



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with Nutter Corporation for the  
SE Capps Road Cul-de-Sac Construction**

<b>Purpose/Outcomes</b>	To provide connections and access for new developments in the Clackamas Industrial Area.
<b>Dollar Amount and Fiscal Impact</b>	Contract value is \$461,690.22
<b>Funding Source</b>	451-7491-00-481200-30157 DTD Funds
<b>Duration</b>	Contract execution through April 15, 2020
<b>Previous Board Action</b>	n/a
<b>Strategic Plan Alignment</b>	Build a strong infrastructure. Ensure safe, healthy and secure communities.
<b>Counsel Approval</b>	October 16, 2019
<b>Contact Person</b>	Mike Ward, Project Manager 503-742-4688

**Background:**

The project is to complete the west end of SE Capps and facilitate access to new developments to the west and south of SE Capps Road, as well as to existing businesses on the north side of SE Capps. The project also involves construction of new driveways into the upper and lower lots of Crystal Greens landscaping.

The contractor working on the new development to the south of Crystal Greens is expected to have rough graded the new Crystal Greens driveways prior to work beginning under this contract. The contract will complete all work to construct curbs, sidewalks, walls, stormwater facilities, and roadway paving for the proposed cul-de-sac at the west end of SE Capps Road. The project includes 900 tons of asphalt concrete pavement, 1,760 tons of aggregate base, 1,360 cubic yards of general excavation, 645 feet of standard or mountable curbs and 166 linear feet of various sizes and types of storm pipe.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be November 30, 2019, with final completion no later than April 15, 2020.

**Procurement Process:**

This project was advertised in accordance with ORS and LCRB Rules on February 5, 2019. Bids were publicly opened on September 12, 2019. The County received ten (10) bids: Lee Contractors, LLC., \$525,801.00; Turney Excavating, \$612,338.00; Nutter Corporation, \$461,690.22; CivilWorks NW, Inc., \$516,286.00; Kerr Contractors Oregon, Inc., \$499,277.00; PCR, Inc., \$688,245.00; Elting Northwest, \$543,457.00; Tapani, Inc., \$548,380.00; R&R General Contractors, Inc., \$539,999.00; and Kodiak Pacific Construction, \$635,536.00. Nutter Corporation was determined to be the lowest responsive bidder.

**Recommendation:**

Staff respectfully recommends that the Board approves and signs this Public Improvement Contract with Nutter Corporation for the SE Capps Road Cul-de-Sac Construction.

Sincerely,

Mike Ward, Project Manager

Placed on the BCC Agenda \_\_\_\_\_ by Procurement



**CLACKAMAS COUNTY**  
**PUBLIC IMPROVEMENT CONTRACT**  
Contract #1981

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County Development Agency, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Nutter Corporation**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

**Project Name: # 2019-76 SE Capps Road Cul-de-Sac Construction**

**1. Contract Price, Contract Documents and Work.**

The Contractor, in consideration of the sum of **four hundred sixty-one thousand six hundred ninety dollars and twenty-two cents (\$461,690.22)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addendum #1
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2018) referenced therein.

The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default

**2. Representatives.**

Contractor has named Jeff Deringer as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Mike Ward as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

### 3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

**Project Executive:** Jeff Deringer shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

**Project Manager:** Shannon Buell shall be the Contractor's project manager and will participate in all meetings throughout the project term.

**Job Superintendent:** Mike McCallen shall be the Contractor's on-site job superintendent throughout the project term.

### 4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: January 31, 2020

FINAL COMPLETION DATE: April 15, 2020

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

### 5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to [Procurement@clackamas.us](mailto:Procurement@clackamas.us).

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in

addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have

a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

## **6. Responsibility for Damages/Indemnity.**

6.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **7. Tax Compliance.**

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in

equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

### **8. Confidential Information.**

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

### **9. Counterparts.**

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

### **10. Integration.**

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

### **11. Liquidated Damages**

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.







**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Authorization to Purchase Quantity 15 Dodge Chargers for the  
Clackamas County Sheriff's Office**

<b>Purpose/Outcomes</b>	Approval to purchase Qty 15 each 2019 Dodge Chargers for the Clackamas County Sheriff's Office
<b>Dollar Amount and Fiscal Impact</b>	The contract amount is not to exceed \$383,508.00.
<b>Funding Source</b>	Clackamas County Fleet Services 216-1620-06831-485510
<b>Duration</b>	N/A
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	Replaces older, less reliable Patrol Vehicles
<b>Counsel Review</b>	N/A
<b>Contact Person</b>	Amy Aguilar, Fleet Analyst, 503-650-3243

**Background:**

The Clackamas County Sheriff's Office has requested that the Clackamas County Fleet Services Division purchase fifteen (15) 2019 V8 (LDEE48) Dodge Charger AWD police patrol vehicles from Withnell Motor Company.

These vehicles will be assigned to the Sheriff's Office Patrol Division and will replace aging Dodge Chargers currently assigned to the patrol division.

**Procurement Process:**

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0400, Authority of Cooperative Procurements. The purchase will be made off cooperative contract # 5553 with the State of Oregon Cooperative Purchasing Agreement Program through Withnell Motor Company. A notice of Intent to Purchase the fifteen (15) Dodge Chargers was issued on October 9, 2019. No comments were received by the time of closing on October 16, 2019.

**Recommendation:**

Staff respectfully recommends that the Board approve this purchase.

Sincerely,

Warren Gadberry,  
Fleet Manager

Placed on the BCC Agenda \_\_\_\_\_ by Procurement and Contract Services

\_\_\_\_\_  
Chair Approval