

ORDINANCE NO. 1236

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CEDAR MILL CONSTRUCTION COMPANY OF TUALATIN, OREGON FOR THE CONSTRUCTION OF RESTROOM AND SUPPORT FACILITIES FOR MAPLE STREET PARK AND LEGACY PARK; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby wishes to construct restroom and support facilities for Maple Street Park and Legacy Park; and

WHEREAS, the City has prepared a solicitation including BOLI wage rate provisions and a timeline that is required for the successful construction of these facilities that will meet all liability and professional installation requirements; and

WHEREAS, this solicitation resulted in five proposals as follows:

	MAPLE STREET PARK	LEGACY PARK	TOTAL
Cedar Mill Construction	\$236,276	\$181,619	\$417,895
Emerick Construction	234,663	192,711	427,374
Bourke Construction	256,375	196,576	452,951
Canby Excavating	278,085	194,603	472,688
First Cascade Corporation	260,257	214,427	474,684

WHEREAS, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed the quote from Cedar Mill Construction of Tualatin, Oregon, reviewed the staff report and believes it to be in the best interest of the City to enter into a contract with Cedar Mill Construction for the construction of restroom and support facilities for Maple Street Park and Legacy Park; now therefore

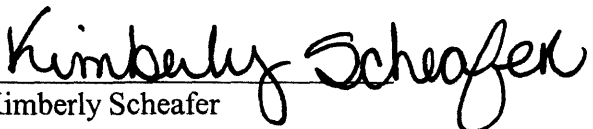
THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Administrator 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 Cedar Mill Construction Company of Tualatin, Oregon for construction of restroom and support facilities for Maple Street Park and Legacy Park in the amount of \$417,895.00.

Section 2. Emergency Declared.

It being necessary for the health, safety and general welfare of the citizens of Canby, that these public improvements be completed as soon as possible, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

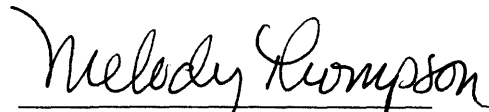
SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, April 18, 2007 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, May 2, 2007 commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.



Kimberly Scheafer
City Recorder Pro-Tem

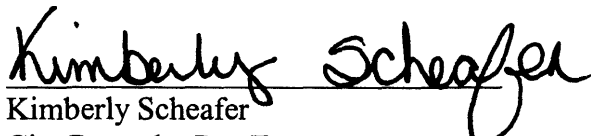
PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 2nd day of May, 2007, by the following vote:

YEAS 5 NAYS 0



Melody Thompson, Mayor

ATTEST:



Kimberly Scheafer
City Recorder Pro-Tem

CONTRACT

This CONTRACT is entered in duplicate by and between City of Canby, a political subdivision of the State of Oregon, hereafter "CITY", and LEGAC Mill Construction Co. LLC, hereafter "CONTRACTOR", for the project entitled "City of Canby Restroom Rehabilitation Projects – Sitework & Utilities Project", hereinafter called "CONTRACT". The mutual promises of each are given in exchange, and as consideration for, the promises of the other.

CONTRACTOR and CITY mutually covenant and agree as follows.

1. The GRAND TOTAL PRICE for services provided by CONTRACTOR to CITY shall be the amount quoted in the "Bid Form" which is the cost to CITY of \$417,895⁰⁰, unless otherwise adjusted in accordance with the terms of this CONTRACT.
2. The TIME OF COMPLETION for this project is 120 calendar days after the signature date of this contract.
3. The following "Contract Documents", are attached and are specifically incorporated here in their entirety by reference:
 - 3.1 This CONTRACT;
 - 3.2 The Bid Form;
 - 3.3 The Invitation to Bid and General Conditions
 - 3.4 The Performance Bond.
 - 3.5 List of Drawings dated 11/1/2006.
 - 3.6 Project manual dated 11/1/2006.
 - 3.7 Current Decision Prevailing Wage Rates for Public Works Contracts in the State of Oregon.**CONTRACTOR agrees as follows:**
4. In consideration of the sums to be paid by CITY in the manner and at the times provided, and in consideration of the other covenants and agreements contained herein, CONTRACTOR agrees to perform and complete the work herein described. This CONTRACT shall be binding upon the CONTRACTOR's heirs, executors, administrators, successors and assigns.
5. CONTRACTOR shall faithfully complete and perform all of the obligations of the CONTRACT, and in particular, shall promptly, as due, make payment of all just debts, dues, demands, and obligations incurred in the performance of said CONTRACT; and shall not permit any lien or claim to be filed or prosecuted against the CITY, its agents or employees.

6. CONTRACTOR shall hold the CITY harmless for any liens, claims, damages or other liabilities of the CONTRACTOR related to the performance of this CONTRACT. CONTRACTOR shall indemnify and save harmless the CITY from any claims, costs, damages or expenses of any kind, including attorney's fees and other costs, and expenses of litigation for personal or property damage to CONTRACTOR or to third parties arising out of CONTRACTOR's performance of the duties required by this Contract.
7. Pursuant to administrative rule of the Commissioner of the Bureau of Labor and Industries CONTRACTOR shall pay a fee equal to one-tenth of one percent (0.1 percent) of the price of this contract. The fee shall be paid on or before the first progress payment or 60 days from the date work first began on the contract, whichever comes first. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries
Wage and Hour Division
Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, OR 97232

CITY agrees as follows:

8. In consideration of the faithful performance of all of the obligations, general and special, herein set out, and in consideration of the faithful performance of the work as set forth in the Contract Documents in accordance with the CITY and to its satisfaction, the CITY agrees to pay to the CONTRACTOR the amount earned, and to make such payments in the manner and at the times provided in the applicable Specifications and schedule of contract prices.

The PARTIES mutually agree as follows:

9. MISCELLANEOUS.

9.1 Integration. This CONTRACT supersedes all prior oral or written agreements between CONTRACTOR and CITY regarding this project. It represents the entire agreement between the parties.

9.2 Savings. Should any clause or section of this CONTRACT be declared by a court to be void or voidable, the remainder of this CONTRACT shall remain in full force and effect.

9.3 Waiver; Modification. Failure to enforce any provision of this CONTRACT does not constitute a continuing waiver of that provision, any other provision, or of the entire Contract. The

rights and duties under this CONTRACT shall not be modified, delegated, transferred or assigned, except upon the written-signed consent of both parties.

9.4 Jurisdiction; Law. This CONTRACT is executed in the State of Oregon, and is subject at all times to City of Canby Ordinances and Oregon law and jurisdiction. Venue shall be in City of Canby, unless otherwise agreed by the parties.

9.5 Attorney Fees. Attorney fees, costs and disbursements necessary to enforce this CONTRACT through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

9.6 Notices. Any notice required or permitted under this CONTRACT shall be in writing and deemed given when:

9.6.1 actually delivered, or

9.6.2 two days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.

9.7 Public contract. This CONTRACT is a public contract and all applicable provisions of ORS chapter 279 (as amended) are incorporated here by reference.

Acknowledgment: EACH PARTY REPRESENTS TO THE OTHER BY THEIR SIGNATURES BELOW THAT EACH HAS READ, UNDERSTANDS, AND AGREES TO ALL COVENANTS, TERMS AND CONDITIONS OF THIS Contract. EACH PARTY REPRESENTS BY THEIR SIGNATURES BELOW TO HAVE THE ACTUAL AND/OR APPARENT AUTHORITY TO BIND THEIR RESPECTIVE PARTY IN CONTRACT.

DATED THIS 8th DAY OF May 2007.

CONTRACTOR:

X [Signature] 5-8-07
CONTRACTOR'S AUTHORIZED AGENT

CITY OF CANBY AUTHORIZED SIGNATURE (in accordance with City of Canby City Council):

X [Signature]