



## AMENDED AGENDA

### CANBY CITY COUNCIL REGULAR MEETING

October 1, 2014

7:30 PM

Council Chambers

155 NW 2nd Avenue

*Mayor Brian Hodson*

*Council President Tim Dale*

*Councilor Clint Coleman*

*Councilor Traci Hensley*

*Councilor Greg Parker*

*Councilor Ken Rider*

*Councilor Todd Rocha*

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### WORK SESSION

6:30 PM

City Hall Conference Room

182 N Holly

This Work Session will be attended by the Mayor and City Council to discuss the Community Park right-of-way and parking lot.

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### CITY COUNCIL REGULAR MEETING

#### 1. CALL TO ORDER

- A. Pledge of Allegiance and Moment of Silence
- B. Public Power Week Proclamation
- C. Walk and Bike to School Day Proclamation
- D. Manufacturing Day Proclamation

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#### 2. COMMUNICATIONS

#### 3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

#### 4. MAYOR'S BUSINESS

#### 5. COUNCILOR COMMENTS & LIAISON REPORTS

#### 6. CONSENT AGENDA

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

- A. Approval of Minutes of the September 17, 2014 City Council Regular Meeting

**7. RESOLUTIONS & ORDINANCES**

- A. Ord. 1404, Authorizing a Lease Agreement with Pioneer Property, LLC for the Rental of Property for Canby Area Transit Parking; and Declaring an Emergency

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**8. NEW BUSINESS**

**9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS**

**10. CITIZEN INPUT**

**11. ACTION REVIEW**

**12. EXECUTIVE SESSION: ORS 192.660(2)(h) Litigation**

**13. ADJOURN**

\*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer, MMC, City Recorder at 503.266.0733. A copy of this Agenda can be found on the City's web page at [www.ci.canby.or.us](http://www.ci.canby.or.us). 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.





Office of the Mayor

# Proclamation

## **RECOGNIZING PUBLIC POWER WEEK, OCT. 5-11: A WEEK-LONG CELEBRATION OF CANBY UTILITY'S YEAR-ROUND ELECTRIC AND POWER SERVICE TO CANBY**

WHEREAS, we, the citizens of Canby, place high value on local control over community services and therefore have chosen to operate a community owned, locally controlled, not-for-profit electric utility and, as consumers and owners of our electric utility, have a direct say in utility operations and policies; and

WHEREAS, Canby Utility provides our homes, businesses and local government agencies with reliable, efficient, and cost-effective electricity employing sound business practices designed to ensure the best possible service at not-for-profit rates; and

WHEREAS, Canby Utility is a valuable community asset that contributes to the well-being of local citizens through energy efficiency, customer service, environmental protection, economic development, and safety awareness; and

WHEREAS, Canby Utility is a dependable and trustworthy institution whose local operation provides many consumer protections and continues to make our community a better place to live and work, and contributes to protecting the global environment; and

WHEREAS, Canby Utility will continue to work to bring lower-cost, safe, reliable electricity to community homes and businesses just as it has since 1970, the year when the utility was created to serve all the citizens of Canby.

NOW THEREFORE, I, Brian Hodson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim that the week of October 5-11, 2014 be designated Public Power Week to recognize Canby Utility for its contributions to the community and to educate consumer-owners, policy makers, and employees on the benefits of public power. We call upon our community to joins hands with more than 2,000 other public power systems in the United States in this celebration of public power, which is best for consumers, business, the community, and the nation.

Given unto my hand this 1<sup>st</sup> day of October 2014 in the City of Canby, Oregon.

Brian Hodson  
Mayor







Office of the Mayor

# Proclamation

## Walk & Bike to School Day

WHEREAS, for more than a century the bicycle has been an utilitarian, economical, environmentally sound and effective means of personal transportation, recreation and fitness; and

WHEREAS, the City of Canby encourages the use of bicycles and walking as a means of transportation; and

WHEREAS, the City of Canby recognizes the bicycle as a legitimate roadway vehicle and therefore is entitled to legal and responsible use of all public roadway facilities in Oregon except highways constructed to interstate standards; and

WHEREAS, the City of Canby encourages the increased use of the bicycle and walking—benefiting all citizens of Canby by improving air quality, reducing traffic congestion and noise, decreasing the use of and dependence upon finite energy sources, and fostering physical fitness; and

WHEREAS, the City of Canby recognizes the use of bicycles and walking as viable modes of transportation, endeavors to promote safe and responsible bicycling and walking and is committed to incorporating the development of bicycle and pedestrian facilities in the vision for revitalizing downtown Canby; and

WHEREAS, the City of Canby's Bicycle and Pedestrian Committee and the Mayor encourage all citizens to ride their bicycles or walk to work, to the store, to the park, to school, and around their neighborhoods with friends, family, and neighbors in order to promote the personal and societal benefits achieved from bicycling and walking and to experience to joy and fun of bicycling and walking.

NOW THEREFORE, I, Brian Hodson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim the second Wednesday in October, October 8, 2014, as:

### WALK & BIKE TO SCHOOL DAY

in the City of Canby and do urge all those in the Canby area to support and promote this observance.

Given unto my hand this 1<sup>st</sup> day of October 2014 in the City of Canby, Oregon.

Brian Hodson  
Mayor







Office of the Mayor

# Proclamation

## Manufacturing Day

WHEREAS, Manufacturing significantly contributes to the national, state and local economy; and

WHEREAS, Our community is fortunate to be the home of many world-class manufacturing companies; and

WHEREAS, Manufacturing companies bring vitality and prosperity to Canby by providing career opportunities and investment; and

WHEREAS, The community wants to introduce as many people as possible to the important role played by manufacturing; and

WHEREAS, Canby's manufacturers benefit from Canby School District efforts to prepare the current and future workforce through training, job shadows and other programs; and

WHEREAS, October 3 is dedicated to celebrating the great work and innovation of the men and women who contribute to Canby's strong manufacturing economy.

NOW THEREFORE, BE IT RESOLVED that I, Brian Hodson, Mayor of the City of Canby, Oregon, do hereby proclaim October 3, 2014 as:

### Manufacturing Day in Canby

and urge all citizens to join in recognizing the value of our manufacturers and the importance they serve in our community.

Given unto my hand this 1<sup>st</sup> day of October 2014 in the City of Canby, Oregon.

Brian Hodson  
Mayor







THIS HAS BEEN REVIEWED  
BY THE FINANCE DIRECTOR

*Halley J.* 9/29/14

## MEMORANDUM

**DATE:** SEPTEMBER 25, 2014  
**TO:** HONORABLE MAYOR HODSON AND CANBY CITY COUNCIL  
**FROM:** JULIE WEHLING, TRANSIT DIRECTOR  
**THROUGH:** AMANDA ZEIBER, INTERIM CITY ADMINISTRATOR  
**RE:** CANBY AREA TRANSIT (CAT) - BUS YARD LEASE

**ISSUE:** Council instructed staff to pursue negotiations with Pioneer Property, LLC (PPL) for leasing an approximate one-half acre located at the farthest south boundary line of Lot 15 (which is behind the current CAT offices on Hazel Dell Way); and to negotiate the payment of the improvements upfront rather than over the life of the lease; and to negotiate a purchase option for the approximate one-half acre and an additional adjacent one-half acre.

**SYNOPSIS:** Pioneer Property, LLC and City staff have negotiated the following:

A lease for the approximate one-half acre located at the farthest south boundary line of Lot 15, for an initial term of four years, with an option to extend up to six subsequent years, for a potential full term of ten years. The initial monthly lease rate would be on a triple net basis, at \$1,500 per month with an annual 3% escalation upon each annual anniversary. All taxes, insurance or fees related to the property would be paid by CAT for the duration of the lease.

All improvements necessary to develop the approximate one-half acre for the purpose of using it as an asphalt paved, curbed, fenced and lighted parking area for the buses owned by CAT will be provided and construction would be supervised by PPL. Plans for the work will be approved by both the City and PPL before work is begun. A final estimated cost will be furnished by the contractor prior to the beginning of the project. Monthly payments for actual costs plus 3% will be made to PPL by the City.

PPL will grant an option as part of the lease arrangement, such that at the inception of the lease, and annually thereafter, a fee is paid by CAT to PPL in the amount of \$0.15/ sq. ft. for the actual square footage covered by the purchase option, with an annual 3% escalation factor. The purchase price is offered at \$5/sq. ft. for the developed approximate ½ acre and the adjoining approximate one-half acre. Further, PPL agrees to credit the purchase option fee paid for the year in which an exercise of the option would occur, against the ultimate purchase price to be paid.



FISCAL

IMPACT:

Land improvements necessary to meet the requirements for use as a bus yard are estimated to cost \$276,750. Within the 2014-2015 budget \$140,000 was budgeted in capital for a bus yard. A contingency of \$777,374 which amounts to 50% of personal service plus materials and services was budgeted, 10-25% dependent on cash flow needs is generally targeted. One time capital expenses are a fiscally responsible use of excess reserves. A supplemental budget for the additional capital funds will be needed but the resulting contingency will remain above target levels.

\$14,400 was budgeted within materials and services for a bus yard property lease, the lease proposed would amount to \$13,500 plus triple net expenses if effective October 1, therefore variance from budget will be immaterial and can be adjusted later in the year if necessary.

RECOMMENDATION:

Staff recommends approval of Ordinance 1404.

MOTION:

I move to approve Ordinance 1404, **AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LEASE AGREEMENT WITH PIONEER PROPERTY, LLC, FOR THE RENTAL OF PROPERTY FOR CANBY AREA TRANSIT PARKING; AND DECLARING AN EMERGENCY** to come up for second reading on October 15, 2014.

ATTACHMENTS:

Ordinance 1404 and Exhibit "A".



## **ORDINANCE NO. 1404**

### **AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LEASE AGREEMENT WITH PIONEER PROPERTY, LLC, FOR THE RENTAL OF PROPERTY FOR CANBY AREA TRANSIT PARKING; AND DECLARING AN EMERGENCY.**

**WHEREAS**, Canby Area Transit has been desiring and planning to identify a bus yard location close to their office space and the fleet facility, improving efficiency, reducing dead-head costs, and that also allows for a central location for parking the transit fleet; and

**WHEREAS**, the City of Canby desires to secure a cost effective bus yard lease with potential for future purchase and expansion; and

**WHEREAS**, Pioneer Property, LLC has an approximate one-half acre space available behind the current transit offices and is willing to improve the space to accommodate the transit fleet, and is willing to include a purchase option for the one-half acre and an additional adjoining one-half acre which would allow for future growth and the future construction of a transit facility; and is willing to lease said one-half acre to the City at a reasonable rental for an initial four (4) year term with an option to extend an additional six (6) years; and

**WHEREAS**, the Canby City Charter requires an ordinance be approved for any contract exceeding \$50,000; now therefore

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

**Section 1.** The City Administrator is hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, the attached Lease Agreement with Pioneer Property, LLC. A copy of the Lease Agreement is attached hereto as Exhibit "A."

**Section 2.** Inasmuch as it is in the best interest of the citizens of Canby, Oregon, that the lease be completed as soon as possible in order to immediately effectuate many necessary agreed upon improvements at the site and ensure minimal disruptions of necessary transit services to users of the service and CAT employees alike, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, October 1, 2014, 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, October 15, 2014, commencing at the hour of 7:30 PM at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

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Kimberly Scheafer, MMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 15<sup>th</sup> day of October 2014, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

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Brian Hodson  
Mayor

ATTEST:

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Kimberly Scheafer, MMC  
City Recorder



## LEASE AGREEMENT

This Lease, signed and entered into as of this \_\_\_\_ day of October, 2014, is by and between **PIONEER PROPERTY, LLC**, an Oregon limited liability company ("Landlord"), and **CITY OF CANBY**, an incorporated Oregon Municipality in Clackamas County, Oregon. ("Tenant").

For and in consideration of the mutual covenants contained herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth herein, that certain property located on Hazel Dell Way, Canby, Oregon 97013, that is described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), commonly referred to as the southernmost approximate one-half acre of Lot 15, Burden No. 3 in the City of Canby, County of Clackamas, State of Oregon.

**1. Term.** The term of this Lease shall be for four (4) years, commencing as of the earlier of the first date occupied by the Tenant, or at such time as an occupancy permit is issued for the property being leased as described herein (the "Commencement Date") and expiring on the last day of the month being four years from the Commencement Date, with an option for Tenant to extend the term of this Lease for six (6) additional years by written notice given to Landlord no greater than two hundred seventy (270) days nor less than one hundred eighty (180) days prior to the end of the initial term.

**2. Rent.** Tenant shall pay to Landlord in advance on the first day of each month, base rent for the Premises initially in the amount of One Thousand Five Hundred Dollars (\$1,500) per month. Beginning on the first annual anniversary of the Commencement Date and each annual anniversary thereafter during the lease term, including during any renewal term(s), base rent shall increase by three percent (3%) over that payable in the prior lease year.

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable without notice, demand, or setoff, in lawful money of the United States of America, to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing.

**3. Use of the Premises.**

**3.1** The Premises may be used and occupied for vehicle parking, or other lawful use upon the prior written consent of Landlord.

**3.2** In connection with its use, Tenant shall, at its expense, comply with all applicable laws, ordinances, and regulations or any public authority, including those requiring alteration of the Premises because of Tenant's specific use; shall create no nuisance nor allow any objectionable liquid, odor, or noise to be emitted from the Premises; shall store no gasoline or other highly combustible materials on the Premises which would violate any applicable fire code or regulation nor conduct any operation that will increase Landlord's fire insurance rates for the Premises.

**3.3** Tenant may erect a sign stating its name, business, and product after first securing all necessary governmental approvals. All signs installed by Tenant shall be removed upon termination of this Lease with the sign location restored to its former state.

**3.4** Tenant shall make no alterations, additions, or improvements to the Premises without Landlord's prior written consent, and without a valid building permit issued by the appropriate governmental agency (as may be required). Upon termination of this Lease, any such alterations, additions, or improvements (including without limitation all electrical, lighting, plumbing, heating and air-conditioning equipment, doors, windows, partitions, drapery, carpeting, shelving, counters, and physically attached fixtures) shall at once become part of the realty and belong to Landlord unless the terms of the applicable consent provide otherwise, or Landlord requests that part or all of the additions, alterations, or improvements be removed. In such case, Tenant shall at its sole cost and expense promptly remove the specified additions, alterations, or improvements and repair and restore the Premises to its original condition.

**4. Utility Charges; Maintenance.**

**4.1** Tenant shall pay when due all charges for electricity, natural gas, water, sewer, and all other utilities or services of any kind furnished to the Premises during the Lease term. Tenant's services shall be separately metered.

**4.2** Tenant shall keep and maintain the Premises in the same condition as existed as of the Commencement Date, reasonable wear and tear excepted, which shall include, without limitation, any foundation, structural, or other capital repairs or replacements.

**5. Taxes.**

**5.1 Real Property Taxes.** In addition to the base rent, Tenant shall pay during each calendar year or part thereof during the term of this lease, Tenant's proportionate share of the total real property taxes and assessments levied, assessed or imposed during the term upon the leased Premises or the use, occupancy or operations of the leased Premises for each such calendar year. Provided, however, in the event the property taxes are reduced because of Tenant's Not-For-Profit status, Tenant will be entitled to all credits applicable to the leased Premises. The Tenant's proportionate share of the total real property taxes will be a percentage calculated based on the total square footage of the leased premises to the total square feet of the real property being assessed or taxed. Included in the Tenant's proportionate share will be 100% of the value of the improvements to the leased Premises. It is the assumption of both parties that Tenant will not have to pay any real property tax due to its Not-For-Profit status. However, should taxes be legally assessed on the leased Premises, Tenant shall pay prior to delinquency all real property taxes applicable to the leased Premises during the term of this Lease. To the extent possible, Tenant shall cause the leased Premises to be assessed and billed separately from the real property of the Landlord. If any of Tenant's leased Premises shall be assessed with Landlord's real property, Tenant shall reimburse Landlord for all taxes attributable to the leased Premises. As used herein, the term "real property tax" shall include any form of assessment, license fee, rent tax, levy, penalty, or tax (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school,



agricultural, lighting, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Premises.

**5.2 Personal Property Taxes.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. To the extent possible, Tenant shall cause said leasehold improvements, trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord. If any such Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

**6. Insurance; Indemnity.**

**6.1** During the term hereof, Tenant shall keep and maintain, at its sole cost and expense, general liability insurance on an occurrence basis and casualty insurance on the Premises and all improvements, personal property, and fixtures thereon, in such amounts and with such coverages as Landlord may from time to time require. Such insurance shall be provided by an insurance carrier reasonably acceptable to Landlord and shall be evidenced by a certificate (or certificates) delivered to Landlord stating that the coverage will not be canceled or materially altered without thirty (30) days' advance written notice to Landlord. Landlord shall be named as an additional insured on such policies.

**6.2** Tenant shall not allow any liens to attach to the Premises as a result of its activities. Tenant shall indemnify, defend and hold Landlord harmless from and against any claim, liability, damage, or loss arising out of any activity on the Premises by Tenant or any party, other than Landlord, or resulting from Tenant's failure to comply with any term of this Lease.

**7. Improvements to the Leased Premises.**

**7.1** Tenant desires and Landlord hereby agrees to arrange for the construction and installation of certain improvements, as generally described in the attached Exhibit B, to enable Tenant to occupy and use the leased premises as a parking area for vehicles operated by Canby Area Transit, a department of the Tenant.

**7.2** Landlord will arrange for the construction of certain improvements at costs identified by the Landlord and its contractors, upon the approval of plans and costs by the Tenant. Any easements required to provide access and use of the property will be arranged for by Landlord with costs included as part of the improvements to be reimbursed by Tenant.

**7.3** Tenant will reimburse Landlord directly for all costs incurred related to the construction of improvements, after being furnished invoices or other supporting documentation of costs incurred. Tenant agrees to reimburse Landlord directly no later than five business days from receipt of invoices from Landlord. Landlord will submit invoices no later than the 10<sup>th</sup> or 25<sup>th</sup> of a month to facilitate Tenant's payments scheduled for the 15<sup>th</sup> or 30<sup>th</sup> of each month. If Tenant fails to reimburse Landlord for payments due within five business days from receipt of invoices from Landlord, Tenant agrees to pay damages to the Landlord of One Hundred Dollars (\$100) per day any such payment is late.

7.4 Tenant and Landlord acknowledge all improvements made to the leased premises are to be the property of the Landlord and made part of this lease for use by the Tenant.

**8. Property Damage; Subrogation Waiver.**

**8.1** If fire or other casualty causes damage to the Premises in an amount exceeding fifty percent (50%) of the full replacement cost of the Premises, either party may elect to terminate this Lease as of the date of the damage by notice in writing to the other party within thirty (30) days after such date. Otherwise, Tenant shall promptly repair the damage and restore the Premises to their former condition as soon as practicable. Rent shall be reduced during the period to the extent the Premises are not reasonably usable for the use permitted by this Lease because of such damage and required repairs.

**8.2** Neither party shall be liable to the other for any loss or damage caused by a casualty covered by a standard casualty insurance policy with extended coverage, and there shall be no subrogated claim by one party's insurance carrier against the other party arising out of any such loss.

**9. Condemnation.** If a condemning authority takes the entire Premises or a portion sufficient to render the remainder unsuitable for Tenant's use (in Tenant's reasonable determination), then Tenant may elect to terminate this Lease effective on the date that title passes to the condemning authority. Otherwise, Landlord shall proceed as soon as practicable to restore the remaining Premises to a condition comparable to that existing at the time of the taking. Rent shall be abated during the period of restoration to the extent the Premises are not reasonably usable by Tenant, and rent shall be reduced for the remainder of the term in an amount equal to the reduction in rental value of the Premises caused by the taking. All condemnation proceeds shall belong to Landlord.

**10. Assignment and Subletting.**

**10.1** Tenant shall not assign its interest under this Lease nor sublet the Premises without first obtaining Landlord's written consent, which shall not be unreasonably withheld. No assignment shall relieve Tenant of its obligation to pay rent or perform other obligations required by this Lease and no one assignment or subletting shall be a consent to any further assignment or subletting.

**10.2** Subject to the above limitations on transfer of Tenant's interest, this Lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and assigns.

**11. Default.** Any of the following shall constitute a default by Tenant under this Lease:

**11.1** Tenant's failure to pay rent or any other charge under this Lease within fifteen (15) days of when due.

**11.2** Tenant's failure to comply with any other term or condition within thirty (30) days following written notice from Landlord specifying the noncompliance. If such noncompliance cannot be cured within the thirty (30) day period, this provision shall be satisfied



if Tenant commences correction within such period and thereafter proceeds in good faith and with reasonable diligence to effect compliance as soon as possible.

**11.3** Tenant's insolvency, assignment for the benefit of its creditors, Tenant's voluntary petition in bankruptcy or adjudication as bankrupt, or the appointment of a receiver for Tenant's properties.

## **12. Landlord's Remedies for Default.**

**12.1** Terminate this Lease without relieving Tenant from its obligation to pay damages.

**12.2** Retake possession of the Premises by summary proceedings or otherwise, in which case Tenant's liability to Landlord for damages shall survive the tenancy. Landlord may, after such retaking of possession, relet the Premises upon any reasonable terms. No such reletting shall be construed as an acceptance of a surrender of Tenant's leasehold interest.

**12.3** Recover damages caused by Tenant's default which shall include reasonable attorneys' fees at trial and on any appeal therefrom. Landlord may sue periodically to recover damages as they occur throughout the lease term, and no action for accrued damages shall bar a later action for damages subsequently accruing. Landlord may elect in any one action to recover accrued damages plus damages attributable to the remaining terms of the Lease equal to the difference between the rent under this Lease and the reasonable rental value of the Premises for the remainder of the term, discounted to the time of judgment at the rate of nine percent (9%) per annum.

**12.4** Make any payment or perform any obligation required of Tenant so as to cure Tenant's default, in which case Landlord shall be entitled to recover all amounts so expended from Tenant.

## **13. Surrender on Termination.**

**13.1** On expiration or early termination of this Lease, Tenant shall surrender the Premises clean and free of debris, with all signing removed and defacement corrected, and all repairs called for under this Lease completed. The Premises shall be delivered in the same condition as at the Commencement Date, subject only to depreciation and wear from ordinary use. Tenant shall remove all of its equipment, materials, and trade fixtures that remain its property. Failure to remove said property shall be an abandonment of the same, and Landlord may dispose of it in any manner without liability.

**13.2** If Tenant fails to vacate the Premises when required, Landlord may elect either to treat Tenant as a tenant from month to month, subject to all provisions of this Lease except rent shall be increased by 150% of the then existing monthly rental rate, or to eject Tenant from the Premises and recover damages caused by wrongful holdover, provided however the provisions of Paragraph 17 within this lease are no longer applicable..

**14. Landlord's Liability.** Landlord warrants that so long as Tenant complies with all terms of this Lease it shall be entitled to peaceable and undisturbed possession of the Premises free from any eviction or disturbance by Landlord or persons claiming through Landlord.

**15. Environmental.**

**15.1 Definitions.** The term "Environmental Law" shall mean any federal, state or local statute, regulation or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious, or radioactive substance, waste and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

**15.2 Use of Hazardous Substances.** Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of or otherwise released on or under the Premises. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling and storage of Hazardous Substances.

**15.3 Notices.** Tenant shall immediately notify Landlord upon becoming aware of the following: (a) any release of a Hazardous Substance on, under, or adjacent to the Premises which is required by law to be reported to any government agency; (b) any notice or communication from a governmental agency or any other person relating to any Hazardous Substance on, under, or adjacent to the Premises; or (c) any material violation of any Environmental Law with respect to the Premises or Tenant's activities on or in connection with the Premises, which is known to Tenant.

**15.4 Releases.** In the event of a release of a Hazardous Substance on or under the Premises caused by Tenant or any of its contractors, agents, or employees, or invitees, or the suspicion or threat of the same, Tenant shall (i) immediately undertake all emergency response necessary to address the released Hazardous Substance as required by all applicable laws, (ii) provide Landlord copies of all correspondence with any governmental agency regarding the release (or threatened or suspected release) or the response action, a detailed report documenting all such response action. All such response action shall be performed, all such reports shall be prepared and all such certifications shall be made by an environmental consultant reasonably acceptable to Landlord, with all costs borne by the Tenant.

**15.5 Condition Upon Termination.** Upon expiration of this Lease or sooner termination of this Lease for any reason, Tenant shall remove all containers of Hazardous Substances from the Premises and clean up Hazardous Substances spilled by Tenant on the premises and/or in the storage containment facilities. Following such removal, Tenant shall certify in writing to Landlord that all such removal is complete.

**15.6 Indemnity.** Tenant shall indemnify, defend and hold harmless Landlord, its officers, directors, shareholders, managers, members, employees and agents, any persons holding a security interest in the Premises, and the respective successors and assigns of each of them from and against any and all claims, demands, liabilities, damages, fines, losses, costs (including without limitation the cost of any investigation, remedial removal or other response action required by Environmental Law) and expenses (including without limitation attorneys' fees and expert fees in



connection with any trial, appeal, petition for review or administrative proceeding) arising out of or in any way relating to the use, treatment, storage, generation, transport, or release to the environment on the Premises of Hazardous Substances by Tenant or any of its contractors, agents or employees or invitees. Tenant's obligations under this paragraph shall survive the expiration or termination of this Lease for any reason. Landlord's rights under this paragraph are in addition to and not in lieu of any other rights or remedies to which Landlord may be entitled under this agreement or otherwise.

## **16. Mortgage or Sale by Landlord; Estoppel Certificates.**

**16.1** This Lease is and shall be prior to any mortgage or deed of trust ("Encumbrance") recorded after the date of this Lease and affecting the Premises. However, if any lender holding an Encumbrance secured by the Premises requires that this Lease be subordinate to the Encumbrance, then Tenant agrees that this Lease shall be subordinate to the Encumbrance if the holder thereof agrees in writing with Tenant that so long as Tenant performs its obligations under this Lease no foreclosure, deed given in lieu of the foreclosure, or sale pursuant to the terms of the Encumbrance, or other steps or procedures taken under the Encumbrance shall affect Tenant's rights under this Lease. If the foregoing condition is met, Tenant shall execute the written agreement and any other documents required by the holder of the Encumbrance to accomplish the purposes of this paragraph.

**16.2** If the Premises is sold as a result of foreclosure of any Encumbrance thereon or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee, and the transferor shall have no further liability hereunder.

**16.3** Either party shall within twenty (20) days after notice from the other execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party of whom the certificate was requested that the Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate.

## **17. Tenant's Right to Purchase the Premises**

### **(a) Purchase Option.**

(i) Upon the inception of this lease, and upon the annual receipt of payment in advance by Tenant to Landlord in the sum of Fifteen Cents (\$0.15) per square foot of the Premises leased, plus an additional equal measure of square feet of land adjoining the north boundary of the Premises leased, Landlord will grant Tenant the option to purchase the property as shown on the attached Exhibit C, at a price of Five Dollars (\$5.00) per square foot.

(iii) The purchase option granted may renew annually upon the anniversary of the Commencement Date for a one year period during the initial four year term only (does not apply to any renewal term) of this lease and upon the receipt of payment in advance by

Tenant to Landlord within 10 days of the anniversary of the Commencement Date for the period as described. Each annual payment subsequent to the initial payment, shall increase by Three Percent (3%) over the prior year payment. If the option is renewed beyond the initial year, the price for purchase of the property described shall increase each subsequent year by Three Percent (3%) over the prior year's price. If the Tenant fails to renew the option by not making timely payment to the Landlord of the renewal fee for any year of the initial term, the option will be deemed to have expired as of the last day of the period for which the last purchase option renewal fee was made, and is no longer renewable. If the option is exercised in any year, all costs, fees, and charges that may arise from the sale shall be borne in whole by the Tenant/Purchaser.

(b) Purchase Option Procedures.

(i) In the event of an exercise of the purchase option by Tenant for all or any part of the premises covered by the option, Tenant shall give written notice (Exercise Notice) of the proposed exercise to purchase to the Landlord, specifying (A) the Premises to be purchased, (B) the purchase price which, as a result of the option being exercised, will be net of a credit granted by Landlord for the amount of the purchase option fee(s) paid for the year in which the option is being exercised, (C) the time and date anticipated for completing the purchase, and (D) any other material terms and conditions of the proposed exercise of the Purchase Option. Concurrently with the delivery of the notice of exercise of the Purchase Option or as soon thereafter as possible, Landlord also shall provide Tenant with all information as may be necessary or appropriate to assist Tenant in purchasing the Premises.

(ii) Upon delivery of the Exercise Notice by Tenant, a binding agreement shall exist between Tenant and Landlord and the purchase shall take place on a date agreed to by the parties, but no later than 60 days after delivery of the Exercise Notice.

(iii) Any transfer by sale as a result of exercise of the purchase option by Tenant, not made in strict compliance with all provisions of this Lease shall be null and void and without any legal effect.

(c) Certain Terms and Conditions of Purchase. Notwithstanding anything to the contrary in the Lease or set forth in the Exercise Notice, if Tenant elects to exercise its Purchase Option, the following terms and conditions shall govern the terms and conditions of the sale of the Premises:

(i) At the closing, Landlord shall transfer its interest in the Property to Tenant by warranty deed and shall execute or cause to be executed all closing documents customarily required by the title company and any documents required to release any fee mortgages and/or liens on the Property.

(ii) Landlord shall execute signed counterparts of all applicable transfer tax declarations.

(iii) At the closing, Tenant shall execute all closing documents customarily required by the title company and signed counterparts of all applicable transfer tax declarations.



(iv) Responsibility for payment of any commissions, transfer taxes, title expenses, partition, lot line adjustments, surveys, related boundary mapping, and closing costs shall be borne by the Tenant/Purchaser.

(v) If the conveyance of the Premises to Tenant is consummated prior to the expiration or termination of this Lease, as of the closing the Lease shall terminate.

(vi) Each party shall be responsible for and pay their own attorneys' fees and expenses.

**18. Disputes - Attorneys' Fees.** In the event of any litigation arising out of this Lease, the prevailing party shall be entitled to recover from the other party, in addition to all other relief provided by law or judgment, its reasonable costs and attorneys' fees incurred both at and in preparation for trial and any appeal of review, such amount to be as determined by the court(s) before which the matter is heard. Disputes between the parties which are to be litigated shall be tried before a judge without a jury, with venue in Clackamas County, Oregon.

**19. Severability.** If any provision of this Lease is held to be invalid, unenforceable, or illegal, the remaining provisions shall not be affected and shall be enforced to the fullest extent permitted by law.

**20. General Provisions.**

**20.1** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same.

**20.2** Subject to the limitations on transfer of Tenant's interest, this Lease shall bind and inure to the benefit of the parties, their respective heirs, successors, and assigns.

**20.3** Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this Lease, to make necessary repairs to the Premises, or to show the Premises to any prospective tenant or purchasers. During the last six (6) months of the term, Landlord may place and maintain upon the Premises notices for leasing or sale of the Premises.

**20.4** If this Lease commences or terminates at a time other than the beginning or end of one of the specified rental periods, then the rent (including Tenant's share of real property taxes, if any) shall be prorated as of such date, and in the event of termination for reasons other than default all prepaid rent shall be refunded to Tenant or paid on its account.

**20.5** Tenant shall, within five (5) days following Landlord's written request, deliver to Landlord a written statement specifying the dates to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested by Landlord.

**20.6** This Lease has been negotiated at arms-length by the parties and shall not be construed or interpreted for or against either party as a result of the drafting hereof.

**20.7** Notices between the parties relating to this Lease shall be in writing, effective when delivered, or if mailed, effective on the second day following mailing, postage prepaid, to the address for the party stated in this Lease or to such other address as either party may specify by notice to the other. Rent shall be payable to Landlord at the same address and in the same manner.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

**LANDLORD:**

**TENANT:**

**PIONEER PROPERTY, LLC**

**CITY OF CANBY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Rick Robinson  
Title: City Administrator

Address for Notices/Rent Payments  
to Landlord:

Address for Notices to Tenant:

Pioneer Property, LLC  
Attn: Manager  
1012 Island View St.  
Kemah, Texas 77565  
Phone No: 281-772-5249  
Facsimile No: 281-957-9233

City of Canby  
Attn: City Administrator  
PO Box 930  
Canby, OR 97013  
Phone No: 503-266-0745  
Facsimile No: 503-266-7961



## EXHIBIT A

Property being leased pursuant to this agreement described as:

Approximately one half acre of Lot 15, Burden No. 3, in the City of Canby, County of Clackamas, State of Oregon, located to the farthest southern boundary of the Lot 15, being approximately 210 feet wide along the southern boundary and then extending north by approximately 105 feet, to form a rectangular area together with access and utility easements and maintenance agreements to be negotiated and approved by legal counsel to the parties.

*(This is an approximate description of the land made before final drawings and subject to change)*

## EXHIBIT B

Improvements to be constructed by Landlord for use by Tenant at the leased premises are generally described as access to an approximate one-half acre of land located to the southernmost boundary of Lot 15, Burden No. 3, accessed by an asphalt paved driveway from Hazel Dell Way, to include asphalt paving of the leased premises, electrical lighting, perimeter fencing with an electrically operated gate, a storm drain leading to a water collection swale, and general landscaping as required.

The improvements are further described as:

- 1) General excavation of approximately 24,000 square feet
- 2) Installation of 12" A/C Base Rock of approximately 24,000 square feet
- 3) Installation of 4" Asphalt paving of approximately 24,000 square feet
- 4) Installation of a driveway
- 5) Installation of a storm drain flowing to a water quality swale to be constructed
- 6) Installation of approximately 1000 linear feet of curbing, either cast in place or extruded
- 7) Installation of general landscaping around the area as required
- 8) Installation of up to 3 light poles connected to electrical service for site lighting
- 9) Installation of perimeter fencing
- 10) Installation of a power assisted gate for access to the parking area
- 11) Installation of a Filter CB/Oil/Water separator as part of the drainage plan
- 12) Installation of water service to the area
- 13) Providing a base line environmental survey prior to occupancy
- 14) General planning, inspection and approval by Landlord of contractors work. Landlord will be entitled to an administrative fee of 3% of the final actual costs of improvements.

***(This description may change with modification of existing plans upon review and approval of Landlord, Tenant and contractor)***

## **EXHIBIT C**

*(This Exhibit C will include a drawing of the approximate ½ acre to be leased, as well as the additional adjoining ½ acre included in the first purchase option as part of this lease)*



**Management Team Meeting Minutes**  
**September 15, 2014**  
**2:00 PM**  
**City Hall Conference Room**

In attendance: Kim Scheafer, Bryan Brown, Joseph Lindsay, Haley Fish, Julie Wehling, and Eric Laitinen.

Kim Scheafer

- Reviewed Agenda for October 1 CC Meeting
- Civic Center Construction Services Management RFP was posted today. Bid deadline is October 15 at 2 PM
- At OAMR Conference tomorrow afternoon through Friday

Haley Fish

- At conference September 19-24
- Closing year-end
- Supplemental Budget will go to Council in November or early December
- Auditors will be here the first week in November

Julie Wehling

- Working on negotiating lease for additional transit parking
- Working on Title VI plan. Doing two surveys. Public meeting will be held on September 23 at 7 p.m. in the PD Community Room to discuss the plan.
- At the OTA conference October 18-22

Eric Laitinen

- Enrollment for adult swim lessons is up
- Winter schedule starts November 17

Joseph Lindsay

- LUBA decision is being appealed to the Court of Appeals
- Municipal Court was very busy last week

Bryan Brown

- Clackamas County Event Center may be making one of the temporary livestock buildings permanent
- A cell tower will be discussed at the September 22 Planning Commission meeting
- An application may be submitted for a dwelling unit in a rear yard

*Minutes taken by Kim Scheafer*