

**ORDINANCE NO. 961**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER TO EXECUTE A CONTRACT WITH CURRAN-McLEOD, INC. FOR ENGINEERING SERVICES FOR IMPROVEMENTS TO NORTH CEDAR AND SOUTH FIR STREETS; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby intends to construct street improvements to North Cedar Street and South Fir Street; and

**WHEREAS**, the City is desirous of employing Curran-McLeod, Inc., the City's engineer of record, on a personal service basis to provide engineering and design services for said project; and

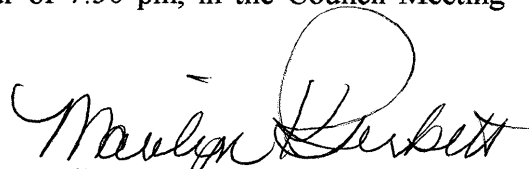
**WHEREAS**, Curran-McLeod, Inc. has proposed a contract for engineering and design services which is acceptable to the City, now therefore

**THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The Mayor and City Recorder are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an appropriate contract with Curran-McLeod, Inc., for engineering and design services for street improvements to North Cedar Street and Fir Street. The copy of said contract is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.


Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

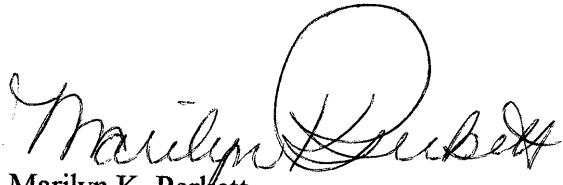
**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, December 18, 1996, ordered posted as provided by the Canby City Charter and scheduled for second reading and action of the Canby City Council at a regular meeting thereof on Wednesday, January 8, 1997, commencing after the hour of 7:30 pm, in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

  
Marilyn K. Perkett  
City Recorder

**ENACTED** by the Canby City Council at a regular meeting thereof on January 8, 1997, by the follow vote: 6 YEAS 0 NAY

ATTEST:

  
Scott Taylor, Mayor

  
Marilyn K. Perkett  
City Recorder

**AGREEMENT FOR ENGINEERING SERVICES**

This Agreement, made this 8 day of Jan., 1997, by and between the City of Canby hereinafter referred to as the OWNER, and **CURRAN-McLEOD, INC. Consulting Engineers**, Portland, Oregon, hereinafter referred to as the ENGINEER:

The OWNER intends to construct the full Street improvements to North Cedar and South Fir Streets, in the City of Canby and for which the ENGINEER agrees to perform the various professional engineering services for the design and construction of said improvements.

**WITNESSETH**

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

**SECTION A - ENGINEERING SERVICES**

The ENGINEER shall furnish engineering services to accomplish the work identified above, detailed in Attachment I, and as provided herein:

1. The ENGINEER will attend conferences with the OWNER, representatives of CUB, OEDD, ODOT or other interested parties as may be required for completion of the work herein before described.
2. After the OWNER directs the ENGINEER to proceed, the ENGINEER will perform the necessary alignment determination, accomplish the detailed design of the projects, prepare construction Drawings, Specifications and Contract Documents, and prepare a final cost estimate based on the final design.

Statements of probable construction costs and detailed cost estimates prepared by the ENGINEER represent his best judgement as a design professional familiar with the Construction Industry. It is recognized, however, that neither the ENGINEER nor the OWNER has any control over the cost of labor, materials or equipment, over the Contractor's method of determining bid prices, or over competitive bidding or market conditions. Accordingly the ENGINEER cannot and does not guarantee that bids will not vary from any statement of probable construction cost or other cost estimate prepared by the ENGINEER.

3. The Contract Documents furnished by the ENGINEER under Section A-2 shall include Federal Davis Bacon Prevailing Wage Rates, Clackamas County CDD, and OWNER'S and state requirements as appropriate.
4. Prior to the advertisement for bids, the ENGINEER will provide for each Construction Contract, not to exceed 10 copies of detailed Drawings, Specifications, and Contract

Documents for use by the OWNER, and for appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of such drawings, Specifications, and Contract Documents shall be included in the basic compensation paid to the ENGINEER. The OWNER pays the cost of permits and review fees as provided in Section F-2 of this Agreement.

5. The ENGINEER will furnish additional copies of the Drawings, Specifications and Contract Documents as required by prospective bidders, materials suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER five sets of the Drawings, Specifications and Contract Documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER. Drawings and Specifications as instruments of service are and shall remain the property of the ENGINEER whether the project for which they are made is executed or not. They are not to be used by the OWNER on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the ENGINEER.
6. The drawings prepared by the ENGINEER under the provisions of Section A-2 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of a map(s) showing the general location of needed construction easements and permanent easements and the land to be acquired. Property surveys, property plats, abstracting and negotiations for land rights shall be provided by the OWNER, unless the OWNER requests, and the ENGINEER agrees to provide those services. In the event the ENGINEER is requested to provide such services, the ENGINEER shall be additionally compensated as set out in Section D hereof.
7. The ENGINEER will require prospective contractors to file an approved Prequalification Form with the Oregon Department of Transportation and will require a 10% Bid Bond in the Bidding Documents to secure the Bid.
8. The ENGINEER will attend the bid opening and tabulate the bid proposals, make an analysis of the bids, make recommendations for awarding contracts for construction.
9. The ENGINEER will assist in the Preconstruction Conference, and will review and approve, for conformance with the design concept, any necessary shop and working drawings furnished by Contractors.
10. The ENGINEER will interpret the drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the Contractor. The ENGINEER will not, however, guarantee the performance of any Contractor. Planning and design of the project and construction engineering services shall be accomplished with due diligence and in conformance with accepted standards of the practice of professional engineering.

11. The ENGINEER will provide general engineering review of the work of the contractors as construction progresses to assure conformance with the design concept. A written record of site visits during construction shall be maintained by the ENGINEER.
12. The ENGINEER will establish baselines and grades for locating the work together with a suitable number of bench marks adjacent to the work as shown in the Contract Documents.
13. The ENGINEER, as representative of the OWNER during the construction phase, shall advise and consult with the OWNER and all of the OWNER'S instructions to the Contractor shall be issued through the ENGINEER. The ENGINEER shall have the authority to act on behalf of the OWNER to the extent provided in this Agreement, excepting authorization of any change orders impacting project scope, time or cost.
14. Unless otherwise requested by the OWNER in writing, the ENGINEER will not provide Resident Construction Inspection. The ENGINEER'S undertaking construction inspection hereunder shall not relieve the Contractor of Contractor's obligation to perform the work in conformity with the Drawings and Specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the Contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.
15. The ENGINEER will review the Contractor's applications for progress and final payment and, when approved, submit same to the OWNER for payment.
16. The ENGINEER will prepare and review necessary contract Change Orders on a timely basis for consideration of approval by the OWNER.
17. The ENGINEER and a representative of the OWNER will make an inspection of the project or project element to determine the status of completion. The ENGINEER may issue a Certificate of Substantial Completion consistent with the General Conditions of the Construction Contract Documents.
18. The ENGINEER will provide the OWNER with one set of reproducible record drawings, two sets of prints and copies of each plan sheet on electronic media in AutoCad format at no additional cost to the OWNER. Such drawings will be based upon construction records provided by the Contractor during construction, as specifically required in the Construction Contract, and reviewed by the ENGINEER, and from the ENGINEER'S construction data.
19. The ENGINEER will be available for site visits to furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for a period of one year after the date of Statement of Substantial Completion of the facility. The ENGINEER will assist the OWNER in performing a review of the project during the 11th month after the date of the Certificate of Substantial Completion.

20. Upon written authorization from the OWNER, the ENGINEER will complete the Final Plans, Specifications and Contract Documents and submit for approval of the OWNER within ten weeks from the date of authorization.

If the above is not accomplished within the time period specified, this Agreement may be terminated by the OWNER. The time for completion will be extended by the OWNER for a reasonable time if completion is delayed due to unforeseeable causes beyond the control and without the fault or negligence of the ENGINEER.

## **SECTION B - COMPENSATION FOR ENGINEERING SERVICES**

1. The OWNER shall compensate the ENGINEER for services in accordance with the following schedule:

### **DESIGN PHASE**

Sixteen Thousand One Hundred and 00/100 Dollars \$16,100.00

### **CONSTRUCTION PHASE**

Seven Thousand Five Hundred and 00/100 Dollars \$7,500.00

2. The compensation for the above Engineering Services shall be as follows:
- a. Design Services shall include items A-1 through A-8.
  - b. Billings shall be submitted monthly by the ENGINEER for Design Services during the previous month. Payments shall be made for these billings within 30 days. Billings shall be based on percent of completion of Design Services. The ENGINEER will provide a status report with the billing.
  - c. Construction Engineering Services and Construction Inspection shall include items A-9 through A-21 and shall be billed by the ENGINEER on an hourly basis.
  - d. Where hourly rates are used, they shall be in accordance with the Standard Hourly Rate Schedule, attached herewith and referenced Attachment II.
  - e. In the event of multiple construction contracts, the ENGINEER may negotiate revised figures under Article B.1.
3. The budget figures shown above shall not be exceeded except by express written authorization of the OWNER.
4. Billings for Engineering Services shall be submitted in a format consistent with the payment provisions and format of the Agreement.

## **SECTION C - RESIDENT CONSTRUCTION INSPECTION**

If the OWNER requests the ENGINEER to provide Resident Construction Inspection, the ENGINEER will, upon request, submit a resume of the Resident Inspector's qualifications, anticipated duties and responsibilities for approval by the OWNER. The OWNER agrees to pay the ENGINEER for such services in accordance with the "Inspector" rate schedule set out in Attachment II. The ENGINEER will render to OWNER for such services performed hereunder during such period, the same to be due and payable by the OWNER to the ENGINEER on or before the 30th day of the following period.

## **SECTION D - ADDITIONAL ENGINEERING SERVICES**

In addition to the foregoing being performed, the following services may be provided UPON WRITTEN AUTHORIZATION OF THE OWNER.

1. Providing financial feasibility or other special studies.
2. Record boundary surveys or legal descriptions for water treatment plants, sewage treatment works, dams, reservoirs, and other similar special surveys as may be required, excepting surveys required to locate the construction project.
3. Laboratory tests, borings, specialized geological, soil, hydraulic, or other studies recommended by the ENGINEER.
4. Record property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights except as identified in the project scope herein.
5. Necessary data and filing maps for storm water discharge permits, water rights, adjudication, and litigation.
6. Redesigns not initiated by the ENGINEER after final Plans and Specifications have been approved by the OWNER, except redesigned to reduce the project cost to within the funds available.
7. Appearances before courts or boards on matters of litigation or hearings related to the project and providing services as an expert witness in connection with any public hearing, arbitration proceeding, or the proceedings of a court of record.
8. Preparing documents for alternate bids requested by the OWNER.

9. Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services of the type set forth as previously mentioned in this Agreement as may be required in connection with the replacement of such work.
10. Providing professional services made necessary by the default of the Contractor in the Construction Contract.
11. Providing construction engineering services and inspection of construction after the contract time has been exceeded.

Payment for the services specified in this Section D shall be as agreed in writing prior to commencement of the work. The ENGINEER will render to OWNER for such services an itemized bill, once each month, for compensation for services performed hereunder during such period, the same to be due and payable by OWNER to the ENGINEER within 30 days.

#### **SECTION E - OWNER'S RESPONSIBILITIES**

1. The OWNER shall provide full information regarding his requirements for the project.
2. The OWNER shall designate, when necessary, a representative authorized to act in his behalf with respect to the project. The OWNER or his representative shall examine documents submitted by the ENGINEER and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the ENGINEER'S work.
3. The OWNER shall furnish all pertinent existing mechanical, chemical or other laboratory tests, inspections and reports as required by law or the Contract Documents, and which may impact the design.
4. The OWNER shall furnish such legal, accounting and insurance counseling services as may be necessary for the project, and such auditing services as he may require to ascertain how or for what purposes the Contract has used the moneys paid to him under the Construction Contract.
5. If the OWNER observes or otherwise becomes aware of any fault or defect in the project or non-conformance with the Contract Documents, he shall give prompt oral notice with written confirmation thereof to the ENGINEER.
6. The OWNER shall furnish information required of him as expeditiously as necessary for the orderly progress of the work.



## SECTION F - SPECIAL PROVISIONS

The following is agreed to by both parties:

1. That the OWNER reserves the right to request replacement of any Resident Inspector(s) furnished by the ENGINEER or to furnish the Resident Inspector(s) from the OWNER'S own forces, subject to the approval of the ENGINEER regarding the qualifications of the Resident Inspector(s). If the OWNER furnishes the Resident Inspector(s), the OWNER agrees that the Resident Inspector(s) will be under the direction and supervision of the ENGINEER.
2. That the OWNER shall pay for advertisement for bids, building or other permits, licenses, etc., as may be required by local, State or Federal authorities, and shall secure the necessary land easements and rights-of-way.
3. The ENGINEER will endeavor to assure compliance of his work with known applicable State and Federal requirements.
4. That insofar as the work under this Agreement may require, the OWNER shall furnish the ENGINEER all existing maps, field survey data, grades and lines of streets, pavements, and boundaries, rights-of-way, and other surveys presently available, which will be returned upon project completion. ENGINEER will provide the OWNER a copy of survey notes establishing bench marks and location of improvements.
5. That if the engineering work covered in this Agreement has not been completed on or after the expiration of a one year period from the date of execution of this Agreement, the OWNER or ENGINEER may, at the option of either, on written notice, request a renegotiation of Sections B, C, and D (providing for the compensation to be paid the ENGINEER for services rendered) to allow for changes in the cost of services. Such new schedule of compensation is to apply only to work performed by the ENGINEER after delivery date of such written notice.
6. That this Agreement is to be binding on the heirs, successors and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. At least fifteen (15) days shall be allowed for such consent.
7. Attorney's fees: In the event a suit, arbitration or other legal action is required by either the OWNER or the ENGINEER to enforce any provision of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon litigation or upon appeal.
8. Termination
  - a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no

termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

- b. The Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than ten (10) calendar days' written notice, (delivered by certified mail, return receipt requested) of intent to terminate, and (2) opportunity for consultation with the terminating party prior to termination.
  - c. If termination for default is effected by the OWNER an equitable adjustment in the price provided for in the Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include all work completed to the date of termination, billed at standard hourly rates. The equitable adjustment for any termination shall provide for payment to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.
  - d. Upon receipt of a termination action under paragraphs a. or b. above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER reproducible data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement whether completed or in process.
  - e. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph c, of this clause.
9. The ENGINEER agrees to insure, hold harmless and indemnify the OWNER against all claims, damages, losses and costs, including costs of defense, arising out of the negligent performances of services under this Agreement. OWNER may make claim under applicable law against ENGINEER or ENGINEER'S insurance carriers for any loss, damage or cost arising out of ENGINEER'S negligent performance of services under this Agreement.

10. The ENGINEER agrees to acquire and maintain for the duration of this Agreement, Professional Liability Insurance in the amount of \$500,000. The ENGINEER further agrees to obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Worker's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees of the ENGINEER'S functions and services required under this Agreement.
11. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
12. ENGINEER covenants that he presently has no interest and shall not acquire interest, direct or indirect, which would conflict in any manner or degree with the performance of his services under this Agreement. Any interest on the part of the ENGINEER or his employees must be disclosed to the OWNER.
13. The records and documents with respect to all matters covered by the Agreement shall be subject at all times to inspection, review or audit by the OWNER, County, Federal or State officials so authorized by law during the performance of this contract. Required records shall be retained for a period of three (3) years after termination of this Agreement.
14. No member or delegate to the Congress of the United States and no Resident Commissioner or City Official shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.
15. This Agreement, including Attachment I and II represents the entire integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and ENGINEER.
16. In the event a suit or arbitration or other legal action is required by either the OWNER or the ENGINEER to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

OWNER: CITY OF CANBY

BY: Scott Taylor

TITLE: Mayor

DATE: Jan 8 1997

ENGINEER: CURRAN-McLEOD, INC.

BY: Art J. McLeod

TITLE: SECRETARY/TREASURER

DATE: 12-11-96