

**ORDINANCE NO. 897**

***AN ORDINANCE AUTHORIZING THE MAYOR AND CITY  
RECORDER TO EXECUTE A CONTRACT WITH  
KITTLESON AND ASSOCIATES, INC. FOR THE  
PREPARATION OF A TRANSPORTATION AND TRAFFIC-  
WAYS PLAN***

**WHEREAS, the City of Canby has heretofore solicited and received Statements of Qualifications from numerous engineering firms for preparing a Transportation Plan and Systems Development Charge; and**

**WHEREAS, the City of Canby has heretofore solicited and received requested proposals for preparing a Transportation and Trafficways Plan and Systems Development Charge; and**

**WHEREAS, City staff has reviewed the proposals and has recommended awarding a contract to Kittleson and Associates, Inc., which proposal was the most responsive; and**

**WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on September 1, 1993, and considered the comparative proposals and recommendations of City staff; and**


**WHEREAS, the Canby City Council is exempt from the public bidding process under OAR 125-310-092 for personal service contracts; and**

**WHEREAS, Kittleson and Associates, Inc. have been determined to be the most responsible proposal for a personal service contract; 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 on its behalf, an appropriate contract with Kittleston and Associates, Inc. for a Transportation-Trafficways Plan and Systems Development Charge, not to exceed \$70,000. The copy of said contract is attached hereto and marked as Exhibit "A" and, by this reference, incorporated herein.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, September 1, 1993; ordered posted as required by the Canby City Charter and scheduled for second reading and action of the Canby City Council at a regular meeting thereof on Wednesday, September 15, 1993; commencing after the hour of 7:30 P.M., at the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

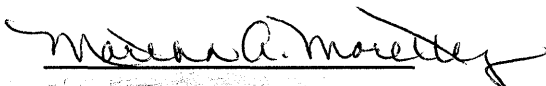
  
Marilyn K. Perrett, City Recorder

ENACTED by the Canby City Council at a regular meeting thereof on September 15, 1993, by the following vote:

YEAS 6      NAYS 0

  
Scott Taylor, Mayor

ATTEST:

  
Martha A. Moretty  
City Recorder Pro Tem

**EXHIBIT "A"**

CITY OF CANBY

CONTRACT FOR

TRANSPORTATION TRAFFICWAYS PLAN/  
SYSTEM DEVELOPMENT CHARGE

THIS AGREEMENT, made and entered into this \_\_\_ day of August, 1993, by and between the City of Canby, a municipal corporation, hereinafter referred to as "City" and KITTELSON & ASSOCIATES, INC., hereinafter referred to as "Contractor".

W I T N E S S E T H:

WHEREAS, the City has a need to have a trafficways plan and system development charge prepared which is necessary for the planning of all transportation projects the City will have in the foreseeable future; and

WHEREAS, Contractor is an engineering firm specializing in transportation planning/traffic engineering with experience in completing transportation master plans for several Oregon cities; and

WHEREAS, Contractor submitted a proposal to complete said project and City is willing to hire contractor under the following terms and provisions.

IN CONSIDERATION of the promises and covenants hereinafter contained, the parties hereto agree as follows:

1. Contractor's Scope of Services.

The Contractor shall successfully develop the City's trafficways plan and system development charge in accordance with the terms and conditions set forth herein, and also as provided in Exhibit "A", which is attached hereto and by this reference made a part hereof.

2. Changes in Scope.

If changes occur either in the Contractor's Scope of Services or the Description of the Project, a supplemental agreement shall be negotiated at the request of either party. Absent such supplemental agreement, each party shall only be bound to the terms of this original agreement.

3. Contractor's Fee.

A. Basic Fee.

As compensation for services provided by Contractor, Contractor shall be paid \$70,000 which shall be the services as set forth on Exhibit A.

B. Certified Cost Records.

The Contractor shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Contractor shall be subject to audit by the City. The Contractor shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the City.

C. Contract Identification.

The Contractor shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or Social Security Number, as the City deems applicable.

4. Contractor is Independent Contractor

A. Contractor's services shall be provided under the general supervision of City's project director or his or her designee, but Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under paragraph 3 of this Agreement.

B. In the event Contractor is to perform the services described in this Agreement without the assistance of others, Contractor hereby agrees to file a joint declaration with City to the effect that Contractor's services are those of an independent contractor, as provided under Chapter 864 Oregon Laws 1979.

C. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor and not an employee of the City, shall not be entitled to benefits of any kind to which an employee of the City is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that Contractor is found by a court of law or an administrative agency to be an

employee of the City for any purpose, City shall be entitled to offset compensation due to demand repayment of any amounts paid to Contractor under the terms of the Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

D. The undersigned Contractor hereby represents that no employee of the City of Canby, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

5. Contractor's Employees Medical Payments

Contractor agrees to pay promptly as due, to any person, copartnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Contractor's employees, all sums which the Contractor agreed to pay for such services and all monies and sums which the Contractor collected or deducted from employee wages pursuant to any law, contractor or agreement for providing or paying for such service.

6. Early Termination

A. This Agreement may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties and for the following reasons authorized by ORS 279.326:

1. If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than suit or action filed in regard to a labor dispute; and
2. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.

B. Payment of Contractor shall be as provided by ORS 279.330 and shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Contractor against City under this Agreement.

C. Termination under any provision of this paragraph shall not affect any right, obligation or liability of Contractor or City which accrued prior to such termination.

7. Cancellation for Cause

City may cancel all or any part of this Contract if Contractor breaches any of the terms hereof or in the event of any of the following: Insolvency of Contractor; voluntary or involuntary petition in bankruptcy by or against Contractor; appointment of a receiver or trustee for Contractor, or an assignment for benefit of creditors of Contractor. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney's fees, and other costs of litigation at trial and upon appeal to the prevailing party.

8. Assignment

This Agreement shall not be assignable except at the written consent of the parties hereto, and if so assigned, shall extend to and be binding upon the successors and assigns of the parties hereto.

9. Nonwaiver

The failure of the City to insist upon or enforce strict performance by Contractor of any of the terms of this contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

10. Attorney's Fees

In the event suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay to the winning party such sum as the Court may adjudge reasonable attorney's fees and court costs on trial and appeal to appellate courts.

11. Applicable Law

This contract will be governed by the laws of the State of Oregon.

12. Term

The work to be performed under this contract shall be completed by Contractor within 6 months of the execution hereof.

13. Conflict Between Terms

Should there be any conflict between the terms of this instrument and the proposal of the Contractor, this instrument shall control and nothing herein shall be considered as an acceptance if the said terms of said proposal conflicting herewith.

14. Indemnity

The Contractor agrees to defend, indemnify and hold harmless the City and its officers, agents, and employees from and against all suits, actions, or claims of any character brought because of any injury or damage received or sustained by any person, persons, or property arising out of or resulting from any asserted negligent act, error, or omission of the Contractor or its agents or employees.

15. Insurance

The Contractor agrees to procure and maintain as its expense until final payment by the City for services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of Oregon, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the work, the Contractor shall furnish to the City a certificate or certificates in a form satisfactory to the City, showing that it has complied with this paragraph. All certificates shall provide that the policy shall not be changed or cancelled until at least ten (10) days prior written notice shall have been given to the City. Kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance. Workers' compensation from the State Accident Insurance Fund or from a responsible private carrier. Private insurance shall provide the schedule of employee benefits required by law.

Liability Insurance. Professional liability insurance in an amount not less than \$500,000 per claim and aggregate. Automobile liability insurance in an amount not less than \$250,000 for injuries to any one person and \$500,000 on account of any one accident and in an amount of not less than \$100,000 for property damage to protect the Contractor and its agents from claims which may arise from services rendered under this Agreement, whether such services are rendered by the Contractor or by any to its agents or by anyone employed by either.

16. Standards of Insurance

Contractor shall perform the services hereunder using the standards of care, skill, and diligence normally provided by a professional in the performance of such services similar to that contemplated hereunder in the community in which the work is to be done.

17. Complete Agreement

This contract and any referenced attachments constitute the complete agreement between the City and Contractor and supersedes all prior written or oral discussions or agreements.



IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized undersigned officers, acting pursuant to action of the City Council, duly passed at the regular meeting held on the Sept. 15, 1993, and the Contractor has executed this Agreement on the date hereinabove first written.

CITY OF CANBY, OREGON

9-15-93  
Date

By: [Signature]  
BY [Signature]

CONTRACTOR - KITTELSON & ASSOCIATES,  
INC.

\_\_\_\_\_  
Date

By: \_\_\_\_\_

By: \_\_\_\_\_