeding south east approx. .72 miles to the end of pavement. Work consists of placing approximately 1066 tons of Level 3, ½ inch Dense HMAC as a 2-inch overlay on a 20-foot-wide rural road, and approximately 67.5 tons on roadside approaches, intersections, and mailbox turnouts.

B. Date of Commencement and Substantial Completion:  All work shall be completed by June 30, 2020.

C. Contract Sum, Payment Terms and Schedule (Progress Payments, Retainage, etc.):
Per proposal, County will pay $234,511.30 based on the estimated quantities of work to be performed or the County will pay said Contractor the amount earned, as determined from actual quantities of work performed and the prices and other bases of payment specified, and to make such payment as provided in the Contract Documents.  Invoices received by the 25th of the month will be paid by the 10th of the following month.

D. Other Requirements:
The Contract Documents consist of this agreement, including the General Conditions, and (check those that apply; list document name where appropriate):

  x  General and Supplementary Conditions
  x  BOLI Prevailing Wage Rate Schedule (Available on-line).
  x  Exhibit ___ (ODOT STANDARD SPECIFICATIONS FOR CONSTRUCTION, 2015)
  ___ Exhibit ____ (Negotiated Amended Proposal)
  ___ Exhibit ___ GEOTECHNICAL REPORT
  ___ Other (Drawings and specifications as developed by County Engineer)
AGREED:

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their respective seals as of the date first above written.

APPROVED:

LINCOLN COUNTY PUBLIC WORKS

By: ____________________________
    Public Works Director

Date: __________________________

APPROVED AS TO FORM ONLY
Approved as to Form by M. Gerard Herbage
via email on May 21, 2020

Legal Counsel

EXECUTED BY THE CONTRACTOR IN THE PRESENCE OF:

______________________________

______________________________

AGREEMENT – 2020 Overlays with Asphalt Concrete
Page 2 of 6
General Conditions

1. CONTRACT DOCUMENTS can be modified only in writing signed by both parties. The Contract Documents are complementary and what is required in one shall be binding as if required by all. If there is a conflict between terms of the documents, the more specific requirement shall hold over the more General and Supplementary Conditions shall hold over General Conditions of this Agreement. Under no conditions shall any term to the contrary waive or supersede a legally mandated term of this agreement required under ORS Chapters 279A, 279B and 279C, or the Model Oregon Administrative Rules promulgated to implement ORS Chapters 279A, 279B and 279C.

2. PERFORMANCE AND PAYMENT BONDS - Unless otherwise waived in accordance with law and as expressly set forth in the agreement, Contractor shall provide County with performance and payment bonds, in a form complying with law and acceptable to County, equal to the full contract price conditioned on the Contractor’s faithful performance of the Contract in accordance with the plans, specifications, and conditions of this Contract, and to protect claimants under ORS 279C.600. [ORS 279C.380]. Contractor is _X_/ is not_ required to furnish and maintain in effect at all times, until released by Lincoln County, performance and payment bond in accordance with ORS 279C.380, furnished by a surety company authorized to do business in the State of Oregon, and in a form acceptable to Lincoln County.

3. LIABILITY INSURANCE - Contractor shall obtain, at Contractor's expense, and maintain Comprehensive or Commercial General Liability (including auto) Insurance covering bodily injury and property damage and including coverage's for personal injury, contractual liability coverage for indemnification requirements in paragraph 6 above, property damage, and products/completed operations liability, in amounts not less than those required under ORS Chapter 30 for a public entity. Lincoln County, its officials, agents, and employees shall be added as additional named insured with respect to Contractor's activities under these Contract Documents. A Certificate of insurance shall be provided to Lincoln County prior to receiving a notice to proceed, specifying Additional Named Insured's, coverage's, and requiring at least 30 days notice to Lincoln County of any cancellation or material change to the policy.

4. PERMITS - Contractor will_/_ will not_X_ be responsible for obtaining necessary permits, inspections and approvals required for construction, use and occupancy of Project. "Obtaining" includes payment by Contractor of all required fees.

5. ASBESTOS REMOVAL - Project does_/ does not_X_ involve asbestos removal. (See Supplemental Conditions if involves asbestos.)

6. INDEPENDENT CONTRACTOR - The parties intend that an independent contractor relationship will be created by this agreement. Lincoln County is interested only in the results to be achieved, and the conduct and control of all services or work will lie solely with the Contractor. No agent, employee, subcontractor, or other person or firm engaged by Contractor shall be (or be deemed to be) an employee, agent, servant or otherwise of Lincoln County for any purpose nor shall any such person be entitled to any benefits that Lincoln County provides for County employees. In the performance of the services herein contemplated, the Contractor is an independent contractor with the authority to control and direct the performance and details of the work, Lincoln County being interested only in the results obtained; however, the work contemplated herein must meet the approval of Lincoln County pursuant to the terms of the Contract Documents under which the services and work were let to the Contractor.

7. HOLD HARMLESS - Contractor shall be responsible to Lincoln County, its officials, agents and employees for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of this work under any agreement with Contractor. Contractor shall indemnify, hold harmless and defend Lincoln County, it consultants, officials, agents and employees from any and all liability, loss, or damage that they may suffer as the result of claims, demands, actions, damages, or injuries of every kind and nature whatsoever by or to any and all persons or property, including reasonable attorney's fees, or judgments against them which result from, arise out of, or are in any way connected with the services rendered or performed by Contractor under the terms of this agreement. The Contractor agrees that it shall defend against any claims brought or actions filed with respect to this agreement, whether they are rightfully or wrongfully filed.

8. EXTRA WORK – The fee includes all work necessary for the design and construction of the PRE-CAST PIPE ARCH as described in the Scope of Work. Any work performed which is not identified by the proposal and accepted by the County as inclusive of the work required to provide the storage building, complete and without further engineering or construction, will be paid as Extra Work. Compensation for Extra Work will be limited to work authorized in writing, in the form of a Change Order, and actually performed as specified. Work performed prior to written authorization shall be at the Contractor's risk. Extra Work will be paid for by _X_ negotiated price or ___force account. Force account
costs will include the actual materials, equipment and special services costs incurred by the Contractor plus 15% and the actual labor costs incurred by the Contractor (wages, required contributions and required benefits) plus 20%.

9. QUALITY OF WORK - Contractor warrants that materials and equipment furnished under the contract will be new and of good quality unless otherwise permitted by the Contract Documents, and that all work, whether by Contractor or its Subcontractors, will conform to the requirements of the Contract Documents. Work not conforming to these requirements may be considered defective and be subject to replacement by Contractor with work conforming to the Contract Documents at no extra cost to owner Lincoln County.

10. WARRANTY - Work failing to conform to the Contract Documents shall be deemed defective, promptly removed and replaced by Contractor at Contractor's expense, without any loss or expense to Lincoln County. Neither the final payment by County nor any provisions of the Contract Documents shall relieve Contractor from responsibility for defective work. Unless otherwise specified in the Contract Documents, Contractor shall warrant and correct any defects that appear in the Contractor's work (including but not limited to materials, equipment, labor, or incidentals) within a period of one year from final completion, except for latent defects which will be remedied by the Contractor at any time they become apparent. Lincoln County shall give Contractor reasonable notice of defects. Contractor's warranties shall not limit or negate warranties for longer periods otherwise required for specific installation, materials, processes, equipment, or fixtures and are in addition to manufacturer's warranties passed on to the County.

11. CONTRACT PAYMENTS - Payments shall be made in accordance with the agreement of the parties, provided however that payments may be withheld on account of (1) defective work (including but not limited to materials, equipment, labor, or incidentals); (2) claims filed by third parties; (3) failure of Contractor to make prompt payments to Subcontractors or labor, material or equipment; (4) reasonable belief that the project cannot be completed for the unpaid balance of the Contract Price on time; (5) damage to Lincoln County; and (6) persistent failure to carry out project work in accordance with the Contract Documents. Final payment shall not become due until Contractor has delivered to Lincoln County a complete release of all liens arising out of this Agreement or receipts in full covering all labor, materials and equipment for which a lien could be filed, or has a bond in accordance with paragraph 2 above.

12. PROJECT TERMINATION/COMPLETION - If Contractor defaults or fails or neglects to carry out the work in this project in accordance with the Contract Documents or fails to perform a provision of the Contract Documents, Lincoln County, after seven days' written notice to the Contractor and without any prejudice to any other remedy available to Lincoln County may make good such deficiencies and may deduct the cost thereof, including in-house and consultants' expenses made necessary thereby, from the payment then or thereafter due Contractor. Alternatively, Lincoln County may terminate the Contract and take possession of the site and of all materials, equipment, and incidentals and complete the work by whatever method Lincoln County deems expedient. If the costs of finishing the work exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to Lincoln County.

13. SUBCONTRACTORS - Contractor shall be responsible for the work and actions of all its suppliers and subcontractors involved in the project. Subcontractors include any person or entity who has a contract, whether written or otherwise, to perform a portion of the work on the project. Contracts between the Contractor and any subcontractor shall require the subcontractor to be bound by the terms and conditions of the Contract Documents to the extent of the subcontractor's work to be performed, but shall not serve to relieve the Contractor from any obligations towards Lincoln County under this agreement.

14. COUNTY OWNERSHIP - All Contractor's work product accomplished under this agreement, whether in the form of designs, drawings, as built, diagrams, specifications, reports, or other writings, shall become the exclusive property of Lincoln County, which will also become the owner of any copyrights thereto, upon County's payment to Contractor. Contractor shall also permit Lincoln County, the State of Oregon and the Federal Government (if state or federal funding are involved) to have access for a period of not less than three years after final acceptance of the work, to all pertinent books, documents, papers and records of Contractor which are pertinent to this project for purposes of making audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.

15. PROTECTION - Contractor shall at all times maintain adequate protection of its work from damage and shall protect both the County's and County employees' property from damage or loss. Contractor must protect any portions of exposed work at all times from weather which might damage County property, including building contents. Contractor will be responsible for any subsequent damage. Contractor shall erect and maintain adequate dust and noise controls to protect County, clients and visitors during the project. Contractor shall take special care not to endanger the public or county employees during the course of Contractor's operations on this project.

16. STATE LAW REQUIREMENTS Contractor shall, in accordance with Oregon Revised Statutes (ORS):

a. Make prompt payment, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in this Contract. [ORS 279C.505(1)(a)]
b. Pay all contributions or amounts due the State Industrial Accident Fund and State Unemployment Compensation Trust Fund from Contractor and any and all subcontractors incurred in the performance of the Contract. [ORS 279C.505(1)(b)]

c. Not permit any lien or claim to be filed or prosecuted against Lincoln County on account of any labor or material furnished for this project. [ORS 279C.505(1)(c)]

d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279C.505(1)(d)]

e. Demonstrate that it has an Employee Drug Testing Program in place as per ORS 279C.505(2).

f. If Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract within 30 days after receipt of payment from the County, 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. Contractor shall place this condition in all first-tier subcontracts. [ORS 279C.515(2)]

g. If Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this 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. [ORS 279C.515(3)]

h. 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 this Contract as such claim becomes due, the proper officer(s) representing Lincoln County may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor’s surety from obligation with respect to any unpaid claims. [ORS 279C.515(1) and (4)]

i. Any person employed under this Contract may not work 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, unless the employee is paid at least time and a half pay:

1. (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) For 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

2. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Contractor must give notice in writing to employees working under this Contract, either at the time of hire or before commencement of work on the agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [ORS 279C.520 (1) and (2)]

j. Contractor shall comply, to the extent applicable to its employees and subcontractors, with the requirements of ORS 279C.540 and 279C.545, concerning maximum hours of work, holidays, overtime and claims for overtime. [ORS 279C.540 and 279C.545]

k. Contractor shall adhere to all state, local and federal environmental regulations applicable to the work under this contract. County shall have available such recourse as if found in ORS 279C.525, which by this reference is incorporated herein as if fully set forth, if delays or additional work is required. [ORS 279C.525]

l. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services. [ORS 279C.530(1)]

m. Contractor and any other employers, subcontractors, assigns or agents working under this Contract are subject employers that will comply with the workers’ compensation provisions of ORS 656.017. Contractor shall insure that its subcontractors comply with these requirements. [ORS 279C.530(2)]
n. Contractor shall include in each subcontract for property or services entered into by Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing under 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 County under this Contract; and

(2) An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from County, 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 paragraph (1) of this subsection. Contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that Contractor or first-tier subcontractor did not make payment when payment was due is that the Contractor or first-tier subcontractor did not receive payment from the County or Contractor 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).

[ORS 279C.580 (3)]

o. This contract _X_ is _ is not subject to the retainage requirements for progress payments under ORS 279C.570. [ORS 279C.570]

p. Contractor shall include in each of Contractor's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards in paragraph "n" above in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier. [ORS 279.580(4)]

q. A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause from paragraphs "n" and "p" included in the subcontract does not constitute a dispute to which the County is a party. County may not be included as a party in any administrative or judicial proceeding involving such a dispute. Except as provided herein, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient performance or nonperformance by a subcontractor. Provided, however, that Contractor's obligation to pay a late payment interest penalty to a subcontractor under these provisions is not intended to be an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such late payment interest penalty. [ORS 279C.580(2)(9) and (10)]

r. Nothing in paragraphs "n" and "p" above are intended to impair the rights of Contractor or a subcontractor at any tier to negotiate provisions authorized under ORS 279C.580(5), et seq. [ORS 279C.580(5)-(8)]

s. This contract _X_ is _ is not subject to the Prevailing Wage Rates under ORS 279C.800 to 279C.870. If subject to Prevailing Wage Rates, Contractor shall adhere to all requirements under Oregon Law for calculation, payment and reporting of prevailing wages. Contractor shall pay all workers subject to Prevailing Wage Rates not less than the specified minimum hourly rate of wage. [ORS 279C.800 to 279C.870] This provision is a term of the contract that shall be binding upon Contractor.

[ORS 701.005, et seq.]

[t. Contractor shall pay the fee required by the Commissioner of the Bureau of Labor and Industries as required in ORS 279C.825 (1) and administrative rules adopted by the Commissioner. [ORS 279C.830(2)]

u. By execution of this Contract, Contractor certifies, under penalty of perjury, that Contractor is, to the best of its knowledge, not in violation of any tax laws of the state of Oregon described in ORS 305.380(4). [ORS 305.380(6)]

v. By execution of this Contract, Contractor certifies that its work and all work of all subcontractors of whatever tier performing "construction work" as defined in ORS 701.005 or landscape work under ORS 701.035 to 701.055, shall be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board, as required by law, prior to Contractor or any subcontractors commencing work under this Contract. [ORS 701.005, et seq.]

w. Contractor shall comply with, and give notices required by, laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of this agreement.