

ORDINANCE NO. 939

AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH PHIL DALLEY, DBA PD MAINTENANCE TO PROVIDE SERVICES AT THE CITY OWNED ZION MEMORIAL CEMETERY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby desiring to enter into a contract between the City and Phil Dalley, dba PD Maintenance to provide for operation and maintenance service for the Canby Municipal Zion Memorial Cemetery; and

WHEREAS, the Canby Municipal Charter Chapter XI, Section 4, requiring an authorization for any contractual obligation exceeding \$15,000 be Ordinance, now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the Mayor and City Recorder to enter into a personal services contract, a copy of which is attached hereto and by this reference incorporated herein with Phil Dalley, dba PD Maintenance for the provision of services including the operation and maintenance of Zion Memorial.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to maintain the Municipal Zion Memorial Cemetery and provide services, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 3, 1995; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, May 17, 1995, after the hour of 7:30 p.m. at the Council Chambers at the Canby City Hall, 182 N. Holly, Canby, Oregon.


Marilyn K. Perkett, City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 17th day of May, 1995, by the following vote:

YEAS 5 NAYS 0


Scott Taylor, Mayor

ATTEST:


Marilyn K. Perkett, City Recorder

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and PHIL DALLEY dba P D MAINTENANCE

A. City requires services which contractor is capable of providing for the maintenance and operation of the Canby Municipal Zion Memorial Cemetery under terms and conditions hereinafter described.

B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree as Follows:

1. **Scope of Service.** Contractor's services under this Agreement shall be detailed on an attached "Scope of Work" addendum, on a project-to-project basis. All work shall be performed to a level satisfactory with the City and in full compliance with Canby Municipal Code 12.28. City Administrator shall act as the contact person on behalf of the City for all issues regarding this contract.

2. **Contractor Identification.** Contractor shall furnish to City its employer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

3. **Revenues.** All revenue from the operation of the cemetery shall flow to the City. All receipts from any compensated service shall be maintained by Contractor and transferred to the City business office by the end of the next business day.

4. **Compensation.**

A. City agrees to pay Contractor \$5,000 per month for the services provided, not to exceed a total of \$60,000 per year.

B. City agrees to pay ten percent (10%) of gross annual revenues exceeding annual base compensation to Contractor as incentive bonus.

C. City agrees to pay Contractor within thirty (30) days after receipt of Contractor's itemized statement. Amounts disputed by the City may be withheld pending resolution.

5. **Contractor is Independent Contractor.**

A. 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. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of Oregon Revised Statutes.

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

6. **Insurance.** Insurance shall be maintained with the following limits:

- A. Liability - \$1,000,000.00.
- B. Professional liability - \$500,000.00.
- C. Workers' Compensation, \$100,000.00 Accident and \$500,000.00 Disease.
- D. Bonding in the amount to cover \$15,000.00.

The City, upon request, may received current copies of insurance certificates.

7 **Subcontractors and Assignment.** Contractor shall not assign any rights acquired hereunder, without obtaining prior written approval from City. Contractor may subcontract portions of the contract work to others, but it is understood that the contractor is primarily responsible for such work, and may not subcontract the majority of duties without first obtaining prior written approval. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor.

8 **Access to Records.** City shall have access to all books, documents, papers and records of Contractor which are pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

9. **Work is Property of City.** All work performed or improvements made by Contractor under this Agreement shall be the property of the City.

10. **Term.** This Agreement shall continue until terminated by one of the following:

- 1. mutual written consent of the parties at any time.
- 2. either party, upon ninety (90) days written notice to the other, delivered by certified mail or in person.
- 3. City, effective upon delivery of written notice to contractor by certified mail, or in person, if Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
- 4. City, if the City does not appropriate funds for any future fiscal year, with immediate notice to Contractor.

11. **Rates.** Contractor may propose rate changes for services at the cemetery, however, City shall only set new rates by resolution pursuant to Canby Municipal Code 12.28.050.

12. **Capital Improvements.** Contractor may propose capital improvements to benefit the cemetery, however, City shall first agree to and then be responsible for costs of such improvements. All other improvements to cemetery requested by someone other than the City must be first approved by the Contractor.

13. **Professional Standards.** Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in the surrounding area, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

14. **Legal Expenses.** In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court. "Legal action" shall include matters subject to arbitration and appeals.

15. **Notices.** Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, or personally delivered to the addresses below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.

16. **Integrated Agreement.** This Agreement represents the entire integrated agreement between the City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both City and Contractor.

CITY: City Administrator
City of Canby
182 N. Holly Street
Canby, OR 97013
(503) 266-4021

CONTRACTOR:

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

Contractor

By: *Phil Walley*

Date: 1-25-94

CITY OF CANBY

By: *Michael Gooden*

Date: 1/20/94

SCOPE OF WORK ADDENDUM

- 1. Sales of property.**
- 2. Setting headstones, repairing headstones and installation of name bars on mausoleum.**
- 3. Digging, backfilling and compacting grave sites.**
- 4. Interments of bodies & cremains. (Disinterment, if necessary.)**
- 5. Available for weekend services, as needed.**
- 6. Building maintenance.**
- 7. Road Repair.**
- 8. On-site record keeping as defined and requested by City.**
- 9. Ground maintenance to including the following, but not limited to:**
 - A. Mowing**
 - B. Trimming hedges and trees**
 - C. Fertilizing, spraying and weed control.**
 - D. Planting grass on new graves.**
 - E. Seasonal irrigation.**
 - F. Mole control.**
 - G. Removing old flowers.**
- 10. Develop working relationships with service clubs for Memorial Day.**
- 11. Develop working relationships with local and out of town funeral directors.**
- 12. Maintain working relationships with City staff.**

ADDENDUM II
TO
CEMETERY AGREEMENT
BETWEEN PD MAINTENANCE
AND
THE CITY OF CANBY

03\08\94

CONTACT THROUGH ONE CITY REPRESENTATIVE

All questions about how or whether a service can be performed, what kind of paperwork is needed, and/or any other questions about the relationship between the City of Canby and PD Maintenance are to be handled by Marilyn Perkett until such a time as another City employee is designated as the cemetery contact person.

PAYMENT OF BILLS

All bills for materials, supplies, utilities, and marketing are to be handled by PD Maintenance and are to be held in their name. The City will act only as the final guarantor for payments.

ADVANCES

Should PD Maintenance run into a cash flow problem due to start-up costs and/or the timing of bills, the City of Canby is willing to advance them up to 2 months payment for their services. This would result in no payment in the following month.

PAPERWORK

The current system of paperwork will continue for one year after the start of the contract with PD Maintenance. After a year, if changes are needed and/or requested by either side, then they will be considered by the City Administrator.

TIME-PAYMENTS

All time-payment decisions are to go through the City Administrator of the City of Canby.

MAINTENANCE OF CEMETERY

PD Maintenance will be responsible for all maintenance of facilities and the grounds of the cemetery. This includes the road, and all spraying for insects. The only exception for the fiscal year 1993- 1994 would be replacement of the roof for the office, and spraying for carpenter ants in the restrooms. At the beginning of fiscal year 1994-1995 PD Maintenance

will resume responsibility for any infestation spraying. The City, on a case-by-case basis, will pay for repairs that were due to prior neglect. This will need to be negotiated.

ROOF REPAIR

For the fiscal year 1993-1994, the City of Canby will pay for a replacement roof for the cemetery office. In future years this will be considered routine maintenance and the responsibility of PD Maintenance.

NAME BARS

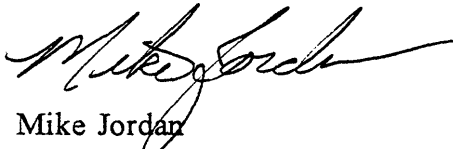
Advance purchase of double name bars, before the second person has died will not be allowed for the mausoleum from March 1st, 1994 forward.

VENDOR DELIVERIES

PD Maintenance will send a letter, signed by the City Administrator, to all vendors requesting them to stop deliveries to the Public works shop. Delivery will now be at the Zion Memorial Cemetery, Walnut and Township Road.

Date: *3/8/94*

Signed by:



Mike Jordan
City Administrator



Phil Dalley
PD Maintenance