

AGENDA

CANBY CITY COUNCIL MEETING

February 6, 2008, 7:30 P.M.

Council Chambers

155 NW 2nd Avenue

Mayor Melody Thompson

Council President Walt Daniels

Councilor Teresa Blackwell

Councilor Paul Carlson

Councilor Randy Carson

Councilor Tony Helbling

Councilor Wayne Oliver

WORK SESSION

6:00 P.M.

City Hall Conference Room

182 N Holly

The City Council will be meeting in a Work Session to receive a mid-year update on the City Budget and City Council goals.

CITY COUNCIL MEETING

1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)

A. Approval of Minutes of the January 16, 2008 City Council Regular Meeting

B. Approval of Minutes of the January 22, 2008 City Council Special Meeting

C. Annual Liquor License Renewals

Pg. 1

7. RESOLUTIONS & ORDINANCES.

A. Res. 971, Referring to Voters a Proposed Revised Home Rule Charter for the City of Canby

Pg. 3

- B. Ord. 1270, Authorizing Contract with Group Mackenzie, Inc. for Architectural Services Relating to the New Police and Court Facility for the City of Canby (**2nd Reading**) Pg. 8

8. NEW BUSINESS

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

A. Update on Legacy Park

10. CITIZEN INPUT

11. ACTION REVIEW

12. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation and ORS 192.660(2)(e) Real Property

13. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

Dist. License
Number

Tradename

Participant

License
Type

Premises Address

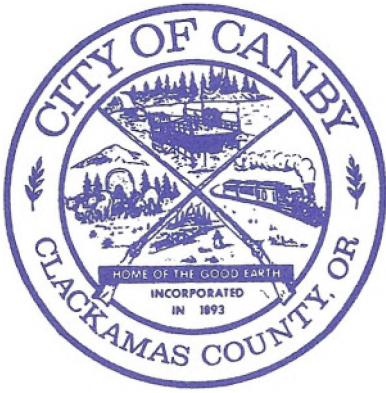
Local Government: CANBY

12-04-07

2	91695	7-ELEVEN STORE #2353-17845C	BAIRD, JOLENE BAIRD, REGENT W	O	109 SE 1ST, CANBY, OR
	90203	AMERICAN LEGION POST #122 CANBY	AMERICAN LEGION #122, CANBY	F-CLU	424 NW 1ST, CANBY, OR
	89156	BLACKJACK DELI & MORE	BLACKJACK DELI & MORE LLC	L	1110 SW 1ST AVE, CANBY, OR
	90609	CANBY BOWL	CANBY BOWL INC	L	145 SW 1ST, CANBY, OR
	89198	CANBY PUB & GRILL	BUTLER INVESTMENTS INC	F-COM	211 N GRANT, CANBY, OR
	100609	CANBY SHELL	FLORES, JOSUE LAUDON FLORES, MARY F	O	293 SW 1ST, CANBY, OR
	92406	CUTSFORTH THRIFTWAY	GEF INC	O	225 NE 2ND, CANBY, OR
	91612	DENNY'S RESTAURANT	CANBY-DENN INC	F-COM	1369 SE 1ST AVE, CANBY, OR
	89876	FISHER'S MEATS	STONE, WILLARD J	O	272 N GRANT, CANBY, OR
	90894	FRED MEYER	FRED MEYER STORES INC	O	1401 SE 1ST, CANBY, OR
	91390	FULTANO'S PIZZA	ROMINE PIZZA CO	L	715 SE 1ST, CANBY, OR
	91285	GODFATHER'S PIZZA	ARCADIA PIZZA COMPANY INC	L	1477 SE 1ST AVE #101, CANBY, OR
	89762	GOLD DRAGON	PHAN, TRAM N PHAN, LAM P	F-COM	204 SW 2ND, CANBY, OR
	92252	HOI TIN RESTAURANT	HUNG WON INC	L	1075 SW 1ST AVE, CANBY, OR
	91189	HWY 99 SOUTH CANBY QUIK MART	HWY 99 SOUTH CANBY QUIK MART LLC	O	1120 SW 1ST, CANBY, OR
	91501	LA MEXICANA	LA HERMITA INC	O	733 SE 1ST AVE, CANBY, OR
	101510	LA MIXTECA MARKET	ZURITA, RUFINO	O	205 SW 1ST, CANBY, OR
	91546	LA SALSA MEXICAN FOOD	LA SALSA MEXICAN FOOD LLC	L	851 SW FIRST AVE, CANBY, OR
	89197	LONE ELDER PIZZA	J & E INC	L	207 SW 1ST #106, CANBY, OR
	91607	LOS DORADOS MEXICAN RESTAURANT	LOS DORADOS INC	F-COM	1011 SW 1ST AVE, CANBY, OR
	91536	MI TIERRA MEXICAN RESTAURANT	LA HERMITA INC	F-COM	729 SE 1ST AVE, CANBY, OR
	91342	MIKE'S PLACE	CHRS INC	L	404 NW 1ST AVE, CANBY, OR
	91346	MIKE'S PLACE	CHRS INC	O	404 NW 1ST AVE, CANBY, OR
	89818	NUEVO VALLARTA RESTAURANT	PUERTO VALLARTA RESTAURANTS INC	F-COM	1385 SE 1ST AVE #104, CANBY, OR
	92468	PREMIER WINE CLUB SERVICES	PREMIER WINE CLUB SERVICES LLC	O	321 SE SEQUOIA PARKWAY, CANBY, OR
	90005	RITE AID #5325	THRIFTY PAYLESS INC	O	1025 SW 1ST AVE, CANBY, OR
	91076	SAFEGWAY STORE #2604	SAFEGWAY INC	O	1055 SW 1ST AVE, CANBY, OR
	91324	SEASONS GRILL	EPICURE ENTERPRISES INC	F-COM	101 N ELM ST, CANBY, OR
	92241	SHRIJI MARKET	SHRIJI INC	O	891 SE FIRST AVE, CANBY, OR
	90463	SMOKE 4 LESS	PRABEZ LLC	O	1021 SW 1ST AVE SUITE A, CANBY, OR
	89998	THAI DISH	THAI DISH INC	L	108 N IVY ST, CANBY, OR
	89103	THE WILD HARE SALOON & CAFE	SIDEWINDER INC	F-COM	1190 SW FIRST, CANBY, OR
	95009	TNT MARKET	WHK INC	O	164 SE 1ST AVE, CANBY, OR
	91649	TRES CAFE'	TRES CAFE' INC	L	243 NW 2ND AVE, CANBY, OR

Dist. #	License Number	Tradename	Participant	License Type	Premises Address
Local Government: CANBY					
2	90357	WILLAMETTE VALLEY COUNTRY CLUB	WILLAMETTE VALLEY CNTRY CLUB INC	F-CLU	900 COUNTRY CLUB PL, CANBY, OR

ALL APPROVED
CHIEF KROEN

City of Canby

Office of the City Attorney

January 21, 2008

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney 

Re: Resolution No. 971 - Ballot measure/Summary for Voter's Pamphlet for Canby City Charter Amendment

Attached is Resolution No. 971. It certifies to Clackamas County elections department for the May 20, 2008 election, proposed Charter Amendment for the City of Canby

Attached to the Resolution is a Notice of City Measure Election with the Caption, Question and Summary for the ballot and the Explanatory Statement for the Voter's Pamphlet. The City is required to submit these documents when it refers an issue to a vote of the electorate. The deadline for having the material to the County is March 20, 2008.

The guideline for drafting the Notice and Explanatory Statement is that, "the City Attorney, to the best of his ability, give a true and impartial statement of the purpose of the measure in such language that the ballot title not create any argument for, or create prejudice against the measure". I believe the Notice and Statement I have prepared meets this criteria. If you agree, a motion to approve Resolution No. 971 is appropriate. If you are not satisfied with the language, please feel free to contact me before the meeting or draft some alternative language to bring to the meeting so that it can be discussed.

RESOLUTION NO. 971

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A MEASURE REFERRING TO THE ELECTORATE A PROPOSED REVISED HOME RULE CHARTER FOR THE CITY OF CANBY; AUTHORIZING THE CITY RECORDER TO SEND AN EXPLANATORY STATEMENT FOR THE VOTER'S PAMPHLET; AND DOING ALL OTHER NECESSARY ACTS TO PLACE THE MATTER BEFORE THE VOTERS OF THE CITY OF CANBY FOR THE MAY 20, 2008 ELECTION.

WHEREAS, the Canby City Council has heretofore approved a revised home rule Charter for the City of Canby following a public hearing on July 18, 2007; and

WHEREAS, pursuant to the provisions of the Canby City Charter, the approval of the proposed home rule Charter must be referred to the electorate of the City of Canby for an election; and

WHEREAS, ORS 250.035 requires a Notice of Measure be prepared by the City and submitted to the Clackamas County Elections Department by March 20, 2008 in order to appear on the ballot for the May 20, 2008 election; and

WHEREAS, pursuant to the Canby Municipal Code, the Canby City Attorney has prepared a Notice of City Measure Election and Summary for Voter's Pamphlet to be submitted to the Elections Department;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby, as follows:

1. The City Recorder of the City of Canby is hereby authorized and directed to certify to the Clackamas County Clerk for submission to the voters at the May 20, 2008 election, the Notice of City Measure. Such Notice of City Measure Election is attached to this Resolution in proper form and adopted by the City.
2. The City Recorder of the City of Canby is further authorized and directed to submit a Summary of the Measure to be placed in the voter's pamphlet explaining in clear and concise language the affect of such ballot measure. Such summary is attached to this Resolution in proper form and adopted by the City.
3. The City Recorder, the City Administrator and the City Attorney are hereby authorized to do all other necessary and proper acts to place the ballot measure before the voters at the May 20, 2008 election.

This Resolution shall take effect on February 6, 2008.

ADOPTED this 6th day of February, 2008, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder, Pro-Tem

Notice of City Measure Election

SEL 802

rev 1/08: ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

Name of City Canby

Notice is hereby given on February 6, 2008, that a measure election will be held in

name of county or counties Clackamas County, Oregon on date of election May 20, 2008.

The following shall be the ballot title of the measure to be submitted to the county's voters on this date: May 20, 2008.

CAPTION 10 words

MEASURE ADOPTING REVISED HOME RULE CHARTER FOR CANBY.

QUESTION 20 words

Shall the City of Canby adopt a revised home rule Charter?

SUMMARY 175 words

The Canby City Charter is the governing document for the City of Canby. This measure would replace the current City Charter, adopted in 1984, with a new, revised home rule Charter. The City Council approved the new Charter for submission to City voters following a public hearing on July 18, 2007. The new Charter is combination of current Charter provisions and provisions from a "model Charter". The new Charter is consistent with recent changes in the Oregon Constitution, laws and court decisions. The proposed Charter eliminates the City Treasurer and City Recorder as officers, and makes those positions responsible to the City Administrator. The proposed Charter makes the Mayor a voting member of the Council. It changes the name of the Canby Electric Board to the Canby Utility Board and eliminates term limits a Board member may serve. It eliminates the requirement that the City Administrator live within the city limits. The proposed Charter raises the limit from \$15,000 to \$50,000 for expenditures that must be approved by City ordinance.

↓ **signature**

The following authorized city official hereby certifies the above ballot title is true and complete, which includes completion of the ballot title challenge process.

signature of authorized city official *not required to be notarized*

date signed mm/dd/yy

Kimberly Scheafer
printed name of authorized city official

City Recorder Pro-Tem
title

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EXPLANATORY STATEMENT FOR VOTER'S PAMPHLET

MEASURE ADOPTING HOME RULE CHARTER FOR THE CITY OF CANBY

Measure No. _____

Word Total 345 (500 max)

The Canby City Charter is the governing document for the City. This measure, if approved by the voters, would replace the current City Charter with a new, revised home rule Charter. The City Council approved the new Charter for submission to City voters. The current City Charter was adopted in 1984 and is in serious need of updating and revision. The City Council and City staff revised the proposed Charter using a "model Charter" developed by the League of Oregon Cities (LOC). The new, proposed Charter is a combination of current Charter provisions and new provisions from the LOC "model Charter". The new Charter would be consistent with changes in the Oregon Constitution, laws and court decisions since 1984.

The proposed Charter eliminates two officers of the City, the City Treasurer and the City Recorder. The positions will continue to exist, but the new Charter makes them responsible to the City Administrator rather than the City Council. The proposed Charter makes the Mayor a voting member of the City Council. Under the current Charter, the Mayor only votes to break a tie. It adopts the most recent election law provisions, condemnation law provisions, public contracting law provisions, debt limitation provisions and tort liability law provisions established by the State of Oregon.

The proposed Charter changes the name of the Canby Electric Board to the Canby Utility Board (CUB) and eliminates the term limitation on number of terms a CUB board member can serve. Under the current Charter CUB members can only serve two terms. The proposed Charter eliminates the requirement that the City Administrator live with the Canby city limits.

Finally, the new Charter raises the limit to \$50,000 for contracts and expenditures that must first be approved by City Ordinance. The current limitation is \$15,000.

The City Council held a public hearing for comments from local citizens regarding the proposed changes in the Charter on July 18, 2007 in the City Council chambers. The current Charter and the proposed Charter are available to view in their entirety on the City's web page located www.ci.canby.or.us.

CITY OF CANBY

Kimberly Scheafer, CMC
Canby City Recorder - Pro tem

Date

ORDINANCE NO. 1270

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH GROUP MACKENZIE, INC., OF PORTLAND, OREGON FOR ARCHITECTURAL SERVICES RELATING TO THE NEW POLICE AND COURT FACILITY FOR THE CITY OF CANBY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby wishes to design and construct a new Police and Court facility and will require an architect to help with the design phase of the project; and

WHEREAS, the City has heretofore interviewed several potential candidates for the position and wishes to employ Group Mackenzie, Inc., of Portland, Oregon, as an independent contractor under a personal services contract for the purpose of carrying out the these activities; and

WHEREAS, a proposed personal services contract which is acceptable to the City has been signed by Group Mackenzie, Inc.; 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 Group Mackenzie, Inc., of Portland, Oregon for architectural services, 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 project 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, January 16, 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 Wednesday, February 6, 2008, commencing at the hour of 7:30 PM in the Council Meeting Chambers at 155 NW 2nd Avenue, 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 6th day of February 2008, by the following vote:

YEAS _____

NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder Pro-tem

AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES
SHORT TITLE OF WORK PROJECT: CANBY POLICE

This contract is between the City of Canby, Oregon, acting by and through its Elected Officials, hereafter called "City," and Group Mackenzie; hereafter called "Contractor". The City's Project Manager for this contract is William Harper.

Effective Date and Duration

This contract shall become effective on January 16, 2008 (or on the date at which every party has signed this contract, whichever is later.) This contract shall expire, unless otherwise terminated or extended, on November 5, 2008.

Statement of Work

- (a) The statement of work is contained in EXHIBIT A attached hereto and by this reference made a part hereof.
- (b) The delivery schedule for the work is identified in EXHIBIT A.

Consideration

- (a) City agrees to pay Contractor a lump sum of \$42,500 billed on percent complete basis for accomplishment of the work (including reimbursable expenses).
- (b) Interim payments shall be made to Contractor according to the schedule identified in EXHIBIT A.

Terms and conditions listed on pages 2 - 4.

CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Name (please print): Group Mackenzie

Address: 1515 SE Water Avenue, Suite 100, Portland, OR 97214, PO Box 14310, Portland, OR 97293

Social Security #: N/A

Federal Tax ID #: 93-0573937 State Tax ID #: 0169851-3 Business License #: N/A

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☐ Corporation
☐ Limited Liability Co (LLC) ☐ Estate/Trust ☐ Public Service Corp. ☐ Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to 20 percent backup withholding.

I, the undersigned, agree to perform work outlined in this contract in accordance to the terms and conditions (listed on pages 2-4 and made part of this contract by reference) and the statement of work made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer; and hereby certify I am an independent contractor as defined in ORS 670.600.

Approved by the Contractor: _____

Signature/Title

Date

1-8-2008

CITY OF CANBY SIGNATURES

Approved by Purchasing Agent: _____

City Administrator

Date

Approved as to Form

By City Attorney: _____

Office of City Attorney

Date

1/8/08

**CITY OF CANBY
STANDARD CONTRACT PROVISIONS FOR
PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)**

1. Access to Records

The Contractor shall maintain, and the City of Canby ("City") and its duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

2. Audits

(a) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, **Access to Records**. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(b) If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.

(c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, **Early Termination of Agreement** and section 7, **Remedies**.

3. Effective Date and Duration

The passage of the contract expiration date (as recorded on Page 1) shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

4. Order of Precedence

This contract consists of the terms and conditions of this contract, the Request for Proposals (RFP) issued by the City, if any, and the Contractor's proposal in response to the RFP. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict: a) this contract's terms and conditions, b) the City's RFP, and c) the Contractor's proposal in response to the RFP.

5. Early Termination of Agreement

(a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

6. Payment on Early Termination

(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.

(c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.

(d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

7. Remedies

(a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the City due to a breach by the contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay the City the amount of the reasonable excess.

(b) The remedies provided by the City under section 5, **Early Termination of Agreement** and Section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

8. Subcontracts and Assignment

Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if

subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

9. Compliance with Applicable Law

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state, and local laws and regulations, all of which are incorporated by this reference. Contractor shall complete Exhibit B, Independent Contractor/Workers' Compensation Insurance Questionnaire, which is attached hereto and by this reference made a part hereof. **Contractor is required to obtain a City of Canby business license.**

9a. Indemnity – Claims for Other than Professional Liability

Contractor shall defend, save, and hold harmless the City of Canby, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the City.

9b. Indemnity – Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Canby, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

9c. Indemnity – Standard of Care

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

10. Insurance

Exhibit C is hereby referenced and made a part of this contract.

11. Ownership of Work Product

All work products produced by the Contractor under this contract is the exclusive property of the City. "Work product" shall include but not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; the Contractor and the City intend that such work product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a work product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the work product is the property of the Contractor-Architect, and by execution of this contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that work product.

12. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub I. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

13. Successors in Interest

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

14. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term of provision held to be invalid.

15. Waiver

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

16. Errors

The Contractor shall perform such additional work as may be necessary to correct errors in the work of the contractor required under this contract without undue delays and without additional cost.

17. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Clackamas County, Oregon.

18. Amendments

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Purchasing Agent to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the City Council to be valid.

19. Business License

The Contractor shall obtain a City of Canby business license prior to beginning work under this Agreement. The Contractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Contractor shall pay all fees or taxes due under the Business License Law during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law.

20. Prohibited Interest

(a) No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(b) No City officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

21. Payment to Vendors and Subcontractors

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

Merger Clause

THIS CONTRACT WITH ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT 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 CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

OPTIONAL PROVISIONS (selected by City Project Manager)

22. Arbitration: / ___ / Not Applicable / X / Applicable (consult with City Attorney's Office before finalizing as applicable.

(a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days or notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Clackamas. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Canby, or Oregon City, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for Clackamas County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Agreement for undisputed portions of work.

23. Progress Reports: / ___ / Applicable / X / Not Applicable

The Contractor shall provide monthly progress reports to the Project Manager. If applicable, Exhibit A should list what information the Contractor must include in monthly progress reports.

24. Contractor's Personnel: / X / Applicable / ___ / Not Applicable

The Contractor shall assign the following personnel to do the work in the capacities designated. If applicable, list selected personnel in Exhibit A. The Contractor shall not change personnel assignments without the prior written consent of the City.

25. Subcontractors: / ___ / Applicable / X / Not Applicable

The Contractor shall assign the following subcontractors to perform work in the capacities designated. If applicable, list selected subcontractors in Exhibit A. The Contractor shall not change subcontractor assignments without the prior written consent of the City.

GROUP MACKENZIE

December 7, 2007 (*Revised January 8, 2008*)

Francis C. Berg / Architect PC
Attention: Bill Harper
6393 Silverton Road NE
Salem, OR 97305

Re: **Canby Police**
Proposal for Professional Services
Project Number 2070505.00

Dear Bill:

We are pleased to present to you the following proposed scope for the project.

We will provide professional services to assist the City of Canby in evaluating their needs for a new police facility and developing a conceptual design for a facility to accommodate their identified needs. The project will be developed in two phases. The first phase will be the pre-bond services. Upon successful bond approval a scope and fee will be developed for the second phase of the project. This proposal is for the scope of the phase 1 pre-bond services.

Our project team/staff for this project will be Jeff Reaves, Project Principal; Jeff Humphreys, Project Manager/Project Architect (main client contact); Brett Hanson, Job Captain; and support staff as indicated in our proposal as needed.

Our services will include Architectural, Land Use Planning and Construction Cost Estimating as described by the following.

Our first task will be to conduct a thorough review of project history and all available information. Following this effort we will meet collectively with the project stakeholders to identify each stakeholder group's goals for the project. These goals will be used to guide the design process through the project.

Our second task will be to work with the building users groups to review the current program and refine the program as necessary. As part of this effort, research of existing stations will be conducted and a tour of one or more facilities will be arranged with Canby Police and City staff to observe other stations and identify elements and features that work well, and not so well so that these items can be coordinated with the project design. At the conclusion of this task, Group Mackenzie will present to City Council the program and findings for approval to proceed.

After the program has been confirmed, an adjacency diagram, bubble diagram and block diagram will be developed. Building on an approved block diagram, a conceptual floor plan which defines room size, layout and configuration will be developed.

RiverEast Center | PO Box 14310 | Portland, OR 97293
1515 SE Water Ave, Suite 100 | Portland, OR 97214
Tel: 503.224.9560 Web: www.grpmack.com Fax: 503.228.1285

**Group
Mackenzie,
Incorporated**

Architecture
Interiors
Structural
Engineering
Civil Engineering
Land Use Planning
Transportation
Planning
Landscape
Architecture

Locations:

Portland, Oregon
Seattle, Washington
Vancouver, Washington

Francis C. Berg / Architect PC
Canby Police
Project Number 2070505.00
December 7, 2007 (Revised January 8, 2008)
Page 2

As the conceptual floor plan is developed the design of the exterior character and site will be explored. Our land use planning services will include a development feasibility review for the project. For this effort, we will review readily available data pertaining to development of the subject site including, but not limited to, the zoning code, comprehensive plan, transportation system plan and GIS map data. We will review current and proposed zoning regulations, availability of public utilities, access/circulation issues and environmental issues that will have impact on the development of the site.

Upon approval of the design direction, the team will develop a final design summary package that will summarize the current design decision. The design summary package will include:

1. Identified goals and objectives
2. Site plan
3. Building plan and elevations
4. Character sketch / perspective of building
5. Program summary of building
6. Cost estimate
7. Project Schedule
8. List of outstanding issues that need to be resolved prior to the project progressing

The design and materials of this final package will be presented to City Council and a public hearing.

Items which are specifically excluded from the Scope of Services include, but are not limited to:

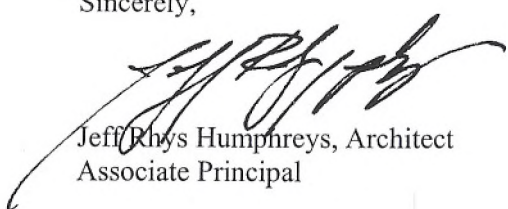
- Soils investigation/testing and related specifications
- Pavement design and related specifications
- Environmental review
- Traffic analysis
- Land survey, topographic survey, tree survey, or metes and bounds descriptions and related specifications
- Sensitive lands requirements
- Materials testing/special inspections
- Building permit fees, design review fees, or any other fees paid to public bodies having jurisdiction over the project
- Offsite improvements (such as roads and utilities)
- Appeals, variances, public hearings, land use approvals
- Special permits
- Renderings, models
- Disabled access compliance design other than that required by the current editions of the governing building code and the Americans with Disabilities Act - Accessibility Guidelines (ADAAG) for new construction, whichever is more stringent
- Square footage calculations beyond those required to confirm compliance with building and zoning code requirements (Calculation of gross, net, and rentable square footages is not included)

Francis C. Berg / Architect PC
Canby Police
Project Number 2070505.00
December 7, 2007 (Revised January 8, 2008)
Page 3

Group Mackenzie's Contract Fee will be a lump sum of \$42,500 billed on percent complete basis. Any services performed beyond the scope of services set forth above shall be for additional fees. Reimbursable costs are included in the Contract Fee. Reimbursable costs for services accomplished by in-house personnel (printing, faxing, copying, mileage, etc.) will be billed at standard rates. Other reimbursable costs (outside printing, outside delivery services, photography, Federal Express, Express Mail, etc.) will be billed at cost plus 10%. Consultants' fees are included in the Contract Fee. Consultants' fees will be billed at cost plus 10%.

If this scope meets your expectations, it can be used as an attachment to the contract to define the provided services.

Sincerely,



Jeff Rhys Humphreys, Architect
Associate Principal

Enclosure: Project Schedule

c: Jeff Reaves – Group Mackenzie

17

Exhibit "A"

GROUP

MACKENZIE

December 7, 2007

Francis C. Berg / Architect PC
Attention: Bill Harper
6393 Silvertown Road N.E.
Salem, OR 97305

Re: **Canby Police**
Proposal for Professional Services
Project Number 2070505.00

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As the conceptual floor plan is developed the design of the exterior character and site will be explored. Our land use planning services will include a development feasibility review for the project. For this effort, we will review readily available data pertaining to development of the subject site including, but not limited to, the zoning code, comprehensive plan, transportation

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Locations:

Portland, Oregon

Seattle, Washington

Vancouver, Washington

Francis C. Berg / Architect PC

Canby Police

Project Number 2070505.00

Items which are specifically excluded from the Scope of Services include, but are not limited to:

Page 2

system plan and GIS map data. We will review current and proposed zoning regulations, availability of public utilities, access/circulation issues and environmental issues that will have impact on the development of the site.

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The design and materials of this final package will be presented to City Council and a public hearing.

Items which are specifically excluded from the Scope of Services include, but are not limited to:

- Soils investigation/testing and related specifications
- Pavement design and related specifications
- Environmental review
- Traffic analysis
- Land survey, topographic survey, tree survey, or metes and bounds descriptions and related specifications
- Sensitive lands requirements
- Materials testing/special inspections
- Building permit fees, design review fees, or any other fees paid to public bodies having jurisdiction over the project
- Offsite improvements (such as roads and utilities)
- Appeals, variances, public hearings, land use approvals
- Special permits
- Renderings, models
- Disabled access compliance design other than that required by the current editions of the governing building code and the Americans with Disabilities Act - Accessibility Guidelines (ADAAG) for new construction, whichever is more stringent.

Francis C. Berg / Architect PC
Canby Police
Project Number 2070505.00

- Square footage calculations beyond those required to confirm compliance with building and zoning code requirements. (Calculation of gross, net, and rentable square footages is not included.)

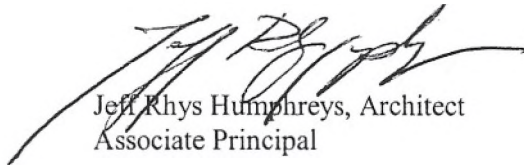
Page 3

- Square footage calculations beyond those required to confirm compliance with building and zoning code requirements. (Calculation of gross, net, and rentable square footages is not included.)

Group Mackenzie's Contract Fee will be a lump sum of \$40,000 billed on percent complete basis. Any services performed beyond the scope of services set forth above shall be for additional fees. Reimbursable costs are not included in the Contract Fee. Reimbursable costs for services accomplished by in-house personnel (printing, faxing, copying, mileage, etc.) will be billed at standard rates. Other reimbursable costs (outside printing, outside delivery services, photography, Federal Express, Express Mail, etc.) will be billed at cost plus 10%. Consultants' fees are included in the Contract Fee. Consultants' fees will be billed at cost plus 10%.

If this scope meets your expectations, it can used as an attachment to the contract to define the provided services.

Sincerely,



Jeff Rhys Humphreys, Architect
Associate Principal

Enclosures: Project Schedule

c: Jeff Reaves

INDEPENDENT CONTRACTOR
CERTIFICATION STATEMENT

EXHIBIT B

SECTION A

CONTRACTOR CERTIFICATION. I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Contractor Signature: 

Date

1-8-08

Entity

GROUP MACKENZIE
ARCHITECT

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.


City Project Manager Signature

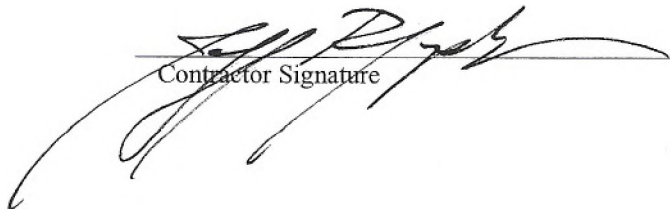
Date

SECTION C

Independent contractor certifies he/she meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required.
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor, check four or more of the following:
 - A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
 - B. Commercial advertising or business cards as in customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
 - C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

-  D. Labor or services are performed only pursuant to written contracts;
- E. Labor or services are performed for two or more different persons within a period of one year; or
- F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services provided.


Contractor Signature

1-8-08
Date

INSURANCE

EXHIBIT C

(The Project Manger must answer and initial 2, 3, and 4 below)

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

1. Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).
2. ☒ Required and attached or Waived by City Attorney: _____
General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that City of Canby; and its agents, officers, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract.
3. ☒ Required and attached or Waived by City Attorney: _____
Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable:
4. ☒ Required and attached or Waived by City Attorney: _____
Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the successful Proposer shall acquire a "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, contractor shall notify City immediately.
5. On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.
6. **Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause that provides that the insurance shall not terminate or be cancelled without 30 days written notice first being given to the Canby City Administrator. Insuring companies or entities are subject to the City acceptance. If requested, complete policy shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.**