

**ORDINANCE NO. 1247**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH NANCY MCCLAIN FOR PROFESSIONAL SERVICES FOR PROJECT MANAGEMENT FOR THE CANBY FINANCE DEPARTMENT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby currently has a need for project management services for Canby Finance Department; and

**WHEREAS**, the City wishes to employ Nancy McClain, as an independent contractor under a personal services contract for the purpose of carrying out the these financial projects; and

**WHEREAS**, Nancy McClain has proposed a personal services contract which is acceptable to the City; and

**WHEREAS**, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules set forth in Ordinance No 1170 and Resolution No. 897, Exhibit A, Section 6 B (7), the city may enter into personal service contracts not exceeding \$75,000.00 by direct appointment without competition; and

**WHEREAS**, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this proposal, reviewed the staff report and finds that the contract is in the best interest of the City to enter into; now therefore,

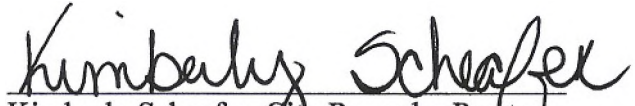
**THE CITY OF CANBY ORDAINS AS FOLLOWS:**

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 Nancy McClain, the copy of said contract is attached hereto and marked as Exhibit "A" and by this reference fully incorporated herein.

Section 2. Emergency Declared.

It being necessary for the health, safety, and general welfare of the citizens of Canby that this master plan 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, June 6, 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, June 20, 2007, commencing at the hour of 7:30 PM in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

  
\_\_\_\_\_  
Kimberly Scheafer, City Recorder Pro-tem

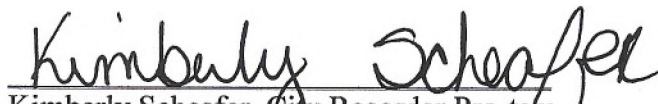
**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 20<sup>th</sup> day of June 2007, by the following vote:

YEAS 6

NAYS 0

  
\_\_\_\_\_  
Melody Thompson, Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly Scheafer, City Recorder Pro-tem

## **CITY OF CANBY, OREGON PERSONAL SERVICES CONTRACT**

A CONTRACT between THE CITY OF CANBY, OREGON ("City"), and Nancy M. McClain ("Provider").

WHEREAS, the City and Provider believe it in their mutual interest to enter into a written contract setting out their understandings concerning Providers provision of services of Consultant to the City,

### **1. Term**

The term of this contract shall be from July 1, 2007 until no longer needed unless sooner terminated under the provisions of this contract.

### **2. Providers Service**

The scope of Provider's services and time of performance under this contract are set forth in Exhibit A. All provisions and covenants contained in said Exhibit are hereby incorporated by reference and shall become a part of this contract as if fully set forth. Any conflict between this written contract and Provider's Proposal (if any) shall be resolved first in favor of this written contract. Provider will, in the rendering of its services to the City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this contract and Exhibit "A"

### **3. Provider Identification**

Provider shall furnish to City Provider's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number. Contractor understands it is required to obtain a City of Canby business license for conducting business in the City.

### **4. Compensation**

City agrees to pay Provider at the times and in the amount(s) set out in and in accordance with Exhibit

### **5. Project Managers**

City's Project Manager is Chaunee Seifried, Treasurer Finance Director. Provider's Project Manager is Nancy M. McClain. Each party shall give the other written notification of any change in their respective Project Manager.

### **6. Project Information**

Provider agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project shall be made to representatives of newspapers, magazines, television and radio stations, or any other

news medium without the prior authorization of City's Project Manager.

#### 7. Duty to Inform

Provider shall give prompt written notice to City's Project Manager if, at any time during the performance of this contract, Provider becomes aware of actual or potential problems, faults, or defects in the project, any nonconformity with the contract, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim, and shall not constitute a waiver of any of City's rights.

#### 8. Provider is Independent Contractor

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this contract. Provider hereby expressly acknowledges that as an independent contractor, Provider is not entitled to indemnification by the City or the provision of defense by the City under the terms of ORS 30.285.

#### 9. Overtime

Any person employed on work under this contract, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC 201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

#### 10. Indemnity and Insurance-WAIVED

i. Indemnity: Provider acknowledges responsibility for any and all liability arising out of the performance of this contract and shall hold City harmless from, indemnify and defend City for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Provider's acts, omissions, activities or services in the course of performing this contract.

ii. Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, the City, its Commissioners, directors, officers, agents, and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than \$1,000,000 combined single limit per occurrence. Such insurance shall name the City as an additional insured.

iii. Workers Compensation Coverage: Provider certifies that Provider has qualified for State of Oregon Workers Compensation coverage for all Provider's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier—insured employer as provided by ORS 656.407 or as a self-insured employer. Provider shall provide to City within 10 days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers Compensation statutes insured by an insurance company.

satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Provider is self-insured.

iv. Professional Errors and Omissions: Provider shall provide City with evidence of professional errors and omissions liability insurance for the protection of Provider and its employees, insuring against bodily injury and property damage and arising out of or resulting from Providers negligent acts, omissions, activities or services, in an amount not less than \$1000000 combined single limit per occurrence. Such insurance shall be endorsed to include contractual liability.

v. Certificates: Provider shall furnish the City certificates evidencing the date, amount, and type of insurance required by this contract. All policies will provide for not less than thirty (30) days' written notice to the City before they may be canceled,

vi, Primary Coverage: The coverage provided by insurance required under this contract shall be primary, and any other insurance carried by City- shall be excess.

#### 11. Work is Property of City.

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this contract shall be the property of City.

#### 12. Law of Oregon.

The contract shall be governed by the laws of the State of Oregon. Venue shall be in Clackamas County, Oregon.

#### 13. Successors and Assignments

i. Each party binds itself, and any partner, successor, executor, administrator, or assign to this agreement.

ii Neither the City nor the Provider shall assign, or transfer their interest or obligation hereunder in this agreement without the written consent of the others. Provider must seek and obtain the City's written consent before subcontracting any part of the work required of Provider under this contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

#### 14. Records

i. Provider shall retain all books, documents, papers, and records that are directly pertinent to this contract for at least three years after the City makes final payment on this contract and all other pending matters are closed.

ii. Provider shall allow the City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

#### 15. Breach of Contract

i. Provider shall remedy any breach of this contract within the shortest reasonable time after Provider first has actual notice of the breach or the City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, the City may terminate that part of the contract affected by the breach upon written notice to Provider, may obtain substitute services in reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this contract.

ii. If the breach is material and Provider fails to remedy the breach in accordance with *this* paragraph, the City may declare Provider in default and pursue any remedy available for a default.

iii. Pending a decision to terminate all or part of this contract, the City unilaterally may order Provider to suspend all or part of the services under this contract. If the City terminates any or part of the contract pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after the City ordered suspension of those services. If the City suspends certain services under this contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

iv. To recover amounts due under this paragraph, the City may withhold from any amounts owed by the City to Provider, including but not limited to amounts owed under this or any other contract between Provider and the City.

#### 16. Mediation

Should any dispute arise between the parties to this Agreement it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and, only in the event said mediation efforts fail, through litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

#### 17. Termination for Convenience

The City may terminate all or part of this contract at any time for its own convenience by written notice to Provider. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Providers reasonable costs actually incurred in closing out the contract.

18. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the City. Provider shall execute any assignment or other documents necessary to affect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the City any data or other tangible property generated by Provider under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

19. Payment for Labor or Material

Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the prosecution of the work provided for in this contract. (ORS 279.312)

20. Contributions to the Industrial Accident Fund

Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider incurred in the performance of this contract, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279.312)

21. Income Tax Withholding

Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

22. Payment of Claims by the City

If Provider fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this contract as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider pursuant to this contract. The City's payment of a claim under this Paragraph shall not relieve Provider or Provider's surety, if any, from responsibility for those claims. (ORS 279.314)

23. Workers Compensation

Provider is a subject employer that will comply with CR5 656.017. Provider warrants that all persons engaged in contact work and subject to the Oregon workers compensation law are covered by a workers compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify the City for any liability incurred by the City as a result of Provider's breach of the warranty under this Paragraph. (ORS 279.120)

24. Medical Care for Employees

Provider shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Provider's employee(s), all sums which Provider agrees to pay for such services and all moneys and sums which Provider collected or deducted from the wages of employees pursuant to any law, contract or *agreement* for the purpose of providing or paying for such service. (ORS 279.320)

25. Modification

Any modification of the provisions of this contact shall be reduced to writing and signed by the parties.

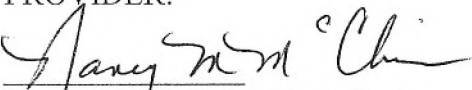
26. No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

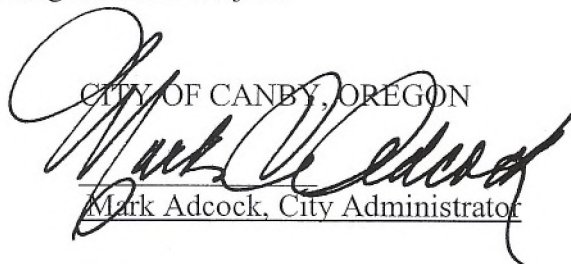
27. Integration

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

PROVIDER:

  
Nancy M. McClain, Consultant

CITY OF CANBY, OREGON

  
Mark Adcock, City Administrator

Date

PD Box 22349

Milwaukie, DR 97269

503-539-8109

503-652-8827 Fax

Date

PO Box 930

Canby, OR 97013

503-266-4021

503-266-1977 Fax



**Proposal**  
**For a Consultant**  
**For the City of Canby, OR**  
**July 1, 2007**

**Purpose:**

The City of Canby, is requesting a proposal for a consultant to provide professional financial assistance services to the City's finance staff and departments.

**Scope of Work:**

The Consultant will provide professional financial assistance to the City's finance staff, management and departments as required. This will include but not limited to grant accounting, internal controls, management reporting and other fiscal matters as may be appropriate. Oversee the delivery of all financial services assigned to the division, including the administration of accounts receivable, accounts payable, payroll, utility billing, general ledger, financial reporting and contracting. Oversee preparation of financial statements. Coordinates the work related to an independent audit. Provide technical budgetary assistance.

**Duration:**

The current projected time frame is when the projects are completed. However, the duration is considered temporary in nature and can be changed by the City of Canby or the consultant at any time.

**Proposed work plan:**

Consultant to work on finance projects designated by the finance director as needed.

**Schedule of Compensation:**

\*Professional Services will be billed at an hourly rate of \$80 per hour.

Travel expenses will be billed at 1.5 hours per week at the rate of \$40 per hour.

Mileage will be billed at the current established IRS allowance per trip

\*Professional Services do not include the attendance at City Council meetings or other City business meetings after normal working hours. Required attendance will be billed at a 1.5 per hour rate (\$120 per hour) and will not be counted toward the daily assistance required by the City's financial department.

\*\*The actual schedule may vary due to holidays and schedules. Billings will be only for actual time plus expenses as noted herein. Billings will be twice a month (on the 1st and 15th) for services rendered to date including associated travel expenses.