

**ORDINANCE NO. 1285**

**AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH MOWRY REBAR INC. OF CANBY OREGON TO CONSTRUCT A PICNIC SHELTER AND RELATED IMPROVEMENTS AT LEGACY PARK FOR THE CANBY PARKS DEPARTMENT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby wishes to construct improvements within Legacy Park, and

**WHEREAS**, the cost of the construction project will be paid by the Canby Parks Department with funds budgeted and approved for this purpose in the 2008-2009 fiscal year budget; and

**WHEREAS**, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules as set forth in Ordinance No. 1170 and Resolution No. 897, three sealed bids were obtained for the construction project:

- |  |           |
|--|-----------|
| 1. Mowry Rebar Inc. of Canby, Oregon                     | \$155,350 |
| 2. P.C.R. of Beaver Creek, OR                            | \$165,500 |
| 3. Custom Manufacturing and Design LLC of Ridgefield, WA | \$167,083 |

**WHEREAS**, Mowry Rebar Inc. of Canby, OR submitted the lowest bid of \$155,350.00 to construct the picnic shelter improvements; and

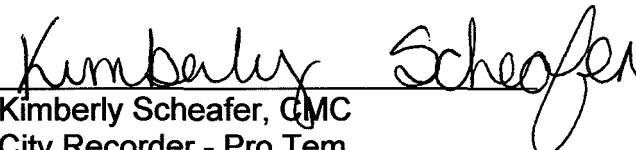
**WHEREAS**, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this bid, reviewed the staff report and believes it to be in the best interest of the City to contract with Mowry Rebar Inc., to construct said improvements in Legacy Park; therefore

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

**Section 1.** The Mayor and/or 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 Mowry Rebar Inc. to construct picnic shelter improvements in Legacy Park for the Canby Parks Department for a total of \$155,350.00.

Section 2. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to provide the Parks Department with the afore mentioned construction project without further delay, and to better serve the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

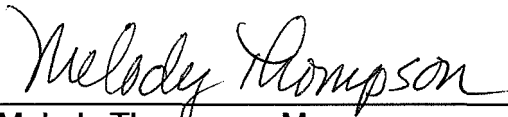
**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on July 2, 2008, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on July 16, 2008, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at 155 NW 2<sup>nd</sup> Avenue in Canby, Oregon.

  
\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder - Pro Tem

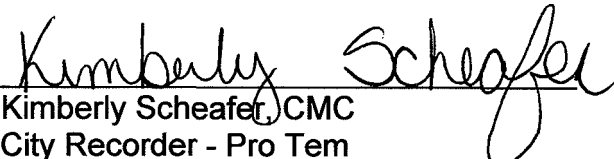
**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 16<sup>th</sup> day of July, 2008, by the following vote:

YEAS 5

NAYS 0

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

**ATTEST:**

  
\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder - Pro Tem

**CONTRACT FOR CONSTRUCTION**

THIS AGREEMENT is dated as of the 25<sup>th</sup> day of July in the year 2008 by and between the:

\_\_\_\_\_  
City of Canby  
(hereinafter called OWNER) and  
\_\_\_\_\_  
Mowry Rebar INC.  
(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents:

**City of Canby  
Legacy Park New Public Picnic Shelter**

The work on this project consists of site work and a new free-standing public picnic shelter structure including concrete paving, mechanical and electrical facilities and services.

**ARTICLE 2 - ENGINEER**

The Project has been designed by Scott R. Beck Architect who is hereinafter called Architect and Horn Consulting Engineers LLC who is hereinafter called Structural Engineer who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3 - CONTRACT TIME**

3.1 The Work will be substantially completed within 70 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 days after the date of issuance of the Certificate of Substantial Completion including punch list items.

3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER or the OWNER may withhold from amounts due the CONTRACTOR Two Hundred Fifty Dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion until the Work is substantially complete AND/OR the sum of One Hundred Dollars (\$100.00) for each day of delay beyond the deadline for Final Completion.

#### ARTICLE 4 - CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds by check, an amount totaling

One Hundred Fifty Five thousand three hundred Fifty Dollars  
(\$155,350.00) as shown in the attached Bid Proposal.

#### ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.01 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

- (a) 95 % of the Work completed; and
- (b) 95 % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the value of the Contract Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 14.07.

## **ARTICLE 6 - INTEREST**

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, in accordance with ORS 279C.570

## **ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS**

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

## ARTICLE 8 - CONTRACT DOCUMENTS

- 8.1 This Agreement.
- 8.2 Exhibits to this Agreement.
- 8.3 Performance and other Bonds.
- 8.4 Notice of Award.
- 8.5 General Conditions of the Construction Contract.
- 8.6 Supplementary Conditions.
- 8.7 Technical Specifications.
- 8.8 Drawings bearing the following general title:

**City of Canby  
Legacy Park New Public Picnic Shelter**

- 8.9 Addenda numbers   1  .
- 8.10 CONTRACTOR'S Bid
- 8.11 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the General Conditions).

## ARTICLE 9 - MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically by without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR 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 signed four counterparts of this Agreement.

This Agreement will be effective on July 25, 2008.

OWNER:

City of Canby  
170 NW 2<sup>nd</sup> Ave, PO BOX 930  
Canby, OR 97013

By:  
Name/Title:

*[Signature]*  
City Admin.

CONTRACTOR

Mowry Rebar INC.  
1879 NE Turwood Circle  
CANBY OR, 97013

By:  
Name/Title:

*[Signature]*  
GEOFF R. Mowry Pres.

CCB No

159826

Attest

*[Signature]*

Name/Title:

Annette J. Gelbrich  
Asst. Office Admin

Approved as to Form

*[Signature]*  
**John Kelley**  
**City Attorney**