

**ORDINANCE NO. 1361**

**AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH KEN ROBINSON DBA KR MAINTENANCE TO PROVIDE SERVICES AT THE CITY OWNED ZION MEMORIAL CEMETERY; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby desires to continue its contract between the City and Ken Robinson dba KR Maintenance to provide for operation and maintenance services for Canby Zion Memorial Cemetery; and

**WHEREAS**, the current contract with Ken Robinson dba KR Maintenance needs to be renewed; now therefore,

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

**Section 1 .** The City Administrator is hereby authorized on behalf of the City to enter into a Personal Services Agreement with Ken Robinson dba KR Maintenance to continue to provide for operation and maintenance services of Canby Zion Memorial Cemetery. A copy of the Personal Services Agreement is attached hereto as Exhibit "A".

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

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, July 18 2012, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 1, 2012, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2<sup>nd</sup> Avenue, Canby, Oregon.

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 1<sup>st</sup> of August 2012, by the following vote:

YEAS 6

NAYS 0

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

ATTEST:

  
\_\_\_\_\_  
Kimberly Scheafer, MMC  
City Recorder

## PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and KEN ROBINSON dba KR Maintenance. (Contractor).

- A. City requires services which Contractor is capable of providing, 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 a Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 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. **Contractor understands it is required to obtain a City of Canby business license for conducting business in the City. Contractor agrees to obtain a Canby business license prior to commencing work under this contract.**
- 3. Compensation:
  - A. City agrees to pay Contractor \$7,600.00 per month for the services provided, not to exceed a total of \$91,200.00 per year.
  - B. The City agrees to pay ten percent (10%) of gross annual revenues exceeding \$60,000.00 annual to Contract as incentive bonus.
  - C. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
  - D. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
  - A. Contractor's services shall be provided under the general supervision of the City Administrator. 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 the Oregon Revised Statutes.

- C. Contractor hereby represents 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.
5. Subcontractors and Assignment. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions of this agreement as well as applicable OSHA regulations and requirements.
6. 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.
7. Work is Property of City. All work performed or improvements made by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.
8. Term.
- A. The term shall be considered as a continuing or rolling two (2) year Agreement commencing on the date agreement is executed.
- B. This Agreement may be terminated by:
1. Mutual written consent of the parties.
  2. Either party, upon ninety (90) days written notice to the other, delivered by certified mail or in person.
  3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
    - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
    - b. If Contractor fails to abide by the terms of this Agreement.
    - c. If services are no longer required.
9. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in

City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

10. Insurance. Insurance shall be maintained by the Contractor with the following limits:
  - A. Liability - \$1,000,000.00 combined single limit, bodily injury/property damage, including automobile coverage for any vehicle used for City business.
  - B. Professional liability – errors and omissions - \$1,000,000.00, combined single limit, bodily injury/property damage.

The City shall be named as an additional insured on all required policies. The City may require current copies of insurance endorsement. Procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by Contractor's negligence or neglect connected with the Agreement.

11. Legal Expense. 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 both at trial and all appeals there from.
12. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
13. Notices. Any notice, 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 address 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.
14. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
15. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.
16. 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.

- 17. Capital Improvements. Contractor may propose capital improvement 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.

CITY: Greg Ellis, City Administrator  
 City of Canby  
 PO Box 930  
 182 N. Holly Street  
 Canby, OR 97013

CONTRACTOR: Ken Robinson  
 PO Box 934  
 Canby, OR 97013

**Please submit invoices to: Attn: Accounts Payable  
 City of Canby  
 PO Box 930  
 Canby, OR 97013  
potterl@ci.canby.or.us**

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

CONTRACTOR:

CITY OF CANBY:


By: 

By: 

Date: 8-2-12

Date: 08-01-12

Approved as to Form:

  
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 Joseph Lindsay  
 City Attorney

## SCOPE OF SERVICES

- All bills for materials, supplies, utilities, and marketing are to be handled by Ken Robinson (Contractor) and are to be held in that name. The City will act only as the final guarantor for payments.
- Contractor will maintain on-site record keeping as defined and requested by the City. The current system of paperwork will continue until changes are needed and/or requested by either party.
- Contractor will be responsible for the sales of cemetery property.
- Contractor will be responsible for all maintenance of facilities and the grounds of the cemetery. The City, on a case-by-case basis, will pay for repairs that were due to prior neglect.
- Ground maintenance includes the following, but not limited to:
  - Mowing
  - Trimming hedges and trees
  - Fertilizing, spraying and weed control
  - Planting grass on new graves
  - Season irrigation
  - Mole control
  - Removing old flowers
- Contractor will be responsible for setting headstones, repairing headstones, and installation of name bars on mausoleum.
  - Advance purchase of double name bards, before the second person has died will not be allowed for the mausoleum.
- Contractor will be responsible for digging, backfilling and compacting grave sites.
- Contractor will be responsible for interments of bodies & cremains (disinterment if necessary).
- Contractor will be responsible for building maintenance
- Contractor will be available for weekend services, as needed.
- Contractor will develop working relationships with services clubs for Memorial Day; with local and out of town funeral directors; and with City staff.
- Contractor has authorization to sell grave markers under the name of K R Maintenance and has no bearing with the City.