



AGENDA

CANBY CITY COUNCIL MEETING

June 20, 2018

7:30 PM

Council Chambers

222 NE 2nd Avenue, 1st Floor

Mayor Brian Hodson

Council President Tim Dale

Councilor Tracie Heidt

Councilor Traci Hensley

Councilor Greg Parker

Councilor Tyler Smith

Councilor Sarah Spoon

CITY COUNCIL MEETING – 7:30 PM

1. CALL TO ORDER

- A. Invocation
- B. Pledge of Allegiance
- C. Fill the Boot Proclamation
- D. Recognition of Public Works Employee

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2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for audience members to address the City Council on items not on the agenda. Each person will be given 3 minutes to speak. You 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. For Agenda items, please fill out a testimony/comment card and give to the City Recorder noting which item you wish to speak on.)

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 June 6, 2018 City Council Regular Meeting

7. PUBLIC HEARINGS

- A. State Revenue Sharing Funds
- B. 2018-2019 FY Budget as Approved by Budget Committee

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8. RESOLUTIONS & ORDINANCES

- A. Res. 1286, Adopting a Supplemental Budget for the 2017-2018 FY
- B. Res. 1287, Verifying City Has Met Requirements to Receive State-Shared Revenue Money
- C. Res. 1288, Declaring City's Election to Receive State Revenue for the 2018-2019 FY

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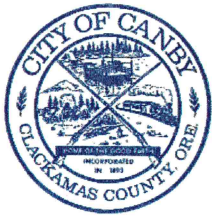
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- D. Res. 1289, Adopting Budget, Making Appropriations and Imposing and Categorizing Tax for the 2018-2019 FY Pg. 9
 - E. Res. 1290, Adopting Updated Public Procurement and Contracting Rules; and Repealing Resolution No. 897 Pg. 12
 - F. Res. 1291, Creating a New Special Revenue Fund for Transient Room Taxes Pg. 30
 - G. Res. 1292, Authorizing an Interfund Loan from the Cemetery Perpetual Care Fund to the Library Fund in the Amount of \$500,000.00 and Authorizing Repayment of the Interfund Loan in Fiscal Year 2018-2019 Pg. 32
 - H. Res. 1293, Adopting Rules for Administration of Federal Awards Pg. 34
 - I. Ord. 1484, Authorizing Contract with Master Clean, Inc. For Janitorial Services For Various City Facilities, Not to Exceed \$57,787.00; and Repealing Ordinance 1452 (2nd Reading) Pg. 40
 - J. Ord. 1485, Amending Canby Municipal Code Chapter 10.04.100 Regarding Storage or Abandoning of Vehicles on Streets Pg. 49
- 9. NEW BUSINESS**
- A. Selling of CBD and Hemp Products in the City of Canby Pg. 51
 - B. Findings, Conclusion & Final Order APP 18-01 Pg. 54
 - C. Cancellation of July 5, 2018 City Council Meeting
- 10. CITY ADMINISTRATOR’S BUSINESS & STAFF REPORTS**
- 11. CITIZEN INPUT**
- 12. ACTION REVIEW**
- 13. EXECUTIVE SESSION: ORS 192.660(2)(h) Litigation**
- 14. 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 503.266.0733. A copy of this Agenda can be found on the City’s web page at www.canbyoregon.gov. City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV Channel 5. For a schedule of the playback times, please call 503.263.6287.

Starting July 5, 2018, City Council meetings will start at 7:00 PM instead of 7:30 PM



Office of the Mayor

Proclamation

Canby Fire District #62 "Fill-the-Boot" Day

WHEREAS, Canby Fire District #62 has been working with the Muscular Dystrophy Association in their fight against neuromuscular disease; and

WHEREAS, "Fill-the-Boot" is an opportunity for Oregon firefighters to ask community members to drop donations into their fire boots to help local families served by MDA in the state. This year marks the 64th anniversary of the partnership between firefighters and MDA in the fight against muscle wasting diseases; and

WHEREAS, Canby Fire District #62 has spent many hours collecting money on the streets for this campaign; and

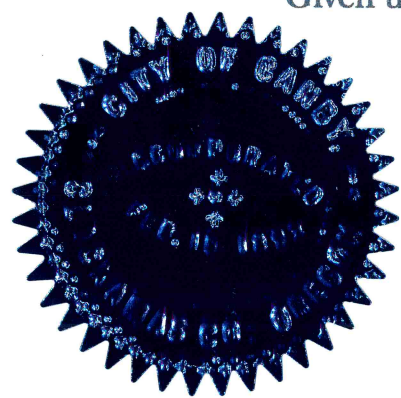
WHEREAS, firefighters, locally and nationally, are the largest contributors to the MDA. Canby Firefighters collected \$11,850.00 in 2017 to help in the fight against the 43 different types of neuromuscular diseases.

NOW, THEREFORE, I, Brian Hodson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim Saturday, July 28, 2018 as:

Canby Fire District #62 "Fill-the-Boot" Day for the City of Canby

Given unto my hand this 20th day of June 2018.

Brian Hodson
Mayor



M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR FISCAL YEAR 2017-2018.**

ISSUE: Adoption of a Supplemental Budget for the 2017-2018 fiscal year.

SYNOPSIS: The Planning department continues to see a high volume of development activity. This level of activity was not anticipated when the budget was prepared. Additional staff time has been needed to keep up with the developer demand and additional work on traffic studies has been required.

A slight increase in budget appropriation is required to accommodate the purchase of replacement equipment for both the City and CTV5. These expenses are paid for out of dedicated PEG access fees.

The Sewer Fund utility revenue is higher than anticipated which results in an increase in the corresponding franchise fee and billing costs.

To maintain compliance with local budget law a supplemental budget must be adopted to allow an increase in expenditure appropriations.

RECOMMENDATION: Staff recommends that Council adopt Resolution No. 1286
ATTACHED: Resolution No. 1286

RESOLUTION NO. 1286

A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE 2017-2018 FISCAL YEAR.

WHEREAS, the City of Canby budget for the 2017-2018 fiscal year was adopted by the City Council at a regular meeting thereof on Wednesday, June 14, 2017; and

WHEREAS, the City of Canby has unforeseen expenses and has also received unanticipated revenues; and

WHEREAS, a supplemental budget is required in order to expend the unanticipated revenues; and

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

Section 1. Appropriations for the 2017-18 budget year are increased in the following amounts.

	Current Appropriation	Change	Revised Appropriation
General Fund			
Planning Revenue	78,100	30,000	108,100
Planning Department	235,504	30,000	265,504
	^^		
Not Allocated Special Payments	30,000	5,000	35,000
Contingency	552,876	(5,000)	547,876
Sewer Combined Fund			
Sewer Utility Revenue	4,030,000	15,000	4,045,000
Not Allocated Materials & Services	322,260	15,000	337,260

This resolution shall take effect on June 20, 2018.

ADOPTED this 20th day of June 2018 by the Canby City Council.

Brian Hodson, Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION VERIFYING THAT THE CITY OF CANBY
HAS MET THE REQUIREMENTS TO RECEIVE STATE-
SHARED REVENUE MONEY.**

Issue: Annual verification that the City has met the requirements to receive revenues from intergovernmental taxes.

Background: ORS 221.760 Prerequisites for cities in counties over 100,000 population to receive revenues from cigarette, gas and liquor taxes. (1) The officer responsible for disbursing funds to cities shall disburse such funds in the case of a city located within a county having more than 100,000 inhabitants, according to the most recent federal decennial census, only if the officer reasonably is satisfied that the city meets the requirements or if the city provides four or more of the following municipal services; (a) Police protection, (b) Fire protection, (c) Street construction, maintenance and lighting, (d) Sanitary sewers, (e) Storm sewers, (f) Planning, zoning and subdivision control, or (g) One or more utility services.

Recommendation: That council adopts Resolution No. 1287 certifying that the city has met the requirements to receive state-shared revenue money.

Fiscal Impact: The city estimates amounts to be received are \$20,200 for cigarette taxes, \$282,000 for liquor taxes, and \$1,169,000 for gas taxes.

Attached: Resolution No. 1287

RESOLUTION NO. 1287

**A RESOLUTION VERIFYING THAT THE CITY OF CANBY HAS MET THE
REQUIREMENTS TO RECEIVE STATE-SHARED REVENUE MONEY.**

WHEREAS, ORS 221.760 provides as follows:

Section 1. The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820, and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse such funds only if the city provides four or more of the following services:

1. Police protection
2. Fire protection
3. Street construction, maintenance, and lighting
4. Sanitary sewer
5. Storm sewers
6. Planning, zoning, and subdivision control
7. One or more utility services and:

WHEREAS, City officials recognize the desirability of assisting the state officer responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760,

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council, Clackamas County, Oregon hereby certifies that it provides the following four or more municipal services enumerated in Section 1, ORS 221.760:

1. Police protection
2. Street construction, maintenance and lighting
3. Sanitary sewers
4. Storm sewers
5. Planning, zoning and subdivision control

This Resolution shall take effect on June 20, 2018.

ADOPTED this 20th day of June 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION DECLARING THE CITY'S ELECTION TO
RECEIVE STATE REVENUE FOR FISCAL YEAR 2018-2019.**

Issue: A resolution declaring the City's election to receive state revenues for fiscal year 2018-2019.

Background: State Revenue Sharing Law, ORS 221.770, requires cities to annually pass an ordinance or resolution requesting state revenue sharing money. The law mandates public hearings be held by the city, both before the budget committee to discuss possible uses of the funds and before the city council on the proposed uses of the funds in relation to the entire budget. Certification of these hearings are required. This has to be done and filed with the Oregon Department of Administrative Services prior to July 31.

Recommendation: That council adopt Resolution 1288 declaring the city's election to receive state revenue for fiscal year 2018-2019.

Fiscal Impact: The amount estimated by the city to receive is approximately \$183,500.

Attached: Resolution No. 1288

RESOLUTION NO. 1288

A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE FOR FISCAL YEAR 2018-2019.

WHEREAS, a public hearing for the use of state revenue sharing funds was held before the Budget Committee on May 17, 2018 and before City Council on June 20, 2018;

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

Section 1 Pursuant to ORS 221.770, the City of Canby hereby elects to receive state revenues for fiscal year 2018-2019.

This Resolution shall be effective on June 20, 2018.

ADOPTED this 20th day of June 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: A RESOLUTION ADOPTING THE BUDGET, MAKING
APPROPRIATIONS, AND IMPOSING AND CATEGORIZING
TAXES FOR THE 2018-2019 FISCAL YEAR.

Issue: Oregon budget law requires adoption of an annual budget by June 30 of each year. ORS 294.453 requires the City to hold a public hearing, and ORS 294.458 requires the City to submit tax certification documents to the County Assessor by July 15th.

Background: The City passed a local option levy of \$0.49 per \$1,000 of assessed property value on November 08, 2016 to fund Swim Center operations. The City levies the taxes provided for in the adopted budget at the permanent rate of 3.4886 per \$1,000 of assessed property value. These taxes are hereby levied upon all taxable property within the district as of July 1, 2018. The allocation and categorization are subject to the limits of section 11, Article XI of the Oregon Constitution.

Recommendation: Staff recommends City Council adopt Resolution No. 1289

Attached: Resolution No. 1289

RESOLUTION NO. 1289

A RESOLUTION ADOPTING THE BUDGET, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAX FOR THE 2018-2019 FISCAL YEAR

WHEREAS, a public hearing for the 2018-2019 City Budget as approved by the Budget Committee was duly and regularly advertised and held on June 20, 2018; and

WHEREAS, the City Council of Canby proposes to levy the taxes provided for in the adopted budget at the permanent rate of 3.4886 per \$1,000 and a local option levy of 0.49 per \$1,000 of assessed property value and that these taxes be levied upon all taxable property within the district as of July 1, 2018; and

WHEREAS, the following allocation and categorization subject to the limits of section.11, Article XI of the Oregon Constitution make up the above aggregate levy.

RESOLUTION ADOPTING THE BUDGET

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council, that it hereby adopts the budget for fiscal year 2018-19 in the total of \$29,379,830. This budget is now on file at City Hall, 222 NE 2nd Avenue, Canby, Oregon.

RESOLUTION MAKING APPROPRIATIONS

BE IT RESOLVED that the amounts for the fiscal year beginning July 1, 2018, and for the purposes shown below are hereby appropriated:

General Fund		Library Fund	
Administration	\$ 1,126,873	Library	\$ 957,644
Court	432,937	Transfers Out	625,778
Planning	323,645	Contingency	3,370
Parks	959,611	Total	\$ 1,586,792
Building	53,387		
Police	5,713,347	Transit Fund	
Cemetery	139,326	Transit	\$ 2,187,427
Finance	476,610	Transfers Out	185,937
Economic Dev.	533,955	Contingency	175,000
Not Allocated		Total	\$ 2,548,364
Personnel Services	90,000		
Materials & Services	46,672	Swim Levy Fund	
Transfers	159,243	Swim	\$ 1,264,555
Contingency	500,000	Transfers Out	88,071
Total	\$ 10,555,606	Contingency	75,000
		Total	\$ 1,427,626

Streets Fund	
Streets	\$ 4,883,259
Transfers Out	220,345
Contingency	110,000
Total	\$ 5,213,604

SDC Fund	
Transfers Out	\$ 1,837,378

Cemetery Perpetual Care Fund	
Transfers Out	\$ 500,000

Forfeiture Fund	
Forfeiture	\$ 52,015

Facilities Fund	
Facilities	\$ 384,295
Contingency	30,047
Total	\$ 414,342

Fleet Fund	
Fleet	\$ 632,554
Contingency	67,363
Total	\$ 699,917

Tech Services Fund	
Tech Services	\$ 335,205
Contingency	30,543
Total	\$ 365,748

Sewer Fund	
WWTP	\$ 1,303,283
Collections	1,501,517
Stormwater	292,850
Not Allocated	
Personnel Services	48,810
Materials & Services	330,000
Transfers Out	466,978
Contingency	235,000
Total	\$ 4,178,438

RESOLUTION IMPOSING AND CATEGORIZING THE TAX

BE IT RESOLVED that the following ad valorem property taxes are hereby imposed and categorized for the tax year 2018-2019 upon the assessed value of all taxable property within the district:

General Government Limitation

- (1) At the rate of \$3.4886 per \$1,000 of assessed value for permanent rate tax;
- (2) At the rate of \$0.4900 per \$1,000 of assessed value for local option tax; and

Excluded from Limitation

- (3) In the amount of \$ 0 for debt service for general obligation bonds;

The above resolution statements were approved and declared adopted on this 20th day of June 2018.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION ADOPTING UPDATED PUBLIC PROCUREMENT
AND CONTRACTING RULES.**

ISSUE: Updating the contracting and procurement rules for the City of Canby.

SYNOPSIS: On June 1, 2005 the Canby City Council acting as the Canby Contract Review Board adopted resolution 897 to implement Public Contracting Rules.

This policy has not been reviewed or updated since 2005. Many of the references to State Statutes and Administrative Rules have been updated and changed since 2005. This updated policy takes into account all of the changes to date in the State Laws.

In addition to updates in State Law the City recently underwent an ODOT review of our Transit system. One of the findings from that review was the need to have a policy that clearly stated the procurement rules when using Federal Award money. This new policy includes a section for purchases made with Federal money thereby remedying the review finding.

RECOMMENDATION: Staff recommends that Council adopt Resolution No. 1290
ATTACHED: Resolution No. 1290
Exhibit A – City of Canby Administrative Policy on Contracting and Procurements

RESOLUTION NO. 1290

**A RESOLUTION ADOPTING UPDATED PUBLIC PROCUREMENT AND
CONTRACTING RULES; AND REPEALING RESOLUTION NO. 897**

WHEREAS, by Resolution No. 897, the Canby City Council, acting in its capacity as the City's Local Contract Review Board, ("Board") adopted purchasing rules and related exemptions to supersede the temporary rules established by Ordinance No. 1170.; and

WHEREAS, Section 2 of Ordinance No. 1170 provides that the Board may adopt, by resolution, rules to supersede any portion or all of the temporary rules; and

WHEREAS, the City requests the Board to adopt updated rules attached as "Exhibit A", which supersede the rules established in Resolution No. 897, and repeal Resolution No. 897.

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council, acting in its capacity as the City's Public Contract Review Board, as follows:

1. The City Council hereby adopts Resolution No. 1290 with "Exhibit A" to establish updated Procurement and Contracting rules.
2. Resolution No. 897 is hereby repealed.

This resolution shall take effect on June 20, 2018.

ADOPTED this 20th day of June 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

00CITY OF CANBY ADMINISTRATIVE POLICY	Effective Date: 06/20/2018
Contracting and Procurement	Resolution #1290

SECTION I:	Purpose
SECTION II:	Authority and Delegation
SECTION III:	Procurement and Contract Expenditure Authority Levels
SECTION IV:	Solicitation Preferences
SECTION V:	Methods of Source Selection
SECTION VI:	Goods Procurement and Non-Professional Services Contracts
SECTION VII:	Personal/Professional Services Contracts
SECTION VIII:	Public Works Contracts
SECTION IX:	Construction/Public Improvement Contracts
SECTION X:	Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying and Related Services Contracts
SECTION XI:	Procurements Using Federal Funds
SECTION XII:	Definitions

SECTION I.

PURPOSE

This policy is intended to:

- Use public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by promoting impartial and open competition;
- Provide appropriate authority for and control over City expenditures;
- Ensure compliance with the Oregon Department of Administrative Services (DAS) contracting and procurement policy, Oregon Public Contracting Code (Code), and the Department of Justice Model Rules; and the Federal Uniform Guidance for Grants and Agreements;
- Fully implement the Code and the City's Public Contracting Rules (Resolution 1290) by delegating authority for purchasing decisions;
- Define signature authority levels for City expenditures.

SECTION II.

AUTHORITY AND DELEGATION

1. General Authority

The City Administrator shall serve as the Purchasing Manager for the City and is authorized to issue all solicitations and to award all City contracts to complete work outlined in the adopted budget or if the contract price does not exceed \$10,000. Subject to this chapter, the Purchasing Manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City's contracting needs. The Purchasing Manager shall hear all solicitation and award protests.

2. Delegation of Purchasing Manager's Authority

Any of the responsibilities or authorities of the Purchasing Manager under this chapter may be delegated and sub-delegated by the Purchasing Manager.

3. Mandatory Review of Rules

Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Oregon Department of Administrative Services (DAS) contracting and procurement policy, Oregon Public Contracting Code (Code), and the Model Rules, the Purchasing Manager shall cause the Public Contracting Rules and Administrative Policy to be reviewed, and make any modifications required to ensure compliance with statutory changes.

4. Legal Framework

The laws, ordinances, and rules applicable to purchasing, contracting, and the sale of City property are:

- A. Oregon Revised Statutes:
 - 1. ORS Chapter 279A regarding public contracting – general provisions
 - 2. ORS Chapter 279B regarding public contracting – public procurements
 - 3. ORS Chapter 279C regarding public contracting – public improvements and related contracts
- B. Oregon Administrative Rules, Chapter 125 and 137; and
- C. Oregon Constitution.

SECTION III.

PROCUREMENT AND CONTRACT EXPENDITURE AUTHORITY LEVELS

When the City Administrator, a Director or a Manager/Supervisor approves City expenditures, a purchase order, or timecard s/he is approving that:

- A. The expenditure is an appropriate use of City funds.
- B. The expenditure has been approved by the City Council in the adopted budget.
- C. There are funds available in the budget for the expenditure.
- D. The account coding associated with the expenditure is correct.

Expenditures are authorized as follows:

City Council	Expenditures of budgeted funds for a single purchase or contract in excess of \$50,000 or expenditures of sums not appropriated in the budget.
City Administrator	Up to \$50,000 unless expenditure causes the City to exceed a budget appropriation. City Council must approve if exceeds budget appropriation.
Assistant City Administrator or Finance Director	Up to \$25,000 unless expenditure causes the City to exceed a budget appropriation.
All other City Directors	Up to \$10,000 unless expenditure causes the City to exceed a budget appropriation.
Managers and Supervisors	Up to \$5,000 unless expenditure causes the City to exceed a budget appropriation.

SECTION IV.

SOLICITATION PREFERENCES

Under ORS 279A, the following preferences for procurements and contracts should be taken into account when soliciting goods or services:

1. Preference for Oregon goods and services; nonresident bidders

- A. For the purposes of awarding a public contract, the City shall:
 - I. Give preference to goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal; and
 - II. Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference give to the bidder in the state in which the bidder resides.
- B. When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the bidder shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.
- C. The Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each state. A contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

2. Preference for recycled materials

- A. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

3. Preference for goods fabricated or processed within state or services performed within state

- A. Notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, when the City uses public funds to procure goods or services for a public use under ORS chapter 279B, the City may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent (10%) more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the contracting agency may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.
- B. The City by order may set a higher percentage than the percentage set forth in paragraph (A) of this subsection if the City, in a written determination to support the order, finds good cause to set the higher percentage and explains the City's reasons and evidence for the finding.
- C. Notwithstanding ORS 279C.320 (1), subsection (A) of this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320 (1).

SECTION V.

METHODS OF SOURCE SELECTION

Except as permitted by ORS 279B.065 through ORS 279B.085 (procurements listed in Section VI), the City shall award a public contract for goods or services by competitive sealed bidding under ORS 279B.055 or competitive sealed proposals under ORS 279B.060.

1. Competitive sealed bidding (ITB) (OAR 137-047-0255 and ORS 279B.055)

- A. **USE:** specification and cost-based with cost as the primary basis for award of the contract. Bids are submitted on pre-determined specifications.
- B. The City may solicit and award a public contract for goods or services, or may award multiple public contracts for goods or services when specified in the invitation to bid, by competitive sealed bidding.
- C. Reference OAR 137-047-0255 and ORS 279B.055 for specific instructions when dealing with competitive sealed bids.

2. Competitive sealed proposals (RFP) (OAR 137-047-0260 and ORS 279B.060)

- A. **USE:** when a goal or outcome is known, but multiple solutions may exist. This allows for comparison of solutions, demonstrations, and negotiations.
- B. RFP is looking for the highest quality with price being secondary. Used when City wants the ability to negotiate contract terms.
- C. The City may solicit and award a public contract for goods or services, or may award multiple public contracts for goods or services when specified in the request for proposals, by requesting and evaluating competitive sealed proposals.
- D. Reference OAR 137-047-0269 and ORS 279B.060 for specific instructions when dealing with competitive sealed proposals.

SECTION VI.

GOODS PROCUREMENT & NON-PROFESSIONAL SERVICES CONTRACTS

1. Buy Decision for Source Selection (OAR 125-247-0200)

- A. The buy decision means the decision to buy supplies and services through socio-economic programs, agreements, or the open market (source). The City is not required to make a buy decision based on the lowest price. See the specific statute or rules for the authority to use each source.
- B. The City **WILL ATTEMPT TO** make their buy decision in the priority order set forth in subsections (i) through (iv) (priority order). If a higher priority source satisfies a procurement, the City will attempt to procure through that higher priority source and may not elect to procure through a lower priority source.
 - i. Qualified Rehabilitation Facilities (QRFs) (ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045)
 - ii. Inmate Labor (Oregon Constitution, Article I, Section 41)
 - iii. Statewide DAS Price Agreement (OAR 125-247-0296).
Go to ORPIN and perform a “statewide contract search” or an “award search” for “active” contracts.
 - iv. Surplus Property (OAR 125-050-0100 through 125-050-0400)
When appropriate, the City will attempt to purchase goods through the surplus property system or govdeals.com.

- C. **ORS 190 Agreement.** Section (B) does not apply to ORS 190 Agreements that promote the use of existing state resources, including an Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement, or Tribal Agreement (OAR 125-246-0365). The City may elect to use an ORS 190 Agreement at any time and supersede the Buy Decision checklist.
- D. **Open Market.** If sections (B) and (C) do not apply, the City may procure supplies and services through the open market, using the methods provided under the Code, related Rules, and policies. (ORS 279A and B, OAR 125-246 and 247).
- E. **Minority, Women and Emerging Small Business (MWESB).** For a public contract with a value of \$5,000 or more, the City shall provide timely notice and information to the Advocate for Minority, Women, and Emerging Small Business regarding bid or proposal solicitations and contract awards. The Advocate should be notified by sending a fax or emailing the Office of Economic and Business Equity.

2. Small procurements (OAR 137-047-0265 and ORS 279B.065)

- A. The City may award a procurement of goods or services that does not exceed \$10,000 in any manner the City deems practical or convenient, including by direct selection award.
- B. A contract awarded under this section may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than one hundred twenty-five percent (125%) of the original contract price.
- C. The City may not artificially divide or fragment a procurement so as to constitute a small procurement under this section.
- D. If purchase is over \$5,000, the Minority, Women, and Emerging Small Business advocate must be notified. Posting to ORPIN meets the basic notification requirement for MWESBs.

3. Intermediate procurements (OAR 137-047-0270 and ORS 279B.070)

- A. The City may award a procurement of goods and services that exceeds \$10,000 but does not exceed \$150,000 in accordance with intermediate procurement procedures pursuant to ORS 279B.070.
- B. A contract awarded under this section may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than one hundred twenty-five percent (125%) of the original contract price or \$150,000, whichever is greater.
- C. The City may not artificially divide or fragment a procurement so as to constitute an intermediate procurement under this section.
- D. When conducting an intermediate procurement, the City shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The City shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the City shall make a written record of the effort the City makes to obtain the quotes or proposals.
- E. If the City awards a contract, the City shall award the contract to the offeror whose quote or proposal will best serve the interests of the City, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- F. If purchase is over \$5,000, the Minority, Women, and Emerging Small Business advocate must be notified. Posting to ORPIN meets the basic notification requirement for MWESBs.

4. Sole source procurements (OAR 137-047-0275 and ORS 279B.075)

- A. The City may award a contract for goods or services without competition when the City Council, City Administrator, Director, or Manager with the City, determines in writing, that the goods or services, or class of goods or services, are available from only one source.
- B. The determination of a sole source must be based on written findings that may include:
 - a. That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
 - b. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
 - c. That the goods or services are for use in a pilot or an experimental project; or
 - d. Other findings that support the conclusion that the goods or services are available from only one source.
- C. To the extent reasonably practical, the City shall negotiate with the sole source to obtain contract terms advantageous to the contracting agency.

5. Emergency procurements (OAR 137-047-0280 and ORS 279B.080)

- A. The City, or designee, may make or authorize others to make emergency procurements of goods or services in an emergency. The City shall document the nature of the emergency and describe the method used for the selection of the particular contractor.
- B. For an emergency procurement of construction services that are not public improvements, the City shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the City shall set a solicitation time period that the City determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity.

6. Special procurements (OAR 137-047-0285 and ORS 279B.085)

- A. Except as provided in subsection (3) of this section, to seek approval of a special procurement, the City shall submit a written request to the local contract review board that describes the contracting procedure, the goods or services or the class of goods or services that are the subject of the special procurement and the circumstances that justify the use of a special procurement under the standards set forth in subsection (4) of this section.
- B. The City Administrator or the local contract review board may approve a special procurement if the City Administrator or board finds that a written request submitted demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed:
 - a. Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
 - b. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
 - c. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted there under.
- C. Public notice of the approval of a special procurement must be given in the same manner as provided in ORS 279B.055 (4).
- D. If the City intends to award a contract through a special procurement that calls for competition among prospective contractors, the City shall award the contract to the offeror the City determines to be the most advantageous.

- E. When the City Administrator or local contract review board approves a class special procurement under this section, the City may award contracts to acquire goods or services within the class of goods or services in accordance with the terms of the approval without making a subsequent request for a special procurement.

SECTION VII.

PERSONAL/PROFESSIONAL SERVICES CONTRACTS

(For Architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services contracts, see section X)

1. Personal/Professional services contracts (OAR 137-047-0560 and ORS 279A.055)

- A. Except as otherwise provided in these rules, personal services contracts may be awarded in the same manner as contracts for services under ORS 279B.050, ORS 279B.060, and ORS 279B.085.
 - a. Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.
 - b. Contracts for personal services for which the estimate contract price does not exceed \$100,000 may be awarded using an informal solicitation for proposals. When informal solicitation is used under this subsection for personal services, the following shall be considered, but not be limited to, the person's (or persons'):
 - i. Professional expertise;
 - ii. Experience related to the particular type of work for that contract;
 - iii. Experience in working with public entities;
 - iv. History of completing such tasks in a timely manner;
 - v. Ability to work with the employees and groups involved in the project; and
 - vi. Price of services.
 - c. Three to five informally solicited competitive price quotes or competitive proposals are required.
 - d. Contracts for personal services for which the estimated contract price does not exceed \$100,000 may be awarded by direct appointment without competition from the City's current list of qualified consultants, another public contracting agency's current list of consultants pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS Chapter 190, or from consultants offering the necessary services that the City reasonably can locate.
 - e. Personal Service Contracts of not more than \$100,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Purchasing Manager determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

SECTION VIII.

PUBLIC WORKS CONTRACTS

1. Contracts for construction other than public improvements (OAR 137-049-0140)

- A. Contracting agencies shall enter into contracts for emergency work, minor alteration, ordinary repair or maintenance of public improvements, as well as any other construction contract that is not defined as a public improvement under ORS 279A.010 (Definitions for Public Contracting Code), in accordance with the provisions of ORS chapter 279B.

- B. Pursuant to ORS 279C.320, public contracts for construction services that are not public improvement contracts may be procured and amended as general trade services under the provisions of ORS 279B rather than under the provisions of ORS Chapter 279C. Emergency contracts for construction services are not public improvement contracts and are regulated under ORS 279B.080 or number 4 in this section.

SECTION IX.

CONSTRUCTION/PUBLIC IMPROVEMENT CONTRACTS

(For Architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services contracts, see section X)

1. Public improvement contracts intermediate procurements (OAR 137-049-0160)

- A. Public improvement contracts estimated by the City not to exceed \$100,000 may be awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.
- B. See OAR 137-049-0160 for complete listing of requirements.

2. Public improvement contracts – Alternative contracting methods (OAR137-049-0600 to OAR 137-049-0690)

Under ORS 279C.335, the City may use alternative contracting methods for public improvement contracts. These include, but are not limited to the following forms of contracting: design-build, energy savings performance contract and the construction manager/general contractor method. To the extent any such alternative contracting methods are utilized within the competitive bidding process set forth in ORS 279.335, these OAR 137-049-0600 to OAR 137-049-0690 rules are advisory only and may be used or referred to by the City.

3. Public improvement contracts – Formal procurement process (OAR 137-049-0200)

When a public improvement project cost is estimated to exceed \$100,000, the City will follow the formal procurement process outlined in OAR 137-049-0200 through OAR 137-049-0490.

SECTION X.

ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING, LAND SURVEYING AND RELATED SERVICES CONTRACTS

When selecting the most qualified consultant to perform architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, the City shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure).

- 1. The City shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required. The City may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation **only after** the contracting agency has selected a candidate pursuant to subsection (2) of this section.
- 2. Subject to the requirements of subsection (1) of this section, the procedures that the City creates to screen and select consultants and to select a candidate under this section are at the City's sole discretion. The City may adjust the procedures to accommodate the City's scope, schedule or

objectives for a particular project if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$250,000.

3. Notwithstanding the provisions of subsection (1) of this section the City may directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$100,000.
4. Notwithstanding the provisions of subsections (1) and (3) of this section, the City may directly appoint a consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.
5. The City's screening and selection procedures under this section, regardless of the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for a project, may include considering each candidate's:
 - A. Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
 - B. Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;
 - C. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - D. Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
 - E. Availability to the project locale;
 - F. Familiarity with the project locale; and
 - G. Proposed project management techniques.
6. If the screening and selection procedures the City creates under subsection (2) of this section result in the City's determination that two or more candidates are equally qualified, the City may select a candidate through any process the City adopts that is not based on the candidate's pricing policies, proposals or other pricing information.
7. The City and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the City as determined solely by the City. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.
8. If the City and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the City, the City shall, either orally or in writing, formally terminate negotiations with the selected candidate. The City may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the City terminates the consultant contracting process.

RELATED SERVICES

“Related services” means personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner’s representation services or land-use planning services. When the City selects a consultant to perform related services, it shall follow one of the following selection procedures:

1. When selecting a consultant on the basis of qualifications alone, the City shall follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), or 137-048-0220 (Formal Selection Procedure);
2. When selecting a consultant on the basis of price competition alone, the City shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information; and
3. When selecting a consultant on the basis of price and qualifications, the City shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals. For selections under the informal selection procedure of OAR 137-048-0210, the City may use abbreviated requests for proposals that nevertheless meet the requirements of 137-048-0210, when the City determines, in its sole discretion, that the characteristics of the project and the related services required by the City would be adequately addressed by a more abbreviated request for proposals document, generally comparable to the intermediate procurement procedures and related documentation under ORS 279B.070 and OAR 137-047-0270. If the City is subject to this section (2) may request and consider a proposer’s pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a proposal.

The City is not required to follow the procedures listed in either section (1) of architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or section (1) of related services, when the City has established price agreements with more than one consultant and is selecting a single consultant to perform architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services under an individual work order or task order. Provided, however, the criteria and procedures the City uses to select a single consultant, when the City has established price agreements with more than one consultant, must meet the requirements of OAR 137-048-0270 (price agreements).

Direct Appointment Procedure (137-048-0200)

The City may enter into a contract directly with a consultant for architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services without the following selection procedures set forth above in these rules when one of the conditions from OAR 137-048-0200 is met.

Informal Selection Procedure (137-048-0210)

The City may use the informal selection process to obtain a contract with a consultant for architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services without the following selection procedures set forth above in these rules when one of the conditions from OAR 137-048-0210 is met.

Formal Selection Procedure (137-024-0220)

Subject to OAR 137-048-0130 (applicable selection procedures; pricing information; disclosure of proposals), the City shall use the formal selection procedure described in this rule to select a consultant if the consultant cannot be selected under either 137-048-0200 (direct appointment procedure) or under 137-048-0210 (informal selection procedure). The formal selection procedure described in this rule may otherwise be used at the City's discretion.

If the City uses the formal selection procedure, it shall obtain contracts through public advertisement of requests for proposals, or requests for qualifications followed by requests for proposals.

SECTION XI.**PROCUREMENTS USING FEDERAL FUNDS**

When the City procures either goods or services using federal money the following rules must be followed:

1. Review Vendor for Suspension and Debarment

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Prior to hiring or contracting with a vendor the vendor must be run through the suspended and debarred database at www.sam.gov. If a vendor is suspended or debarred the City may not under any circumstances contract with this vendor

2. Purchase Method

The amount of the purchase and what the purchase is for will determine the correct purchasing process to follow. Below are the five purchasing processes to use when procuring goods or services using Federal money.

- A. **Micro Purchases** – the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$3,500. Micro-purchases may be awarded without soliciting competitive quotes if the City considers the price to be reasonable.

- B. **Small Purchases** – the acquisition of services, supplies, or other property that fall within the Simplified Acquisition Threshold of \$3,500 - \$150,000. Small purchases require price or rate quotes to be obtained from an adequate number of qualified sources.
- C. **Sealed Bid Purchases** – bids are publicly solicited and a fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bid and is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply.
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised;
 - b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - c. All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;
 - d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - e. Any or all bids may be rejected if there is a sound documented reason.
- D. **Competitive Proposal Purchases** – the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - b. Proposals must be solicited from an adequate number of qualified sources;
 - c. The City must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby

competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- E. **Noncompetitive Proposal Purchases** - procurement through solicitation of a proposal from only one source may be used only when one or more of the following circumstances apply:
- a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
 - d. After solicitation of a number of sources, competition is determined inadequate.

SECTION XII.

DEFINITIONS

Award means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City until the contract is executed and delivered by the City.

Bid means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

Concession agreement means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the City, and under which the concessionaire makes payments to the City based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.

Contract price means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

Contract review board or **local contract review board** means the Canby City Council.

Cooperative procurement means a procurement conducted by or on behalf of one or more contracting agencies.

Debarment means a declaration by the City Council under ORS 279B.130 or ORS 279C.440 or the Federal Government that prohibits a potential contractor from competing for the City's public contracts for a prescribed period of time.

Disposal means any arrangement for the transfer of property by the City under which the City relinquishes ownership.

Emergency means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

Energy savings performance contract means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

Findings are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

Goods means any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses related to the goods.

Informal solicitation means a solicitation made in accordance with the City's Public Contracting Rules to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

Intermediate procurement means a procurement of goods or services exceeding \$5,000 but not exceeding \$150,000.

Invitation to bid means a publicly advertised request for competitive sealed bids.

Model rules means the public contracting rules adopted by the Attorney General under ORS 279A.065.

Non-professional services contract means a contract with an independent contractor predominantly for services that do not require special training. Such services include, but are not limited to, the services of janitorial, landscaping, small equipment rental, and computer programming. The Purchasing Manager shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of non-professional services. *For Personal/Professional Services Contract, please see below.*

Offeror means a person who submits a bid, quote or proposal to enter into a public contract with the City.

Oregon Public Contracting Code means ORS Chapters 279A, 279B and 279C.

Person means a natural person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

Proposal means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or under an informal solicitation.

Personal/professional services contract means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Purchasing

Manager shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services. *For Non-Professional Services Contract, please see above.*

Public contract means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

Public improvement means a project for construction, reconstruction or major renovation on real property by or for the City. **Public improvement** does not include:

- a. Projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- b. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Purchasing manager means the City Administrator or the City Administrator's designee.

Qualified pool means a pool of vendors who are prequalified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

Quote means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

Related services means personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representation services or land-use planning services.

Request for proposals means a publicly advertised request for sealed competitive proposals.

Services means and includes all types of services (including construction labor) other than personal services.

Solicitation means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the City with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the City requests, receives and evaluates potential contractors and awards public contracts.

Solicitation Agent means with respect to a particular solicitation, the City employee charged with responsibility for conducting the solicitation and making an award or making a recommendation on award to the City Council.

Solicitation documents means all informational materials issued by the City for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria,

contract terms and specifications, and all laws, regulations and documents incorporated by reference.

Standards of responsibility means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- b. A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- c. A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- d. Qualified legally to contract with the City;
- e. Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and
- f. Not been debarred by the City, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

Surplus property means personal property owned by the City which is no longer needed for use by the department to which such property has been assigned.

M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION CREATING A NEW SPECIAL REVENUE FUND
FOR TRANSIENT ROOM TAXES.**

ISSUE: Creating a new special revenue fund to account for and report on the Transient Room Tax.

SYNOPSIS: On May 16, 2018 the Canby City Council approved a new Chapter to the Canby Municipal Code to begin charging a Transient Room Tax effective July 1, 2018.

CMC Chapter 3.50.150 calls for creating a separate fund to administer the new Transient Room Tax.

Oregon Budget Law and GAAP both allow for Special Revenue Funds to account for dedicated revenue sources.

RECOMMENDATION: Staff recommends that Council adopt Resolution No. 1291

ATTACHED: Resolution No. 1291

RESOLUTION NO. 1291

A RESOLUTION CREATING A NEW SPECIAL REVENUE FUND FOR TRANSIENT ROOM TAXES.

WHEREAS, Canby Municipal Code 3.50.150 (A) provides as follows: *Transient Room Tax Fund: The Tax Administrator shall place all monies received pursuant to this order in the Transient Room Tax Fund*; and

WHEREAS, The City of Canby will begin charging a Transient Room Tax effective July 1, 2018; and

WHEREAS, 70% of the net proceeds of the transient room tax are dedicated to fund tourism promotion or tourism related facilities in accordance with ORS Chapter 320; and

WHEREAS, 30% of the funds will be dedicated to related programs, events, and support services that enhance tourism in Canby; and

WHEREAS, Generally Accepted Accounting Principles (GAAP) provide special revenue funds to account for and report the proceeds of specific revenue sources that are restricted for specific purposes;

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council that a new special revenue fund will be created and named the Transient Room Tax Fund to account for and report on revenue received from the Canby Transient Room Tax.

This Resolution shall take effect on July 1, 2018.

ADOPTED this 20th day of June 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION AUTHORIZING AN INTERFUND LOAN FROM THE CEMETERY PERPETUAL CARE FUND TO THE LIBRARY FUND IN THE AMOUNT OF \$500,000 AND AUTHORIZING REPAYMENT OF THE INTERFUND LOAN IN FISCAL YEAR 2018-19.**

ISSUE: Authorizing an interfund loan from the Cemetery Perpetual Care Fund to the Library Fund in an amount not to exceed \$500,000 and authorizing the repayment of said loan from the Library Fund to the Cemetery Perpetual Care Fund with interest in FY 2018-19.

SYNOPSIS: On June 20, 2018 the Canby City Council adopted a budget that included and interfund loan from the Cemetery Perpetual Care Fund to the Library Fund for operational purposes.

The Library Fund has used the majority of their reserve balances and will not receive the bulk of their annual revenue until January 2019. Oregon Budget Law does not allow a Fund to run a deficit balance, therefore an interfund loan is needed to cover the operations costs until property tax revenue is received from Clackamas County in January 2019.

This interfund loan will be repaid in FY2018-19 with interest at the approximate yield of the Oregon State Local Investment Pool.

Without a long term funding strategy for the Library it is likely that an interfund loan will be needed every year to cover costs until revenue is received.

RECOMMENDATION: Staff recommends that Council adopt Resolution No. 1292

ATTACHED: Resolution No. 1292

RESOLUTION NO. 1292

A RESOLUTION AUTHORIZING AN INTERFUND LOAN FROM THE CEMETERY PERPETUAL CARE FUND TO THE LIBRARY FUND IN THE AMOUNT OF \$500,000 AND AUTHORIZING REPAYMENT OF THE INTERFUND LOAN IN FISCAL YEAR 2018-19.

WHEREAS, the City of Canby adopted a budget and appropriated funds for Fiscal Year 2018-19 by Resolution 1289, which provided for an interfund loan from the Cemetery Perpetual Care Fund to the Library Fund, and provided for repayment of the interfund loan; and

WHEREAS, ORS 294.460 provides that one fund may loan funds to another fund for operational purposes, provided that the loan is approved by resolution of the governing body and that such loan is scheduled to be repaid no later than the subsequent fiscal year; and

WHEREAS, The Library Fund does not have sufficient reserves to cover the anticipated operating costs prior to the receipt of property tax revenue from Clackamas County in January 2019; and

WHEREAS, it is the intent of the City to loan these funds at a rate that approximates the yield earned by the State of Oregon Local Investment Pool during the period these funds are outstanding; and

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council that:

1. The Cemetery Perpetual Care Fund is authorized to loan to the Library Fund an amount up to \$500,000 in FY 2018-19.
2. The loan shall be repaid in fiscal year 2018-19 with interest bearing at a rate which approximates the yield earned by the State of Oregon Local Investment Pool.
3. The Library Fund is authorized to repay to the Cemetery Perpetual Care Fund the principal amount borrowed in FY 2018-19 plus interest at a rate that approximates the yield in the State of Oregon Local Investment Pool.

This Resolution shall take effect on July 1, 2018.

ADOPTED this 20th day of June 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

M E M O R A N D U M

DATE: June 20, 2018
TO: Honorable Mayor Hodson and City Council
FROM: Julie Blums, Finance Director
CC: Rick Robinson, City Administrator
RE: **A RESOLUTION ADOPTING RULES FOR ADMINISTRATION OF
FEDERAL AWARDS.**

ISSUE: Adopting a policy for the administration of Federal Awards.

SYNOPSIS: On December 26, 2013 the Office of Budget and Management issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards rules referred to as the Uniform Guidance. These new rules set out the requirements for using federal money that must be followed by all Government agencies. The OMB put into place and extension for implementation for non-Federal agencies until June 30, 2018.

If the City of Canby wants to continue to receive Federal Awards for any purpose we are required to have a policy in place prior to July 1, 2018 stating the rules the City will follow when managing Federal Awards. This policy meets the requirements to continue receiving Federal Awards.

RECOMMENDATION: Staff recommends that Council adopt Resolution No. 1293
ATTACHED: Resolution No. 1293
Exhibit A – City of Canby Administrative Policy the
Administration of Federal Awards

RESOLUTION NO. 1293

A RESOLUTION ADOPTING RULES FOR ADMINISTRATION OF FEDERAL AWARDS

WHEREAS, The Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in December of 2013; and

WHEREAS, the new rules are referred to as the Uniform Guidance (UG) and Non-Federal Agencies were given an extension for implementation until June 20, 2018; and

WHEREAS, the City has created an administrative policy to comply with the UG and the policy must be adopted prior to July 1, 2018.

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council that Resolution 1293 with “Exhibit A” is adopted to create an Administrative Policy for the Administration of Federal Awards.

This resolution shall take effect on June 20, 2018.

ADOPTED this 20th day of June 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

CITY OF CANBY ADMINISTRATIVE POLICY	Effective Date: 06/20/2018
Administration of Federal Awards	Resolution # 1293

PURPOSE: This policy is intended to:

- Establish policies and procedures over the administration of Federal Awards;
- To establish policies and procedures over the allowable costs of Federal Awards, including those passed through from the State of Oregon or other granting organizations.

AUTHORITY: The Canby City Council may establish rules and regulations in reference to managing the interests and business of the City under ORS 221.

APPLICABILITY: Every department head, elected official, employee or agent of the county (public official) who has authority to receive or expend Federal Financial Assistance is responsible for compliance with the policy. Each is responsible for ensuring that Federal Financial Assistance is administered in accordance with the purpose of the Federal Award Agreement and in compliance with all applicable laws and regulations.

GENERAL POLICY: All Federal Awards are subject to the established requirements as set forth by the federal government in the Uniform Guidance for Federal Awards (Uniform Guidance) and other laws and regulations as required by the Federal Award Agreement and the granting agency.

DEFINITIONS:

Federal Award: Federal Financial Assistance that a non-federal entity receives directly from a federal awarding agency or indirectly from a pass-through entity, or a cost-reimbursement contract under federal acquisition regulations that a non-federal entity receives directly from a federal awarding agency or indirectly from a pass-through entity.

Federal Award Agreement: the instrument setting forth the terms and conditions of a Federal Award. The instrument is a grant agreement, cooperative agreement or any other agreement providing Federal Financial Assistance, or a cost-reimbursement contract awarded under federal acquisition regulations.

Federal Financial Assistance: assistance that non-federal entities receive to administer a Federal Award in the form of: grants, cooperative agreements, non-cash contributions, donations of property, direct appropriations, food commodities, loans, loan guarantees, interest subsidies or insurance.

ADMINISTRATIVE REQUIREMENTS: Each public official that has responsibility for administering a Federal Award shall:

- a. Provide efficient and effective administration of the Federal Award through the application of sound management practices;
- b. Administer federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal Award;
- c. Comply with the cost principles established by the federal government, support the accumulation of costs as required by the cost principles, and provide adequate documentation to support costs charged to the Federal Award;
- d. Apply costs and cost allocations related to indirect costs and administrative charges on a consistent basis and in accordance with federal cost principles and city policy.
- e. Ensure that no profit results from the use of Federal Financial Assistance, unless explicitly authorized by the terms and conditions of the Federal Award (i.e. program income); and
- f. Establish a process of internal control, designed to achieve the objectives of the Federal Award, in a manner that also achieves the following:
 - i. Effective and efficient operations;
 - ii. Reliable reporting for internal and external use;
 - iii. Evaluating and monitoring compliance with all applicable laws and regulations;
 - iv. Taking prompt action when instances of noncompliance are identified;
 - v. Taking reasonable measures to safeguard protected personally identifiable information.

PAYMENTS OF FEDERAL AWARDS: Payment methods must minimize the time elapsing between the receipt of funds from the federal agency or pass-through entity and the disbursement of those funds by the city, whether the payment is made by electronic funds transfer, issuance or redemption of checks or warrants, or payment by any other means.

- a. Standard practice in the city is to operate Federal Awards on a reimbursement basis, wherein costs are incurred first, then reimbursement of those costs is requested from the federal agency or pass-through entity in order to minimize the time elapsing between transfers of funds.
- b. When the reimbursement method is not feasible, advance payments may be requested to administer a Federal Award with the following considerations:
 - i. Time elapsing between the receipt of funds from the federal agency or pass-through entity and the disbursement of those funds must be no more than 3 business days;
 - ii. Funds that cannot be disbursed within 3 business days must be deposited in an interest-bearing fund and cost center (program, service and/or project), and allocated a fair share of monthly interest earnings; and
 - iii. Interest earnings in excess of \$500 per year must be returned to the federal agency or pass-through entity.

CONFLICT OF INTEREST: A public official, including any department head, elected official, employee or agent of the city, shall not participate in the selection, award or administration of a contract supported by a Federal Award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the public official, or any member of his or her immediate family, or an organization which employs or is about to employ any of the parties indicated herein, receives a financial or other personal benefit from an organization considered for a contract supported by a Federal Award. Violations of such standards by a public official will be subject to disciplinary action in accordance with city policies.

AUDIT REQUIREMENTS:

- a. The city must procure or arrange for the city's audit as required by Section 200.508-200.512, under the Uniform Guidance.
- b. The city will prepare the following statements and schedules:
 - i. Financial statements that reflect its financial position, results of operations or changes in net position, and, where appropriate, cash flows for the fiscal year audited;
 - ii. Schedule of Expenditures of Federal Awards (SEFA) for the period covered by the auditee's financial statements which must include the total Federal Awards expended;
- c. Audit Finding Follow Up – the city is responsible for follow-up and corrective action on all audit findings. The city will prepare a summary schedule of prior audit findings and a corrective action plan for current year findings; and
- d. Report Submission – the city will complete the data collection form within the earlier of 30 days after receipt of the auditor's report or nine months after the end of the audit period. The reporting package must include items as listed in the Uniform Guidance Section 200.512 (c).

ALLOWABLE COSTS: The total cost of a Federal Award is the sum of the allowable direct and allocable indirect costs, less any applicable credits. Costs must meet the following criteria to be allowable under Federal Awards:

- a. Be necessary and reasonable for the performance of the Federal Award and be allocable (chargeable or assignable) to that Federal Award in accordance with the relative benefits received.
- b. Conform to any limitations or exclusions set forth in the Uniform Guidance or in the Federal Award Agreement as to type or amount of cost items.
- c. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the city.
- d. Be given consistent treatment. A cost may not be assigned to a Federal Award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal Award as an indirect cost.
- e. Be determined in accordance with generally accepted accounting principles (GAAP).
- f. Not be included as a cost or used to meet cost-sharing or matching requirements of any other federally financed program in either the current or a prior period.
- g. Be adequately documented.
- h. Comply with the general cost provisions of the Uniform Guidance, 2 CFR Section 200.420. Examples of unallowable costs include, but are not limited to: alcohol, bad debts, contributions and donations, entertainment costs, goods and services for personal use, lobbying, organization costs associated with incorporation fees, and selling and marketing costs (except for prior approval of federal awarding agency).
- i. Receive prior written approval for certain items of cost as outlined in the Uniform Guidance, 2 CFR Section 200.407.

CLASSIFICATION OF COSTS: All costs associated with Federal Awards shall be classified as direct or indirect costs. All allowable costs should be included in the budget or the financial plan of the Federal Award Agreement. Disallowed costs will not be charged to the Federal Award.

- a. Direct Costs – Those costs that can be identified specifically with a particular cost objective or that can be directly assigned to such activities easily and with a high degree of accuracy. Examples include, but are not limited to: payroll costs of employees who work directly on the

Federal Award, materials and other expenses incurred in direct relation to administering the Federal Award, and sub recipient expenses.

- b. Indirect Costs – Those costs incurred for a common or joint purpose benefitting more than one cost objective and/or not readily assignable to the cost objective benefitted. For example, administrative costs charged to the grant based on a cost allocation plan or approved indirect cost rate would be considered indirect costs.
- c. Disallowed Costs - Those costs that the federal awarding agency or pass-through entity determines to be unallowable, in accordance with applicable federal statutes, regulations, and terms and conditions of the Federal Award. To determine whether a cost is allowed or disallowed, refer to:
 - i. The Federal Award Agreement and
 - ii. Section 200.420-475 General Provisions for Selected Items of Cost under the Uniform Guidance for Federal Awards. If unable to determine whether the cost is allowed or disallowed, contact the federal awarding agency or granting agency administering the Federal Award for further clarification.

ADMINISTRATIVE CHARGES ON FEDERAL AWARDS: Administrative charges must be allocated as a reimbursable cost or in-kind cost to maintain consistency in the application of administrative charges.

- a. Departments will include administrative charges in the grant application in accordance with the city's approved cost allocation plan and/or indirect cost rate.
- b. Administrative charges will be included in the budget of the Federal Award approved by the awarding agency.
- c. If the Federal Award Agreement prohibits administrative charges or has a cap on those types of costs, the department will be responsible for including those costs as an in-kind match against the Federal Award.
- d. The Finance Director or City Administrator may grant an exception to the allocation of administrative charges to a federal award.

DISPOSAL OF FIXED ASSETS PURCHASED WITH FEDERAL AWARDS: Funds received from federal assistance may be used to purchase fixed assets, if allowed by the awarded federal assistance contract. When the fixed asset is no longer needed for the project funded by the grant, the fixed asset may be disposed of as outlined below:

- a. Real Property includes buildings, land (including improvements), and structures. If a grantee can no longer use the real property, the federal agency will direct the City to:
 - i. Sell the property and pay the federal agency its share of the proceeds according to matching or cost-sharing ratios;
 - ii. Retain the property and pay the agency its share of the market value of the property; or
 - iii. Transfer title to the federal agency and receive its share of the market value.
- b. Equipment includes tangible personal property having an acquisition cost in excess of \$5,000 and a useful life of more than one year.
 - i. If the current market value of the equipment is less than \$5,000, the city may sell or retain it without compensating the federal government.
 - ii. If the property is worth \$5,000 or more, a grantee has several options from which to choose. In absence of instructions from the awarding agency, within 120 days after the end of federal support of the project the City may:
 - 1. Retain the equipment or
 - 2. Sell the equipment and pay the federal agency their share of the market value.

PERIODIC REVIEW: This policy will be reviewed by the Finance Director at least every three years.

ORDINANCE NO. 1484

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH MASTER CLEEN, INC. FOR JANITORIAL SERVICES FOR VARIOUS CITY FACILITIES, NOT TO EXCEED \$57,787.00; AND REPEALING ORDINANCE 1452

WHEREAS, the City of Canby requires ongoing scheduled janitorial services in order to properly maintain City facilities for the comfort and safety of its employees and citizens; and

WHEREAS, the City has previously adopted Ordinance 1452 which selected Master Clean, Inc., as an independent contractor under a personal services contract for the purpose of carrying out the these activities; 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 Master Clean, Inc., the copy of said contract is attached hereto and marked as Exhibit "A" and by this reference fully incorporated herein.

Section 2. Ordinance 1452 is hereby repealed.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, June 6, 2018, 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, June 20, 2018, commencing at the hour of 7:30 p.m. in the Council Meeting Chambers located at 222 NW 2nd Avenue, 1st Floor, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

2nd Reading

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on June 20, 2018 by the following vote:

YEAS_____ NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

Exhibit "A"

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and MASTER CLEEN, INC. (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 according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that \$57,787.00 is the not to exceed price of this contract, without prior written approval from the City.
 - B. 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.
 - C. 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 this agreement as well as applicable OSHA regulations and requirements.

6. Work is Property of City. All work performed 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.

7. Term.

- A. This Agreement may be terminated by:

1. Mutual written consent of the parties.
2. Either party, upon thirty (30) 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.

8. 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.

By entering into this agreement, contractor represents and warranties that they have complied with the tax laws of the State of Oregon and the City of Canby.

Further, for the duration of this contract, Contractor promises to continue to comply with said State and local tax laws. Any failure to comply with tax laws will be considered a default of this contract and could result in the immediate termination of this agreement and/or other sought damages or other such relief under applicable law.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

A. For Comprehensive General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. **(Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.).** For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.

10. 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.

11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.

12. 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, electronically, faxed, 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.
13. 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.
14. 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.

CITY: Rick Robinson, City Administrator
City of Canby
PO Box 930
Canby, OR 97013

CONTRACTOR: Jim Dye
Master Clean, Inc.
PO Box 208
Oregon City, OR 97045

**Please submit invoices to: Attn: Accounts Payable
City of Canby
PO Box 930
Canby, OR 97013
ap@canbyoregon.gov**

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

CONTRACTOR: CITY OF CANBY

By: By:

Date: Date:

Subcontractors will be used ____ Yes ____ No (If Yes, please complete List of Subcontractors attached to this Agreement)

Approved as to Form:

Joseph Lindsay, City Attorney

11/6/15

LIST OF SUBCONTRACTORS

As per Section 5 of the Personal Services Agreement, the following businesses will be subcontractors. Subcontractors are required to have a City of Canby Business License prior to commencing work under this contract.

[illegible]

The City hereby approves the above listed subcontractors.

City of Canby

Date _____

**Masterclean Schedule
FY 2018-2019**

Exhibit "A"

Facility Location	General Info	Bathrooms Other	Lunch Rooms Offices	Floors	Glass	Annual Rate
CAT OFFICE	3 x per week General cleaning rules apply			S/W HARD FLOOR 1 x per year CARPET 1 x per year	GLASS 2 x per year	\$234 a month \$2,808
CAT TRANSIT STATION	General cleaning rules apply	BATHROOM 1 x per week	LUNCHROOM 2 x per week	FLOOR 1 x per year	GLASS 2 x per month CIGARETTE CANS 2 x per month	Glass - \$52 a month Driver Lounge - \$88 a month Driver Bathroom - \$62 a month CAT Lounge Floors - \$150/yr. \$2,574
CIVIC BUILDING	ENTRY AREA Clean entry doors, Vacuum sweep and mop, Pick up any trash left in the area KITCHEN AREAS Empty trash, Wipe down tables and counter tops, Wipe counter faces, Wipe off faces of microwaves fridges, (Does not include cleaning them inside), Restock supplies as applicable, Wall smudges, Clean sinks, Mop floors	BATHROOMS Clean Sinks, Toilets, Mirrors, Counters and door faces, Wall smudges, Empty trash, Restocking supplies, Mopping the floors, Using disinfectant products STAIRS AND ELEVATOR Sweep, Mop and or vacuum stairs. Prints on inside and out and vacuum Elevator	OFFICES Empty Trash and Recycling, Wipe down any flat surfaces that are cleared off, (Will not move desk top items), Wipe off phones and computer screens, Dust as needed flat open surfaces, Tops and faces of filing cabinets, Watch for cobwebs, Vacuum	FLOORS Strip and wax as needed, where applicable. Carpeting spills could be dealt with as they occur. Small areas may need to be done periodically. As for a full carpet cleaning of an area (library upstairs) Negotiate at time needed	GLASS <u>Add on - \$40 per cleaning.</u> Top to bottom 1x per quarter as requested	\$2,340 a month \$28,080
LIBRARY	Wipe off Counters and flat surfaces, Filing cabinets tops and faces (tops cleared). Wipe off any open desk areas					

	Flat surfaces have to be cleared. Clean phones and computer screens Dust anywhere needed. Empty trash and recycle. Vacuum floor. We do not clean book shelves.					
POLICE/COURT	General cleaning rules apply Basement/lower level not included	Mondays All secure shredding dumped, records room shredding	Lunch Room 3x a year	Floors 4 areas of hard floors to be maintained	Glass 2x a year in/out. 2nd floor glass not included	\$1,494 a month \$17,928
WWTP						\$321 a month <i>Blower Room - \$120/yr.</i> <i>Floors - \$1,225/yr.</i> <i>Carpet - \$1,200/yr.</i> \$6,397
TOTAL ANNUAL COST						\$57,787

ORDINANCE NO. 1485

AN ORDINANCE AMENDING CANBY MUNICIPAL CODE (CMC) CHAPTER 10.04.100 REGARDING STORAGE OR ABANDONING OF VEHICLES ON STREETS

WHEREAS, the City of Canby currently has a City Traffic Code ordinance that deals with parking, storage, and abandoning of vehicles on streets and public rights of way; and

WHEREAS, the City of Canby desires to amend the ordinance to clarify the parking aspects of the ordinance to aid enforcement and eliminate ambiguity.

NOW, THEREFORE, THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The Canby Municipal Code (CMC) Chapter 10.04.100 is hereby amended to read as follows:

§ 10.04.100 ~~Parking, storage or abandoning of vehicles on streets.~~

A. 1. No person, firm or corporation shall **park**, store or permit to be stored on a street or other public property, without the permission of the City Police Department, a vehicle or personal property **therein**, for a period in excess of **72**~~24~~ hours. The continuity of the time shall not be deemed broken by movement of the vehicle elsewhere on the block unless the movement removes the vehicle from the block where it is located before it is returned.

2. No person, firm or corporation shall abandon a vehicle upon a street or upon any other public or private property.

B. When a vehicle is found in violation of division A. of this section, the officer responsible for the enforcement of this section shall follow the procedures provided in O.R.S. Chapter ~~8~~619 dealing with the custody, removal and disposal of ~~abandoned~~ vehicles.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 20, 2018; ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, July 18, 2018, commencing at the hour of 7:30 PM in the Council Chambers located at 222 NE 2nd Avenue, 1st Floor Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on July 18, 2018 by the following vote:

YEAS_____ NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

ORDINANCE NO. 1427

AN ORDINANCE OF THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON, DECLARING A BAN ON MARIJUANA BUSINESSES AND OTHER SITES; REFERRING ORDINANCE; AND DECLARING AN EMERGENCY

WHEREAS, the Oregon Medical Marijuana Act, as amended by House Bill 3400 (2015) provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries; and

WHEREAS, Measure 91, which the voters of Oregon adopted in November 2014, directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana; and

WHEREAS, section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city; and

WHEREAS, the Canby City Council desires to refer the question of whether to prohibit marijuana businesses and sites to the voters of Canby; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

DEFINITIONS.

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae, and the seeds of the plant Cannabis family Cannabaceae.

Marijuana processing site means any entity registered with the Oregon Health Authority to process marijuana.

Marijuana processor means any entity licensed by the Oregon Liquor Control Commission to process the marijuana.

Marijuana producer means any entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow, or harvest marijuana.

Marijuana retailer means any entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.

Marijuana wholesaler means any entity licensed by the Oregon Liquor Control Commission to purchase marijuana items in this state for resale to a person other than a consumer.

Medical marijuana dispensary means any entity registered with the Oregon Health Authority to transfer marijuana.

BAN DECLARED. As described in section 134 of House Bill 3400 (2015), the City of Canby, Clackamas County, Oregon, hereby prohibits the establishment and operation of the following in the area subject to the jurisdiction of the city:

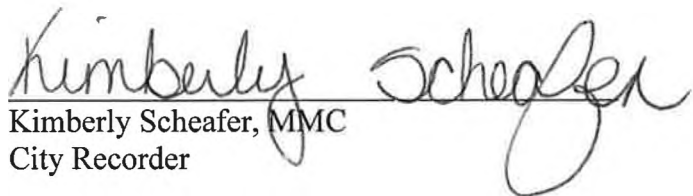
- (a) Marijuana processing sites;
- (b) Medical marijuana dispensaries;
- (c) Marijuana producers;
- (d) Marijuana processors;
- (e) Marijuana wholesalers;
- (f) Marijuana retailers.

EXCEPTION. The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in subsections 6 or 7 of section 134, section 136, or section 137 of House Bill 3400 (2015).

REFERRAL. This ordinance shall be referred to the electors of the City of Canby, Clackamas County, Oregon at the next statewide general election on Tuesday, November 8, 2016.

EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect upon passage.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 21, 2015 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, November 4, 2015, commencing at the hour of 7:30 PM in the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.


Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 4th day of November 2015, by the following vote:

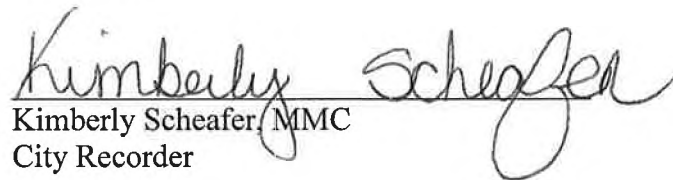
YEAS 6

NAYS 0



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

BEFORE THE CITY COUNCIL
FOR THE CITY OF CANBY, OREGON

)	
	)	FINDINGS OF FACT
In the Matter of a Request for a	)	AND CONCLUSIONS OF LAW
Subdivision Approval for Property	)	REJECTING THE APPEAL
Located at 1440, 1548, 1612, 1650,	)	AND APPROVING THE
And 1758 North Redwood Street in the	)	APPLICATION
City of Canby, located in the R-1 Zoning)	
District Within the North Redwood	)	FINAL ORDER FOR
Development Concept Plan Area	)	CITY OF CANBY FILE
("NRDCP") for Approval of Eighty-Two	)	NOS. APPEAL 18-01 OF
Lot Subdivision	)	SUB 17-06/APP 17-03,
	)	DECISION

I. INTRODUCTION.

This Final Order is the Canby City Council's ("City Council") approval of an Application for approval of an eighty-two lot subdivision in the R-1 Zoning District located within the NRDCP area. As explained below, the City Council finds that the Applicant satisfied its burden of proof on the applicable approval criteria by substantial evidence and that the grounds for overturning the Planning Commission's decision found in Canby Zoning Ordinance ("CZO") 16.89.050.A.3.a.c are not satisfied. Therefore, the City Council rejects the appeal, affirms the Planning Department's decision and approves the Application with the Planning Commission's conditions of approval contained in the eight-page Planning Commission decision dated April 27, 2018. The Planning Commission decision is hereby incorporated in its entirety. In the event of a conflict between the Planning Commission decision and this decision, this decision shall control.

II. PROCEDURAL STATUS.

The Applicant submitted the Application on September 9, 2017. The City scheduled an initial evidentiary hearing before the Canby Planning Commission on November 13, 2017. The Planning Commission issued a Final Decision approving the Application on December 11, 2017. The Appellants filed a timely appeal of that decision on December 22, 2017. The City Council considered the appeal at a public hearing on February 21, 2018. The Applicant did not grant an extension of the 120-day clock at that hearing. The City Council subsequently allowed the Applicant to extend the 120-day clock through June 22, 2018, and in consideration of that extension, issued an Interlocutory Order remanding the Application to the Planning Commission.

The Planning Commission heard the Application pursuant to the Interlocutory Order on April 23, 2018. The Planning Commission issued a Final Decision approval the Application on April 27, 2018. The Appellants filed a timely appeal of the Planning Commission decision on May 8, 2018. The City heard the appeal on June 6, 2018.

The City Council opened the public hearing with the announcements required by ORS 197.763(5). A quorum of the City Council was present with Council President excused. The City Council had before it the entire Planning Department file for the Application. The City Council did not exclude any documents physically before it. The City Council disclosed *ex parte* contacts and conflicts of interest. No party asked for an opportunity to respond to the *ex parte* disclosures, nor did any party challenge a City Councilor's ability to hear the appeal. No party raised any other procedural objections during the course of the hearing.

The City Council heard a Staff Report, the Applicant, the chief Appellant, and those in support of, or opposed to, the appeal. The City Council then heard the Applicant's rebuttal. Following deliberation, the City Council, on a motion by Councilor Smith, seconded by Councilor Heidt, and voted 4-1 to tentatively approve the Application. The Planning Department returned with proposed findings for adoption by the City Council at a public meeting on June 20, 2018.

CZO 16.89.050.J provides that appeals of the Planning Commission to the City Council will be processed using the Type III procedures unless otherwise specified in CZO Title 16. No other procedures apply to this Application. Further, CZO 16.89.050.I.4 provides that the City Council's action on appeal shall be governed by the same general regulations, standards and criteria as applied to the Planning Commission in the original consideration of the Application. Further, the City Council notes that CZO 16.89.050.F.1 provides that approval or denial of a Type III decision shall be based on standards and criteria located in the Canby Zoning Ordinance. The City Council is required to issue a final written order containing findings and conclusions that approve, in this case, the Application. The following written decision shall explain the written criteria and standards, state the facts relied upon in rendering the decision and justify the decision according to the criteria, standards and facts. CZO 16.89.050F.2 and .3. Finally, CZO 16.89.050.F.4 provides that the prevailing attorney shall prepare the findings, conclusions and final order for review by City Staff.

III. SUPPLEMENTAL FINDINGS IN ADDITION TO THE PLANNING COMMISSION DECISION.

1. FACTORS CONSIDERED ON REMAND OF APPLICATION.

The City Council's Interlocutory Order dated March 21, 2018 remanded the Application to the Planning Commission for consideration of five factors. The March 21, 2018 Interlocutory Order is attached as **Exhibit 1**.

- The lots in the proposed development were well below the R-1 minimum size of 7000 square feet. The applicant relied on an alternative method of lot sizing (using the concept of density transfer) because of proposed parkland dedication in the application. However, the calculations for the purposes of calculating the density transfer were problematically based on a concept of buildable lands donated that unrealistically relied on tiny, noncontiguous pockets of land that in reality were themselves not truly buildable due to being admittedly surrounded by unbuildable lands, either too steep or too wet to even provide access.
- The amount of proposed parkland dedication was also in excess of what was designated in the Development Concept Plan. This further affected the calculation of density transfer,

allowing for even more proposed lots, frustrating the purpose of the R-1 designation in the Development Concept Plan by leading to increasingly smaller lot sizes well below the standards of the R-1 designation. The DCP demonstrated a balanced approach with intentionally varied density and zoning type, and this extreme use of density transfer violated the spirit of this zoning balance provided in the adopted DCP for the area.

- The application relied on numerous “temporary” turnarounds located at street stubs that indefinitely created easements that covered lot areas that were not properly subtracted from the lot sizes of the affected parcels. Because surrounding owners never have to develop, these “temporary” turnarounds might very well exist in perpetuity. In several instances, the subtraction of the easement area of the “temporary” turnarounds would see the lot sizes of affected proposed parcels fall below the absolute minimum of 5000 square feet called for in the Canby Municipal Code.
- The parkland dedication was problematically incomplete in that there was no evidence of appraisal of value for the City Council to consider in their decision-making regarding the amount of parkland dedication to accept.
- Proposed street locations in the application didn’t align with existing lot boundaries of adjacent land owners as recommended by the adopted DCP and against Section 16.13.C.7 of the Canby Municipal Code, even though the applicant admitted it as feasible to do so.

For the reasons explained below, the City Council finds that the Applicant, by substantial evidence in the whole record, addressed and the Planning Commission found, that the five factors were satisfactorily addressed.

A. Lot sizes.

The City Council finds the first factor is addressed. As the record shows, the maximum density for this subdivision site is ninety-three lots. The original subdivision application proposed eighty-nine lots. The revised subdivision application on remand to the Planning Commission proposed eighty-two lots. Further, the Applicant’s substantial evidence in the form of a narrative and a map demonstrate by substantial evidence to the City Council that the Applicant correctly calculated the amount of buildable lands that are in the Willow Creek area as shown on NRDCP Figure 7. The City Council finds that for purposes of conducting the density transfer, it may rely upon this substantial evidence to determine that the buildable area as described in the Applicant’s letter dated May 28, 2018 provides for the transfer of ten dwelling units from the Willow Creek area to the subdivision site.

B. The City Council finds that the amount of proposed parkland dedication is not in excess of what was designated in the NRDCP.

CZO 16.13.C.10 provides in its entirety:

“The park and open space corridor along Willow Creek as identified in Figure 7 of the DCP [the NRDCP], shall be provided through required land dedication for parks.”

Figure 7 is attached to this decision as **Exhibit 3**.

The City Council finds that CZO 16.13, “Plan Districts”, implements the NRDCP. NRDCP Figure 7 is expressly implemented by CZO 16.13.C.10 and directs the amount of parkland dedication that an applicant shall make and shall be accepted by the City. The City Council notes that the Applicant reduced its parkland dedication area from 6.24 acres to 5.29 acres. The entire 5.29 acres is within the area shown on the NRDCP Figure 7.

Additionally, while the City Council appreciates the testimony of the public regarding the lot sizes, the NRDCP at Page 16 expressly provides that density transfer is a mechanism to preserve Willow Creek as a public park to benefit the public. That section is fully implemented by CZO 16.13.D.1 and .2 as to the R-1 Zoning District providing that exceptions to the R-1 Zoning District’s lot size standards may be provided through lot size averaging and shall allow public parkland dedications to be included in the lot size averaging calculation which shall result in an average lot size of no less than 5,000 square feet in the R-1 Zoning District. The City Council notes that substantial evidence in the whole record demonstrates that no lot is less than 5,000 square feet, and that the average lot size is 6,097 square feet.

C. The City Council finds that the Applicant addressed the impact of “temporary” turnarounds located at the end of stub streets on lots.

The Applicant increased the size of the lots to account for the “temporary” turnarounds so that none of the affected lots contain less than 5,000 square feet.

D. The City Council finds that while an appraisal of the parkland valuation was not conducted, the Applicant and the Planning Commission properly relied upon evidence and valuation contained in the Staff Report which, in turn, was taken from the NRDCP at Page 34.

The City Council finds that the Planning Commission adequately considered the value of parkland dedication. Further, the City Council notes that substantial evidence before it demonstrates that the cost of purchasing parkland is likely to be more than that anticipated in the NRDCP. The NRDCP at Page 34, as shown in the Staff Report to the City Council at Page 7, anticipated parkland dedication value of approximately \$100,000 per acre. A sale of comparable property in March, 2018 found a per acre valuation in excess of \$200,000 per acre, more than twice that anticipated by the NRDCP. The City Council finds that it will rely upon substantial evidence relied upon by the Applicant and the Planning Commission to find the value of parkland.

E. The City Council finds that the Planning Commission correctly determined the Applicant satisfied CZO 16.13.C.7.

CZO 16.13.C.7 provides as follows:

“Future local streets should be located to split parcel lines where feasible.”

The City Council remanded the Application to the Planning Commission to allow the Applicant to revise the subdivision plan so that stub streets at the north end of the subdivision would “split” and align with property lines, thus satisfying CZO 16.13.C.7.

F. Conclusion.

For these reasons, the City Council finds that the Applicant satisfactorily addressed the five factors on remand. The Planning Commission, in turn, relied upon substantial evidence by the Applicant finds that the five factors were satisfactorily addressed.

2. CZO 16.89.050.I.3.

CZO 16.89.050.I.3 is entitled “Appeals”. This standard governs the resolution of appeals of a Planning Commission decision to the City Council. This section provides in its entirety:

“The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings is made:

a. That the Commission did not correctly interpret the requirements in this title, the Comprehensive Plan, or other requirements of law;

b. That the Commission did not observe the presubstantive planning as interpreted by the Council; or

c. That the Commission did not adequately consider all of the information which was pertinent to the case.”

The City Council finds for the reasons explained below that CZO 16.89.050.I.3.a-c are not satisfied, thus prohibiting the City Council from reversing the Planning Commission.

A. CZO 16.89.050.I.3.e.

The City Council finds that the Planning Commission correctly interpreted the requirements of CZO Title 16. City Council first finds that the NRDCP is part of the City’s acknowledged Comprehensive Plan. While the NRDCP provides evidence of and informs the City Council on the resolution of issues in the appeal, it is not an applicable approval criterion. First, CZO Chapter 16.13 fully implements the NRDCP. Second, this Application is classified as a Limited Land Use Decision in ORS 197.015(12) because it is a request for a land division for a permitted use inside an urban growth boundary. ORS 197.195(1) provides that unless the City by September 1991 has incorporated some, all or none of its Comprehensive Plan Policies into its land use regulations as applicable approval criteria, the Comprehensive Plan may not be applied. Because the City has not incorporated the Plan or the NRDCP as express policies into its land use regulations, they are not approval criteria. The City Council further finds that no other requirements of law apply to this Application.

For the reasons explained in the incorporated Planning Commission Decision and these findings, City Council finds that the Planning Commission correctly interpreted the applicable requirements of CZO Title 16, specifically, CZO Chapter 16.13.

B. CZO 16.89.050.I.3.b.

The City Council finds that the Planning Commission did observe the precepts of good planning as interpreted by the City Council. The phrase “precepts of good planning as interpreted by the Council” means that the City Council must identify the precepts of good planning. In this case, the precepts of good planning are compliance with the relevant approval criteria in CZO Title 16 and addressing the five factors for remand. The City Council finds that the Planning Commission relied upon substantial evidence in the whole record from the Applicant to find that the relevant approval criteria were satisfied and that the Applicant addressed the five factors identified by the City Council in its Interlocutory Order.

C. CZO 16.89.050.I.3.c.

The City Council finds that this criterion is satisfied. City Council had before it the entire Planning Department file for this Application, including all testimony from the two Planning Commission hearings and all testimony from the two City Council appeal hearings. The City Council considered all of the oral and written testimony by all parties to the proceeding. The City Council does not rely upon any information which was not pertinent to the approval criteria but fully considered all relevant information. The City Council balanced the evidence and determined that the Application was satisfied by substantial evidence upon which a reasonable person would rely.

D. Conclusion.

For the reasons above, City Council finds that a basis to reverse the Planning Commission decision in CZO 16.89.050.E.3.a-c are not present.

3. Other issues raised.

A. Oral testimony by Ms. Erica Recht at the City Council Hearing on June 6, 2018.

Ms. Recht raised several issues. First, she argued that the City Council should not use density transfer because it resulted in five percent of the lots meeting the definition of low density residential lots.

The City Council appreciates Ms. Recht’s testimony but finds that the NRDCP anticipated density transfer in order to preserve Willow Creek and that CZO Chapter 16.13 fully implements the NRDCP. Further, CZO 16.13.C.10 and .D.1 and .2 anticipate the use of density transfer and lot averaging.

The City Council also finds that, pursuant to CZO 16.13.010.D.1, lot sizes may be less than the minimum R-1 lot size of 7,000 square feet found in CZO 16.13.D.2.

Ms. Recht also urged the City Council to purchase the Willow Creek area and thus prevent density transfer rather than adopting Option 1 presented in the Staff Report to the City Council. The City Council, for the reasons explained in this decision, has determined that it will accept the dedication of 5.29 acres of parkland in the Willow Creek area.

Finally, Ms. Recht argued that the NRDCP anticipated a mix of low density, medium and high density areas. The City Council notes that CZO Title 16 does not require this mix and that pursuant to CZO 16.13.D.1, the lot sizes proposed by the Applicant are consistent with the applicable approval standards.

B. Oral testimony by Mr. Glen France at the City Council Hearing on June 6, 2018.

Mr. France testified in his capacity as President of the Postlewait Estates Homeowners Association. Mr. France raised the same issues raised by Ms. Recht and for the same reasons responding to Ms. Recht's testimony, the City Council rejects Mr. France's testimony.

Mr. France also argued that the Applicant should be compelled to establish a homeowners association ("HOA") for a number of reasons. The Applicant voluntarily agreed to establish a homeowners association. The City Council will adopt an additional condition of approval requiring the establishment of a homeowners association with conditions, covenants and restrictions and by-laws prior to or concurrent with the recording of the final plat for any and all phases of the subdivision.

C. Oral testimony by Ms. Susan Meyers at the City Council Hearing on June 6, 2018.

Ms. Meyers agreed with Mr. France's testimony. For the same reasons addressing Ms. Recht's and Mr. France's testimony, City Council responds to Ms. Meyers' testimony. Additionally, Ms. Meyers submitted a photograph of an area between a fence and a sidewalk that was overgrown with grass and weeds as evidence of why an HOA is required to maintain the area. The City Council appreciates Ms. Meyers' testimony and notes that the Applicant voluntarily agreed to create an HOA and that the City Council's additional condition of approval will require an HOA.

D. Oral testimony by Ms. Carol Palmer at the City Council Hearing on June 6, 2018.

Ms. Palmer testified that she was opposed to the eighty-two lot subdivision plan. For the reasons adopted in this decision, the City Council rejects this argument.

E. Oral testimony by Mr. Bob Camba at the City Council Hearing on June 6, 2018.

Mr. Camba argued that the City Council should reduce the use of density transfer. While the City Council appreciates Mr. Camba's testimony with regard to the use of this planning tool, the City Council also notes that density transfer is allowed by CZO 16.13.D.1 and that the "Goal

Post Rule” in ORS 227.178(1) requires the City Council to apply the criteria in effect on the date the Application was submitted.

F. Conclusion.

The City Council thanks all of the citizens who took the time and made the effort to testify before both the Planning Commission and the City Council in this Application.

IV. RESPONSE TO APPEAL ISSUES.

In addition to the other findings contained in this decision, the City Council adopts the following findings responding to the appeal issues.

A. The Planning Commission did not correctly interpret the requirements of CZO Title 16, the Canby Comprehensive Plan or other requirements of law.

FINDING: The City Council finds for the reasons explained above that the Planning Commission did correctly interpret the applicable requirements of CZO Title 16, that the Plan is not applicable and that no other identified requirements of law apply to this Application.

B. The Planning Commission did not observe the precepts of good planning.

FINDING: For the reasons explained above, the City Council finds that the Planning Commission did observe the precepts of good planning as applicable to this Application.

C. The Planning Commission did not adequately consider all of the information which was pertinent to the case.

FINDING: City Council finds that the Planning Commission did adequately consider all of the argument and evidence pertinent to the Application.

D. The NRDCP was not followed in detail or considered in such a way as to preserve the quality of life and property values in the City and within the NRDCP area.

FINDING: Quality of life and property values are not relevant approval criteria. While important to the community and the City Council, the City Council may base its decision on only the applicable approval criterion in effect on the date the Application was submitted. ORS 227.178(3).

E. CZO 16.13.010, Parkland dedication. The Applicant should have dedicated no more parkland than its percentage of ownership within the NRDCP.

FINDING: The City Council finds that neither CZO Chapter 16.13 nor the NRDCP, if it were an applicable standard, included a “disproportionate” basis for judging dedication of parkland. In fact, CZO 16.13.C.10 expressly requires the dedication of parkland as shown in NRDCP Figure 7.

F. System Development Charge (“SDC”) credits. The Planning Commission failed to verify the SDC credit calculations by the Applicant, did not provide an appraisal of land value and could “double-dip” by utilizing density transfer from parkland and then deem eligible for SDC credits for the same parkland.

FINDING: The Staff Report to the City Council and the Planning Commission, based on the NRDCP at Page 34, explained how valuation for parkland was to be determined. Further, the Staff Report to the City Council at Page 7 explained that “double-dipping” would not occur. The City Council adopts these findings as its own.

G. Zoning density as outlined in the NRDCP should remain with no density transfer allowed.

FINDING: The City Council finds that density has not been increased. Substantial evidence in the whole record shows that the maximum density as expressed in the number of lots for this area is ninety-three lots. The Applicant has reduced the number of lots in the subdivision to eighty-two, including ten lots transferred from the buildable area of the Willow Creek dedication. The City Council finds that density is not being increased by the eight-two lots including, the transfer of ten lots from the Willow Creek area.

H. CZO 16.120.030.D, “Dedication Procedures”. The Planning Commission failed to consider this standard in its decision on dedication.

FINDING: The City Council finds that CZO 16.120.030.D refers to credits for land dedication area and not SDC credits. The City Council finds that CZO 16.120.030.D is not a relevant approval criteria for the Application.

V. Conclusion.

For the reasons contained herein, the City Council hereby rejects the appeal, affirms the Planning Commission decision and approves the eight-two lot subdivision Application as shown on the Sheet labeled “Revised Preliminary Plan” (**Exhibit 3**), including the forty-eight conditions of approval in the Planning Commission Decision, and an additional condition of approval as set forth below:

“The Applicant shall establish a homeowners association and record conditions, covenants, and restrictions and by-laws for the homeowners association prior to or concurrent with recording of any phase of the subdivision.”

DATED THIS 20th day of June 2018.

Brian Hodson
Mayor

Bryan Brown
Planning Director

ORAL DECISION – June 6, 2018

AYES: Smith, Parker, Hensley, & Heidt

NOES: Spoon.

ABSTAIN: None.

ABSENT: Dale.

WRITTEN FINDINGS – June 20, 2018

AYES:

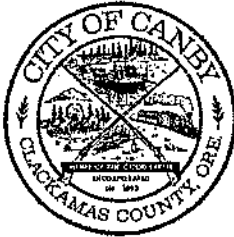
NOES:

ABSTAIN: None.

ABSENT: None.

ATTEST:

Kimberly Scheafer, MMC
City Recorder



BEFORE THE CITY COUNCIL
OF THE CITY OF CANBY

In RE:

APPEAL OF PLANNING COMMISSION	)	INTERLOCUTORY ORDER
DECISION FOR APPLICATION SUB 17-06)	
REDWOOD LANDING SUBDIVISION BY	)	APP 17-03
ICON CONSTRUCTION & DEVELOPMENT,)	
LLC, LOCATED AT 1440, 1548, 1612, 1650,)	
& 1758 N REDWOOD STREET)	

NATURE OF THE APPLICATION

Daniel Webb (Appellant & Applicant), on behalf of property owners north of the proposed Redwood Landing Subdivision, including Linda Thomas at 1864, Andrew Jarmer at 1860, Ryan and Kerrie Oliver at 1850 and Eric and Josephine Recht at 194 N Redwood Street through an Appeal seeks to reverse the Planning Commission recommendation to the Council for approval of SUB 17-06 Redwood Landing Subdivision to divide a 25.21 acres into an 89-lot subdivision on property located at 1440, 1548, 1612, 1650, & 1758 N. Redwood Street and described as Tax Map/Lot 31E34B00700, 00701 and 31E27C00301, 00500, 01200, Clackamas County, Oregon. The property is zoned Low Density Residential (R-1) under the Canby Municipal Code (CMC).

HEARINGS

The Planning Commission considered application SUB 17-06 after the duly noticed public hearing held on December 11, 2017 during which the Planning Commission by a vote of 5/1 approved **SUB 17-06 North Redwood Landing Subdivision submitted by Icon Construction and Development** and approved written findings of their decision at the same evening meeting. Staff sent the final decision notice to those with standing on December 12, 2017.

An Appeal Form and narrative statement outline (File No. APP 17-03) was submitted by Daniel Webb on the appeal deadline of December 22, 2017. Staff requested an extension of the 120-day decision rule from the then existing January 18 deadline to which the applicant provided by email an extension to February 23, 2018 for which Council action and a written decision must otherwise be adopted. The appellant provided a more succinct "appeal statement narrative" on February 9, 2018 that explains the basis of the appeal made of the Planning Commission's approval of the proposed subdivision application.

The City Council after a duly noticed hearing on February 21, 2018, moved to remand application SUB 17-06 on March 7, 2018. This interlocutory order supports the City Council's decision to remand SUB 17-06, thereby allowing the Planning Commission to review an intermediate modification of SUB 17-06.

COUNCIL CONCERNS

After hearing testimony on February 21, 2018 and taking into consideration the Appellant's statement for appeal, the Planning Commission's written decision, and record from the Planning Commission's deliberations and hearing testimony, the staff report, and applicant's original application submittals; the City Council voted to remand City File No. SUB 17-06 Redwood Landing Subdivision located at 1440, 1548, 1650, and 1758 N Redwood Street.

When reviewing modification, the City Council wants the Planning Commission to consider the following concerns:

- The lots in the proposed development were well below the R-1 minimum size of 7000 square feet. The applicant relied on an alternative method of lot sizing (using the concept of density transfer) because of proposed parkland dedication in the application. However, the calculations for the purposes of conducting the density transfer were problematically based on a concept of buildable lands donated that unrealistically relied on tiny, noncontiguous pockets of land that in reality were themselves not truly buildable due to being admittedly surrounded by unbuildable lands, either too steep or too wet to even provide access.
- The amount of proposed parkland dedication was also in excess of what was designated in the Development Concept Plan. This further affected the calculation of density transfer, allowing for even more proposed lots, frustrating the purpose of the R-1 designation in the Development Concept Plan by leading to increasingly smaller lot sizes well below the standards of the R-1 designation. The DCP demonstrated a balanced approach with intentionally varied density and zoning type, and this extreme use of density transfer violated the spirit of this zoning balance provided in the adopted DCP for the area.
- The application relied on numerous "temporary" turnarounds located at street stubs that indefinitely created easements that covered lot areas that were not properly subtracted from the lot sizes of the affected parcels. Because surrounding owners never have to develop, these "temporary" turnarounds might very well exist in perpetuity. In several instances, the subtraction of the easement area of the "temporary" turnarounds would see the lot sizes of affected proposed parcels fall below the absolute minimum of 5000 square feet called for in the Canby Municipal Code.
- The parkland dedication was problematically incomplete in that there was no evidence of appraisal of value for the City Council to consider in their decision-making regarding the amount of parkland dedication to accept.
- Proposed street locations in the application didn't align with existing lot boundaries of adjacent land owners as recommended by the adopted DCP and against Section 16.13(C) (7) of the Canby Municipal Code, even though the applicant admitted it was feasible to do so.

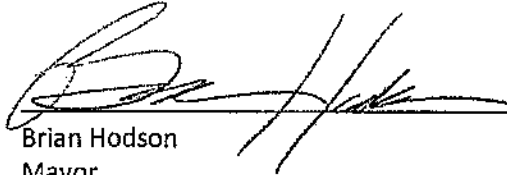
INTERLOCUTORY ORDER

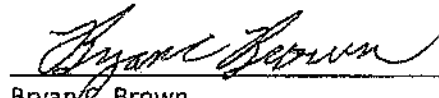
The City Council hereby remands by this interlocutory order City File No. SUB 17-06 to the Planning Commission to consider an intermediate modification consistent with Council concerns contained herein.

THEREFORE, IT IS ORDERED BY THE CITY COUNCIL of the City of Canby that **SUB 17- 06** be remanded back to the Planning Commission to be modified at a newly advertised public hearing on April 23, 2018.

I CERTIFY THAT THIS INTERLOCUTORY ORDER REGARDING REMANDING SUB 17-06 was presented to and **ORDERED** by the City Council of the City of Canby.

DATED THIS 21st day of March 2018.


Brian Hodson
Mayor


Bryan C. Brown
Planning Director

ORAL DECISION – March 7, 2018

AYES: Smith, Parker, Hensley, Dale, Spoon, & Heidt

NOES: None

ABSTAIN: None.

ABSENT: None.

WRITTEN FINDINGS – March 21, 2018

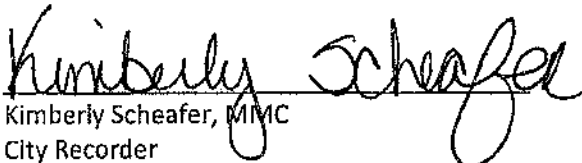
AYES: Smith, Parker, Hensley, Dale, Spoon, & Heidt

NOES: None

ABSTAIN: None.

ABSENT: None.

ATTEST:


Kimberly Scheafer, MMC
City Recorder

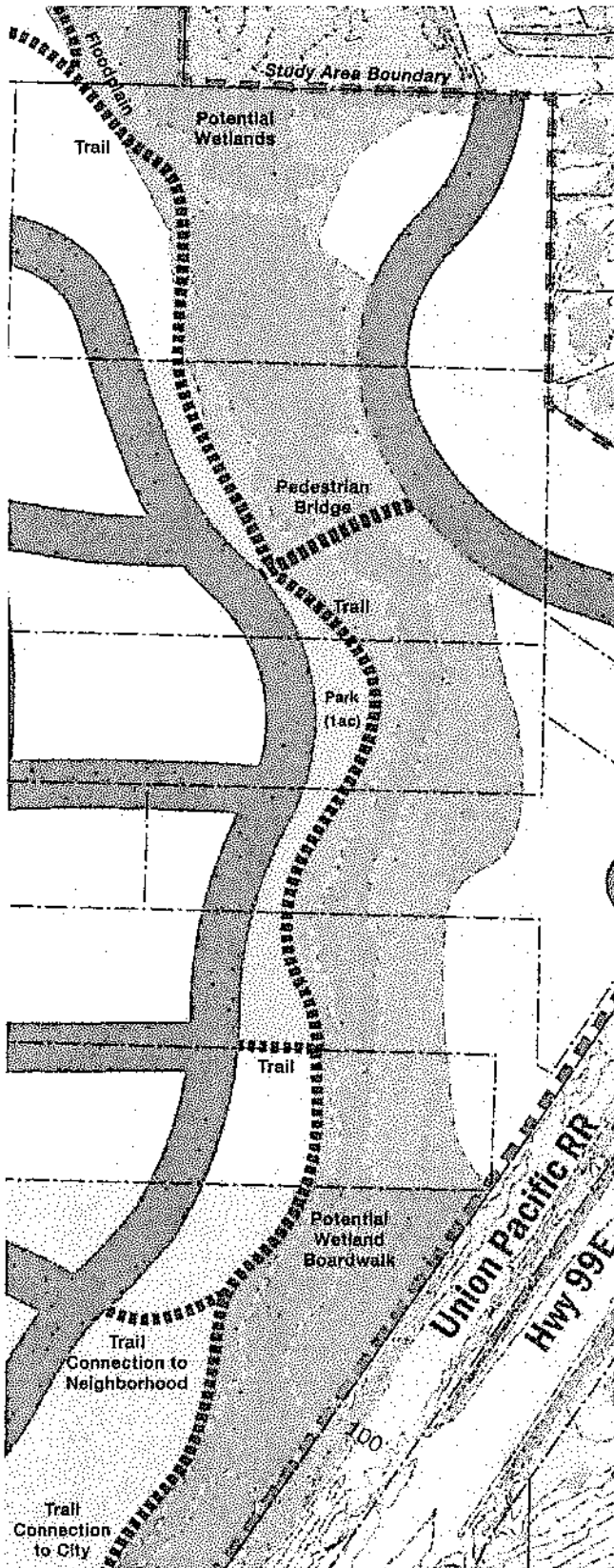


Figure 7: DCP - Open Space detail

Parks and Open Spaces

The DCP illustrates a framework for a new 9.5-acre public natural area along Willow Creek, including the constrained and ecologically-sensitive lands described on Figure 2. This area is more acreage than the approximately 7.8 acres required for dedication by developers (see facing page); some of the sensitive land could be protected within conservation easements on private lots. A strategy to equitably divide this natural area dedication among property owners, including those not adjacent to Willow Creek, is included in this report.

(Given the shortfall in parks maintenance funding in Canby, an agreement could be arranged for a developer to fund a set number of years of maintenance, while the City works to secure more sustainable parks maintenance funding.)

Additional park land of approximately 1 acre, envisioned as a potential neighborhood pocket park, is included to provide some developed park space as a neighborhood amenity. In the DCP, this park is shown as a linear park at the top, west edge of the Willow Creek 'ravine', providing a more developed foreground to the wilder natural area. This park land could include neighborhood amenities such as a play area and picnic shelter. Alternatively, future plan refinements could consider locating such a park in a more central location, surrounded by housing.

A trail is proposed along the Willow Creek open space, through the neighborhood park and linking to existing and future natural areas like Willamette Wayside to the north, as well as to Fred Meyer and downtown Canby to the south. This trail can take a variety of forms according to context, with a boardwalk through wetland or flood prone areas, and a simple paved multi-use path (see Figure 8 below) in other areas such as the neighborhood park edge.

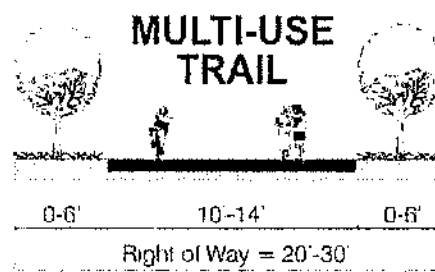
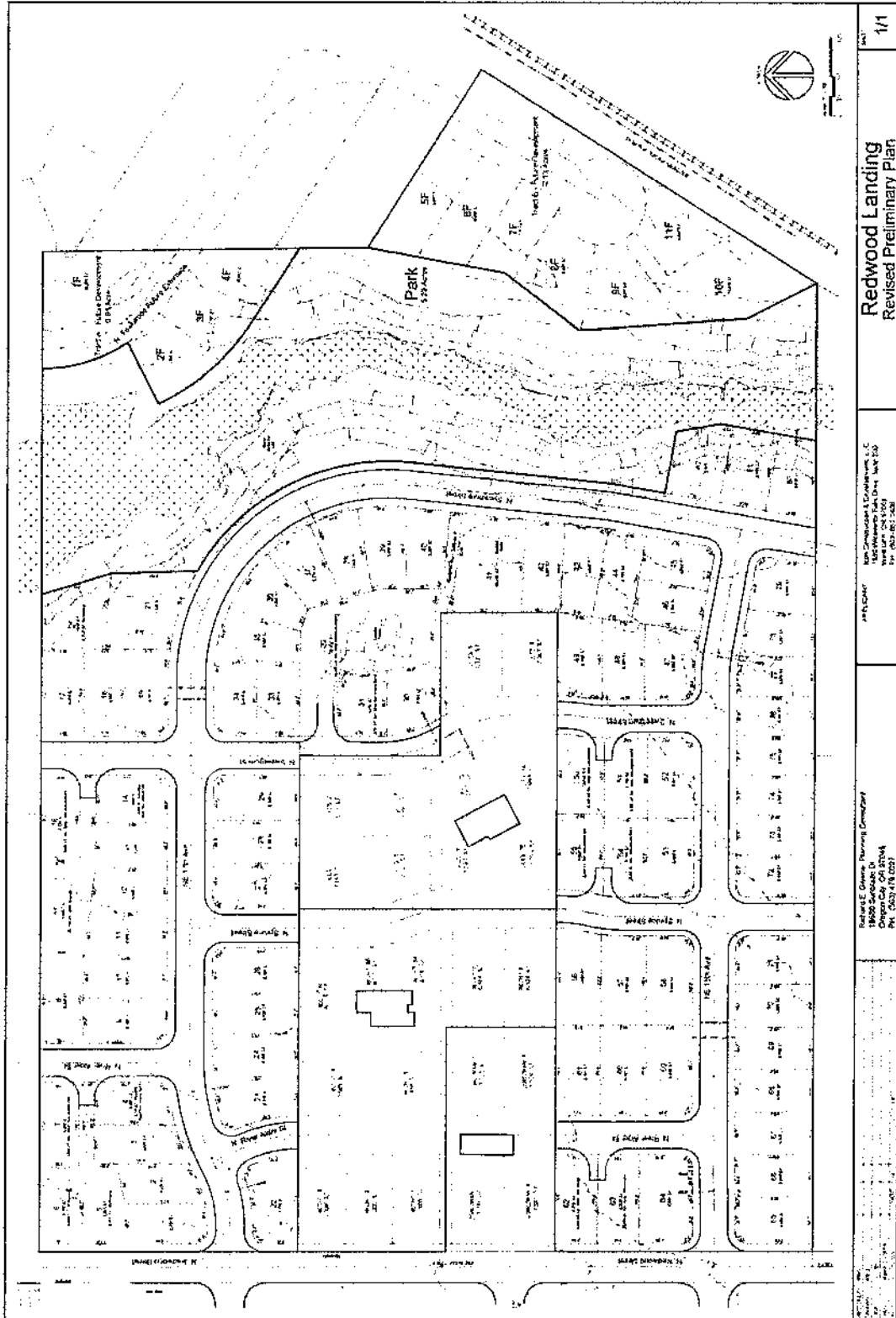


Figure 8: Canby TSP Multi-Use Trail Cross-Section



<p>Redwood Landing Revised Preliminary Plan</p>	<p>1/1</p>
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