

**ORDINANCE NO. 1346**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT EXTENSION WITH JULIE WEHLING OF JWEL CONSULTING, LLC FOR PROFESSIONAL SERVICES FOR MANAGEMENT OF CANBY AREA TRANSIT SERVICE; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City currently employs Julie Wehling of JWL Consulting LLC, as an independent contractor to manage the Canby Area Transit Service and wishes to continue to employ Julie Wehling of JWL Consulting, LLC, as an independent contractor under a personal services contract for the purpose of carrying out the these activities; and

**WHEREAS**, Julie Wehling of JWL Consulting, LLC, has proposed an extension of existing personal services contract which is acceptable to the City; and

**WHEREAS**, the personal services contract entered into in September of 2010 provides for additional one year extensions beginning July 1, 2011 to June 30, 2012 provided the scope of work and agreed upon rate of compensation is acceptable to the City; 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 extension with Julie Wehling is acceptable to the City and 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 Julie Wehling of JWL Consulting, LLC, the copy of said contract is attached hereto and marked as Exhibit "A" and by this reference fully incorporated herein to be effective retroactively to July 1, 2011.

Section 2. Emergency Declared.

It being necessary for the health, safety, and general welfare of the citizens of Canby that there be no interruption in service for the Canby Area Transit program, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment after final reading.

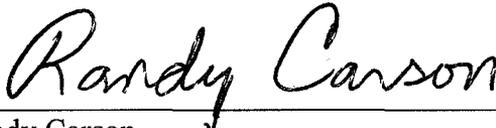
**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 6, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, July 20, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2<sup>nd</sup> Avenue in Canby, Oregon.

  
\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 20<sup>th</sup> day of July, 2011, by the following vote:

YEAS 6

NAYS 0

  
\_\_\_\_\_  
Randy Carson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder

**EXHIBIT "A"**

**PROFESSIONAL SERVICES AGREEMENT**

**Consulting Services for Canby Area Transit (CAT) Management Services**

THIS Agreement is made and entered into as of the date first indicated on the signature page, by and between the **City of Canby**, Canby, Oregon, a municipal corporation of the State of Oregon, hereinafter called "City", and **JWL Consulting, LLC**, hereinafter called "Consultant."

**WHEREAS**, the Consultant specializes in providing transportation and transit management, supervision, planning, and grant applications, and

**WHEREAS**, City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Consultant, and

**WHEREAS**, City has determined that Consultant is qualified and capable of performing the professional services as City does hereinafter require, under the terms and conditions set forth hereafter:

**THEREFORE**, the parties agree as follows:

**ARTICLE 1. SCOPE OF WORK**

Consultant shall initiate services upon receipt of City's Notice to Proceed, together with an executed copy of this Agreement. Consultant agrees to complete work that is detailed in Exhibit A – Scope of Work and by this reference made a part hereof.

Consultant shall have the full authority to act as Director of the Transit Department on behalf of the City in connection with this contract and to manage the Department, including, but not limited to, exercising supervisory control over the performance of duties of employees assigned to the Department, and the parties agree that the Consultant shall assign **Julie Wehling**, to perform the duties of Director of Transportation. In exercising such supervisory control, the Consultant shall do so in consultation with the City's Human Resource Director in the areas of discipline and of administration of the City's collective bargaining agreement. Consultant shall have the authority to make contract purchases in the amounts and of the kind authorized at the level of Director and in accord with the applicable state and local public contracting rules and as budgeted annually by the City for the Department. Consultant has successfully provided to the City with its sub consultant team, as identified below past services of grant application and administration of received grants and federal compliance. To the extent additional costs would be incurred for subcontracting for grant application and administration and/or federal compliance by Consultant beyond that set forth in Exhibit A to this Agreement, Consultant shall seek a separate contract and approval by the City.

**ARTICLE 2. EFFECTIVE DATE AND DURATION**

This Agreement shall become effective from the date of execution by both parties. Work under this Agreement for the initial term shall be completed before the expiration of the initial term of this Agreement.

The services required by this Agreement shall commence on July 1, 2011 with a contract term of one year to and including June 30, 2012, with an option of additional one-year extensions beginning July 1, 2012 to June 30, 2013, The one-year extensions will be based on an updated scope of work and an agreed upon rate by the City and Consultant. The terms referenced herein are intended to be limited in time and revised by the

City at the end of each term for City's satisfaction of performance by Consultant as a condition precedent to any option extension.

**ARTICLE 3. COMPENSATION**

City agrees to pay Consultant, on an a monthly negotiated rate of Seven Thousand One Hundred Forty Dollars (\$7,140), per month for the contract term through June 30, 2012 for performance of those services described in Exhibit A–Scope of Work of this Agreement. Said payment shall cover all costs associated with the performance of services as described in Exhibit A. Payment will be based on Consultant's invoice to be submitted at the beginning of each contract year, subject to the approval of City Administrator for the City, listed herein, and not more frequently than twice a month with bi-monthly checks for \$3,570 on the 15<sup>th</sup> and 30<sup>th</sup>/31<sup>st</sup> of the month.

In the event that additional work is required over the contract payment cap stated above, it may be negotiated individually at Consultant's hourly rate of \$100/hour, or at a negotiated project rate.

**ARTICLE 4. CONTACT INFORMATION**

All notices, bills, and payments shall be made in writing and may be given by personal delivery, mail, or fax. Payments may be delivered by personal delivery, mail, or electronic transfer. The following addresses and contacts shall be used to transmit notices, bills, payments, and other information:

<b>Project Manager for City:</b>	<b>Project Manager for Consultant:</b>
City of Canby	Company: JWL Consulting, LLC
Attn: City Administrator	Attn: Julie Wehling
Address: PO Box 930 Canby, OR 97013	Address: 14138 S. Caufield Road Oregon City, OR 97045
Phone: (503) 266-4021	Phone: (503) 890-6260
Fax: (503) 266-7961	Fax:
Email Address: ellisg@ci.canby.or.us	Email Address: Julie@transitmanagers.com

**ARTICLE 5. CONSULTANT AS INDEPENDENT CONTRACTOR**

Consultant acknowledges that for all purposes related to this Agreement, Consultant is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments, insurance, taxes and or other expenses associated with the performance of the Consultant's duties required by law. Furthermore, in the event that Consultant is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of this Agreement, to the full extent of any benefits or other remuneration Consultant 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 Consultant or to a third party) as a result of said finding.

Consultant acknowledges that for all purposes related to this Agreement, Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

Consultant and the City have reviewed and considered the principal test and secondary factors below and agree that Consultant is an independent contractor and not an employee of the City. Consultant is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes as

set forth herein Consultant is not entitled to any employee benefits. The City agrees that Consultant shall have the right to control the manner and means of accomplishing the result contracted for herein.

**PRINCIPAL TEST:** *The Consultant rather than the City has the right to control the manner and means of accomplishing the result contracted for.*

**SECONDARY FACTORS:** (a) The extent of control which, by agreement, the City may exercise over the details of the work is slight rather than substantial; (b) Consultant is engaged in a distinct occupation or business; (c) Transit systems of local governments often contract with specialists such as Consultant to provide the service to be done by Consultant as specialist without direct supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The Consultant rather than the City supplies key instrumentalities and sub-consultants (f) The length of time for which Consultant is engaged is of limited duration rather than indefinite; (g) The method of payment of Consultant is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of municipal governments in the region and state; (i) Consultant and the City believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) the City conducts public business. It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that Consultant is an independent contractor. By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the Consultant engaged under this Agreement is in fact an independent contractor.

#### **ARTICLE 6. INDEMNIFICATION**

City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant's work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws.

Consultant and City agree to indemnify and defend the other, and the other's officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) incurred by the party being indemnified resulting from the indemnifying party's acts (or failure to act when action is appropriate) that may be asserted by any person or entity which in any way arise from or relate to this Agreement or the performance of obligations under this agreement. *If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.*

#### **ARTICLE 7. INSURANCE**

Consultant shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder.

The policy or policies of insurance maintained by the Consultant shall provide at least the following limits and coverage:

a. **Commercial General Liability Insurance**

Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Each Occurrence	1,000,000
Fire Damage (any one fire)	50,000
Medical Expense (any one person)	5,000

b. Workers' Compensation Insurance

The Consultant and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. **Consultants who perform work without the assistance or labor of any employee need not obtain such coverage.** This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

c. Insurance Carrier Rating

Coverage provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

d. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Consultant shall furnish a Certificate of Insurance to the City. No contract shall be affected until the required certificates have been received and approved by the City.

#### ARTICLE 8. TERMINATION

The parties agree that this contract may be terminated by written mutual agreement of both parties, or by one of the parties to the agreement with at least ninety (90) days written notice to the other party prior to the date termination would take effect, or immediately, upon breach of the contract by either party. There shall be no penalty for early termination. If City terminates the contract pursuant to this paragraph, it shall pay Consultant for services rendered prorated to the date of termination.

#### ARTICLE 9. AGREEMENT MODIFICATIONS

Modifications to this Agreement are valid only if made in writing and signed by all parties.

#### ARTICLE 10. SUBCONTRACTING

No portion of the Agreement may be subcontracted to any other individual, firm, or entity without the express and prior approval of the City.

No portion of the Agreement may be subcontracted to any other individual, firm, or entity without the express and prior approval of the City. Consultant will contact the City Administrator via email for approval of any work to be subcontracted to any other individual or firm.

#### ARTICLE 11. NON-ASSIGNMENT

No portion of nor any interest in this Agreement may be assigned to a third party without the express and prior approval of the City.

**ARTICLE 12. OWNERSHIP OF WORK PRODUCT**

City shall be entitled to ownership and possession of any and all work products, at no additional cost during the products useful lifetime and which are located at City workplaces, of Consultant which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the work pursuant to this Agreement. Provided, however, that the City does not intend to own or claim ownership to any underlying intellectual property or source code developed by Consultant and for which Consultant intends to otherwise use in Consultants products, licensing or sales to others.

**ARTICLE 13. GOVERNING LAW**

Consultant shall comply with all applicable federal, state and local laws, and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability. **Consultant shall obtain a local Canby business license.** The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. All provisions required by ORS Chapter 279 to be included in a contract of this type are incorporated into this Agreement as though fully set forth herein. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

**ARTICLE 14. COMPLETE AGREEMENT**

This Agreement and attached exhibit constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Consultant, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**ARTICLE 15. SURVIVAL**

The terms, conditions, representations, and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

**IN WITNESS WHEREOF**, City has caused this Agreement to be executed by its duly authorized undersigned officer and Consultant has executed this Agreement on the date herein below first written.

CITY OF CANBY  
Greg Ellis  
By: City Administrator  
Greg Ellis  
Printed Name  
07-21-11  
Date

CONSULTANT  
Julie R. Wehling  
By: Authorized Agent of Consultant  
Julie R. Wehling  
Printed Name  
7-19-11  
Date

**City of Canby  
Canby Area Transit**

**Scope of Work**  
July 1, 2011 - June 30, 2012

Contractor agrees to provide the following products and services to the City of Canby, Canby Area Transit and report to the City Administrator or his/her designee.

**Deliverables**

General management of Canby Area Transit (the City's Transit Department); which includes availability by phone during CAT service hours and a management presence in the CAT offices a minimum of eighty (80) hours per month. Contractor will attend required staff meetings, City Council meetings, City Department Director meetings, Transit Advisory Committee meetings, and other meetings specified by the City Administrator.

**Operational Management**

- Supervision of Transit Department personnel
- Operational contractor and contract oversight - currently MV Transportation, Inc.
- General oversight of system operation
- Preparation and submission of bi-monthly Transit Department reports
- Monitor all aspects of service provision
- Make service provision recommendations
- Oversee service adjustments as needed

**Service Design and Delivery**

- Oversee service delivery, schedules, and route design
- Direct service changes as needed
- Manage revisions of schedules, brochures, website and collateral materials as necessary
- Oversee CAT participation in community events

**Financial Management**

Management of the Transit Fund includes drafting and maintaining the annual budget, application and administration of multiple grants, and monitoring grant compliance.

**Budget**

- Monitor and administer approved budget

- Draft and submit annual budget recommendation
- Present budget recommendation to staff and budget committee as required

### **Grants**

Draft and submit annual or periodic grant applications and prepare and submit required reports and/or billings for the following regular grant opportunities:

- Rural and Small Urban Areas (FTA Section 5311)
- Federal Capital Funding - earmark (FTA Section 5309)
- Job Access & Reverse Commute (FTA Section 5316)
- New Freedom (FTA Section 5317)
- Elderly and Disabled Specialized Transit Program (FTA Section 5310)
- American Recovery and Reinvestment Act (ARRA)
- Special Transportation Fund (State of Oregon STF)
- STO and JTA (new funding sources)
- Other opportunities as they present themselves

Research and review additional grant or fund development opportunities. Contact appropriate representatives for the various grant funds and take appropriate steps to ensure Canby is well represented in the funding process for each grant. Attend necessary funding review committee meetings and other pertinent meetings of the following organizations: PTAC, OTA, OTC, TMAC, JPACT, and TPAC.

### **BETC**

Prepare pre-project documents for Department of Energy Business Energy Tax Credit (BET C) program prior to deadline (July 1 each year) and oversee project. Prepare post project documents and arrange audit for previous project as soon as project ends (June 30 each year). Work with City representatives and the Finance Department to identify and secure BETC pass through partner(s). Work closely with Department of Energy staff to assure all steps of the process have been accomplished and project documentation is complete.

### **Contract Management**

Review grant contracts, identify compliance requirements and make necessary recommendations. Communicate requirements to other city departments as necessary.

- Assure that required reports and/or billings such as the following are submitted:
  - Annually:
    - Reports for all Grants funded with 5310, 5311, 5316, & 5317
    - MIS Report, NTD Report, TEAM Report, Certifications & Assurances, TriMet's STF report and others upon request
  - Quarterly: - Reports for all Grants funded with 5310, 5311, 5316, & 5317

- Monthly: - STF Grant Report
- Lead negotiations for Transit grant contracts and service contracts under the direction of the City Administrator and the City Attorney
- Manage and/or assist with following grant funded project:
  - Purchase 2 vehicles (JTA grant funds)

### **Community Relations/Marketing**

- Attend and participate in City Council, Departmental, Planning or other meetings as necessary to maintain internal communication
- Attend and participate in community gatherings and events to promote CAT and CAT services
- Maintain peer contact with community transit partners, local, regional, and state transportation agencies and other appropriate organizations.

### **Transit Advisory Committee (TAC)**

- Facilitate Quarterly Transit Advisory Committee Meetings
- Prepare agenda's and respond to committee requests
- Ongoing communication with TAC members