# AGENDA

**CANBY CITY COUNCIL REGULAR MEETING**
**December 4, 2013**
**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**
**6:00 PM**
**City Hall Conference Room**
**182 N Holly**

This Work Session will be attended by the Mayor and City Council to discuss Canby Municipal Code downtown floor area ratio/two story requirements. Pg. 1

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## CITY COUNCIL REGULAR MEETING

**1. CALL TO ORDER**

A. Pledge of Allegiance and Moment of Silence
B. Community Food & Toy Drive Sponsored by Canby Kiwanis Proclamation Pg.25
C. Swearing In of New Police Officer

**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 November 20, 2013 City Council Work Session & Regular Meeting
B. City Budget Committee Appointment

**7. RESOLUTIONS & ORDINANCES**

A. Ord. 1391, Amending CMC Chapter 3.24 Public Transportation Payroll and Self-Employment Tax **(2nd Reading)** Pg. 26

B. Ord. 1392, Authorizing Contract with Curran-McLeod, Inc. Consulting Engineers for Engineering Services Regarding 2014 Wastewater Treatment Plant Improvements Pg. 40

**8. NEW BUSINESS**

A. Cancellation of December 18, 2013 and January 2, 2014 City Council Meetings

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

**10. CITIZEN INPUT**

**11. ACTION REVIEW**

**12. EXECUTIVE SESSION:** ORS 192.660(2)(h) Pending Litigation and ORS 192.660(2)(i) Performance Evaluation of Public Officer

**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. 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.

# CITY COUNCIL WORK SESSION

## Downtown 2-Story Building Standard & Floor Area Ratio

Wednesday, Dec. 4, 2013

# “Downtown” Canby Business District

## Primarily a 1-Story Pedestrian Environment

**NW 1st Avenue at N Grant St**

# Existing Downtown Building Inventory Predominantly 1-Story

## NW 1ST Avenue at N Holly St

**Andrus Building – NW 3rd Avenue**

**New 2-Story Buildings fit in Well**

**Aerial Photo – Downtown Canby (4 blocks)**

**A mixture of 1 & 2-Story Building Can be Seen**

# COUNCIL WORKSESSION

# CBD 2-Story & Floor Area Ratio Standard

## Legislative Intent:

The overall intent of adopting the above code provisions were to drive and create a vibrant downtown with an increased intensity of use. These standards came from adoption of the Downtown Master Plan in 2001 and the actual code provisions were adopted in 2008.

- These standards were driven by the successful Mainstreet program philosophy that emphasizes that your ground floor in a downtown be for retail and an upstairs be for residential or office uses.
- Having greater population in or near downtown has been shown to stimulate vibrancy and offers a unique and desirable living opportunity to some that directly supports downtown businesses.

# Creating A Vibrant City Center

Principals and Strategies: Centered on creating a city center with diverse but complimentary uses and a visually appealing, comfortable, and secure environment.

- Promote diversity of use
- Encourage compactness
- Foster intensity of development
- Ensure a balance of activities
- Provide for accessibility
- Create functional linkages
- Build a positive identity

# Creating a Vibrant City Center (continued)

## Market Components:

- ❖ Retail Activity
- ❖ Offices
- ❖ Housing
- ❖ Cultural, Government, Entertainment Facilities
- ❖ For larger Downtowns – Hotels, Convention/Conference Space

Critical Areas of Focus:

1) Importance of Place - Uniqueness
2) Well Designed Public Realm – Civic Plazas, Streetscape Design
3) Good Vehicular Circulation
4) Adequate Public Parking Facilities
5) Public Transit Availability

# How Do We Get There - Vibrant City Center?

Through Downtown Visioning, a Development Plan, and Code

- ✓ This has been done and accomplished with Adoption of the Canby Downtown Plan in 2001: An extensive community driven visioning process led to the creation and adoption of the Canby Downtown Plan.

- ✓ This has been done and accomplished with the passing of Ordinance 1296: This ordinance implemented the Downtown Plan through the codification of new Downtown Development Standards, Design Guidelines, and Design Standards. A new Chapter 16.41 Downtown Canby Overlay (DC) Zone was added to the Land Development and Planning Ordinance (Title 16), among other implementing text amendments.

# 2-Story Intent ? – C-1 Zoned Portion of Core Commercial Subarea of DCO

## Current Code Text - 16.41.010(A):

The proposed FAR in conjunction with the maximum lot coverage ensures that the development will be a minimum of two floors along the street in the C-1 portion of the Core Commercial area.

## Staff Comment:

This statement is in a "purpose" paragraph. It can be argued that it is not a development standard. The text certainly appears to impart a clear intent for new buildings to be 2-story. However, the statement is wrong, as we discovered with the library proposal. There is "no maximum lot coverage standard" and the authors did not account for the result of no on-site parking. On-site surface parking is included in the FAR calculation which if provided would ensure a two story building. The FAR on its own does not work to prohibit one-story structures when on-site parking is not provided.

# Floor Area Ratio Requirement

## Definition:

Floor area ratio means a method of calculating structural massing on a lot. Floor Area Ratio is expressed as a ratio of x divided by y, where x is equal to the sum of the gross floor area of all stories above grade plane, as measured to the outside surface of exterior walls, and y is equal to the lot area net of any publicly dedicated right-of-way or land. Detached accessory structures and detached or attached parking structures above grade plane are not included in the gross floor area calculation.

In short: FAR is the ratio of total floor area of a building to the total net lot area (in our case exclusive of parking structures but inclusive of surface parking).

- FAR is a measure of the intensity of use of a site – controls building mass & perceived bulk – taller building with smaller footprint
- It is not an absolute determinant of height or site coverage

# 16.41.050 Table 3 Floor Area Ratio Development Standard

Minimum floor area ratio is 0.8 in the C-1 zone only within the CC subarea of the Downtown Canby Overlay (DCO)

When combined with the other development standards – minimum & maximum setbacks from the lot line (0’ & 10’), street lot minimum building percentage at the minimum setback of 60%, a maximum building footprint of 30,000 sf., and a maximum height of 60’ – the arrangement and form of the building on the lot is determined within the “intensity” allowed by the FAR.

This section of the Code provides:

- No minimum building height – (a one-story building is allowed)
- No development standard requiring a minimum of 2-floors
- No maximum lot coverage provision (only landscape % controls)

# 16.41.060 DCO Site Design Review Guidelines

(A)(3)(c) Findings and Objectives

… Given Canby's desire to create a thriving pedestrian and business district, it is important that uses above the ground floor encourage housing and allow for commercial uses.

(B)(2)(a) … Core Commercial Sub-Area (CC)

… The "downtown" portion of this subarea extends along 1st and 2nd Avenues between Cedar and Knott Streets and extending northward along Grant & Holly past Wait Park to 4th Avenue. This is the "heart" of Canby. The built environment is characterized by one to two story buildings with commercial storefronts built up to the sidewalks containing more or less a solid building wall. The result is a more active and vibrant street life than may be found elsewhere in the City.

# 16.41.070 DCO Site Design Review Standards

The standards in this section provide a framework for how a building should look, function, and feel. The standards provide clear and objective guidance to specific design elements. They vary by subarea, and options are provided in many cases to meet a specific goal.

- Pedestrian oriented ground floor standards
- Cohesive architectural element standards
- Integrated building façade standards
- Corner intersection standards
- Materials standards
- Color palette

# Conclusions From Staff

- We need to amend the relevant ordinance sections to clarify our intent with regard to requiring 2-story buildings in the "Downtown"
- To fully implement the original "intent" of the Downtown Canby Plan, we should ensure that the 2-story standard is fully implemented by adding a 2-story development standard and possibly a "maximum lot coverage" standard and/or adjustment to the FAR upward to assure all new buildings in the "Downtown" will contain 2-story's and/or at least the appearance (as defined) of 2-stories, applicable to the C-1 zoned area of the core commercial subarea of the Downtown Overlay.
- The Development Standards could contain a 2-story exception for buildings (as defined) that present a tall one-story appearance for a minimum percentage of the overall building length along the street frontage.

# Alternative Direction

- Amend the applicable ordinance sections to encourage and incentivize 2-story buildings but retain flexibility to approve new 1-story buildings. Reasons might include:
  - There are likely to be potential future new or redevelopment proposals considered that do not contain 2-stories due to the added expense or particular needs of the use.

Caution – Urban Design Professionals would advise that:

Many of these uses would likely not be compatible with the goals of the Downtown Plan and therefore less likely to result in an increased intensity of use within the downtown with little to no opportunity for future upper story housing within the "Downtown" contributing to a lack of uniqueness and sense of place which may lead to a less vibrant "Downtown".

# Chapter 16.41

# DOWNTOWN CANBY OVERLAY (DCO) ZONE

**Sections**


**16.41.010 Purpose.**
**16.41.020 Applicability.**
**16.41.030 Uses permitted outright.**
**16.41.040 Conditional uses.**
**16.41.050 Development standards.**
**16.41.060 DCO site and design review guidelines.**
**16.41.070 DCO site and design review standards.**


## 16.41.010 Purpose.

The purpose of the Downtown Canby Overlay (DCO) zone is to:

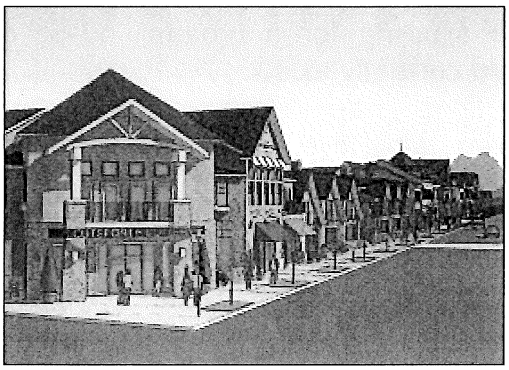


**Figure 1**
Commercial development example concept

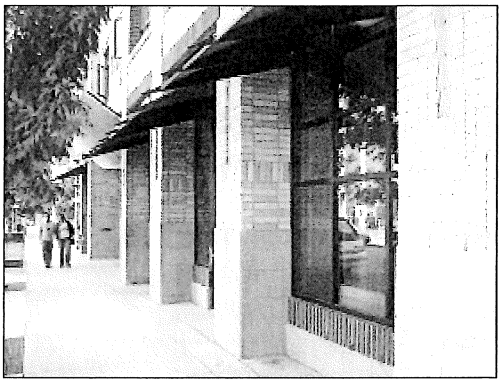


**Figure 2**
Cohesive architectural elements create a human-scale environment

**A.** Encourage more intense development in the Core Commercial area and allow for more intensive development in the Transitional Commercial area over time. Intensity of development and the relationship between setbacks, lot coverage and floor area ratio address this objective. Floor area ratios (FAR) are intended to work with building height and setback standards to control the overall bulk of the building. The proposed FAR in conjunction with the maximum lot coverage ensures that the development will be a minimum of two floors along the street in the C-1 portion of the Core Commercial area.

**B.** Create a pedestrian friendly environment in the Core Commercial and Transitional Commercial areas while allowing for a more auto-oriented focus in the Outer Highway Commercial area. A comfortable pedestrian-oriented environment and limited setbacks are important in the Core Commercial and Transitional Commercial areas. In the Outer Highway Commercial area, a portion of development should be closer to the road to provide visual connection and signal that drivers are entering an urban area. Larger setbacks in the Outer Highway Commercial area also allows for more

Floor area ratio means a method of calculating structural massing on a lot. Floor Area Ratio is expressed as a ratio of x divided by y, where x is equal to the sum of the gross floor area of all stories above grade plane, as measured to the outside surface of exterior walls, and y is equal to the lot area net of any publicly dedicated right-of-way or land. Detached accessory structures and detached or attached parking structures above grade plane are not included in the gross floor area calculation. (Ord 1296, 2008)

**16.04.223 Frontage road.**
Frontage road means a public or private drive which generally parallels a public street between the right-of-way and the front building setback line. The frontage road provides access to private properties while separating them from the arterial street (see also service roads). (Ord. 1043 section 3,
2000)

**16.04.225 FCC.**
The Federal Communications Commission; the federal agency that regulates interstate and international communications by radio, television, wire, satellite and cable. (Ord. 981 section 17, 1997)

**16.04.228 Grade plane.**
Grade plane means the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building. (Ord 1296, 2008)

**16.04.230 Height of building.**
Height of building means the vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitch or hip roof. (Ord. 740 section 10.1.20(B) [part], 1984)

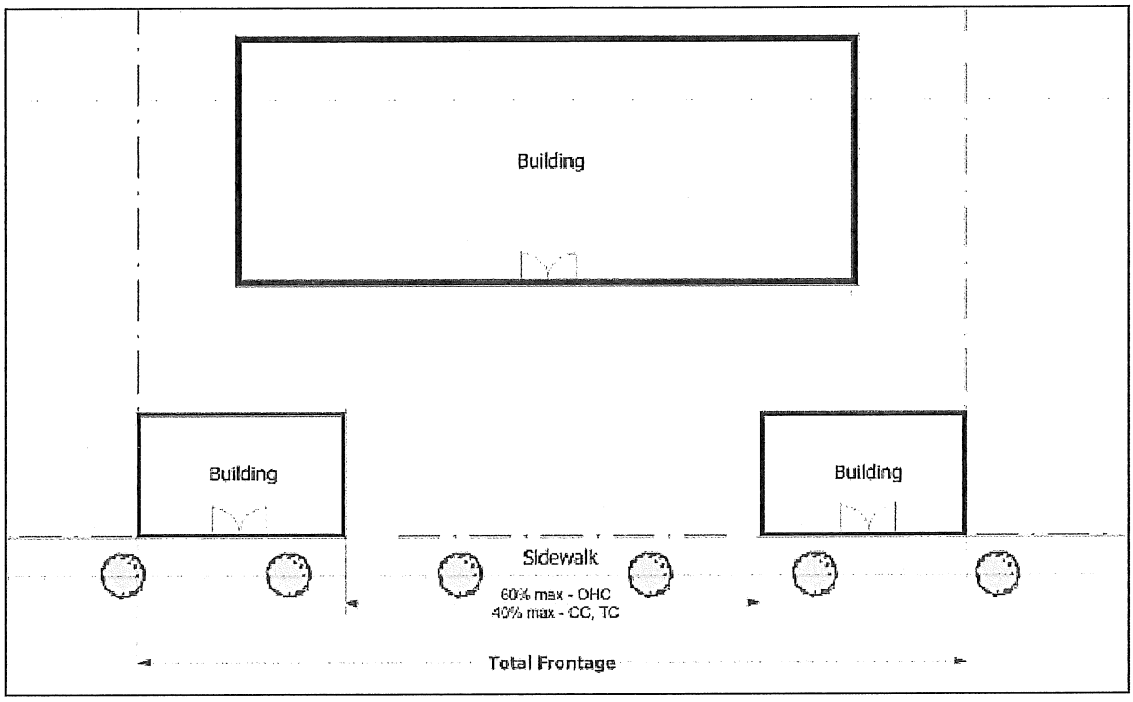
**16.04.240 Home occupation.**
Home occupation means a lawful activity commonly carried on within a dwelling by members of the family occupying the dwelling with not more than one non-resident employee being engaged, provided that:

**A.** The residential character of the building is maintained;

**B.** The activity occupies less than one-quarter of the ground floor area of the building;

**C.** The activity is conducted in such a manner as not to give an outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term nor infringe upon the rights of neighboring residents to enjoy

**Figure 12** Illustration of Building Façade Requirements




**2.** Floor area ratio, building footprint, and building height. Minimum floor area ratio, maximum building footprint, and maximum building height requirements for each DCO subarea are described in Table 3 and illustrated in Figures 13, 14, and 15. Footprints are exclusive of exterior displays or merchandise (e.g., garden centers).

**Table 3.** Floor Area Ratio Requirements

| Standards | CC subarea | TC subarea | OHC subarea |
|---|---|---|---|
| Minimum floor area ratio | 0.8, C-1 zone only | 0.4 | 0.25 |
| Maximum building footprint (square feet) | 30,000 total | 20,000 total | 80,000 per use<br>100,000 all uses within footprint if more than 1 use (see Figure 13) |
| Maximum building height (see Figure 14) | 60 feet | 45 feet | 45 feet |

parking space may count the entirety of the parking space towards its off-street parking requirement. (Ord. 1296, 2008)

**16.41.060 DCO site and design review guidelines.**

**A. Findings and objectives.**

**1.** The City Council finds that physical appearance and design of buildings in the city's primary commercial areas has a strong impact on the community's economic well-being, quality of life and sense of character and identity. High-quality design of these buildings, with special attention to the relationship between buildings, people and the surrounding physical space will help spur investment in the city; enhance use and value of land and improvements; improve the stability and value of property; and generally improve the experience of residents and visitors who use these commercial areas.

**2.** Administration of design standards should be efficient and effective and provide a level of certainty for property and business owners, as well as other community members. It is important to provide a set of clear and objective standards that may be administered relatively quickly and easily for most applicants. At the same time, it is important to provide an alternative path that provides flexibility for applicants that may want to take a more innovative approach which meeting the intent of the clear and objective standards.

**3.** The objectives of the design standards in this section include the following:

**Figure 17**
A high degree of transparency (windows) helps create a sense of interaction between activities inside and outside the building

**a.** Create a pedestrian-oriented environment through design of ground floors. Fostering interaction between activities within buildings and activities within the public realm (the sidewalk and street) is crucial to creating a vibrant and interesting built environment. A high degree of transparency between the two realms creates visual interest for the pedestrian on the sidewalk, and promotes a more active, engaging pedestrian experience. Design of ground floor windows and building entries is important to achieving this goal. In addition, courtyards, arcades and special paving enhance the pedestrian environment by providing pleasing, semi-public transitions between the public and private realms, effectively creating a "threshold" between the sidewalk and the building (see Figure 17).

**b.** Establish cohesive architectural elements. Well-designed, repetitive building elements tend to create a strong sense of place and leave a lasting physical memory. Cohesive and repetitive architectural "bays" along the street-facing ground floor of a

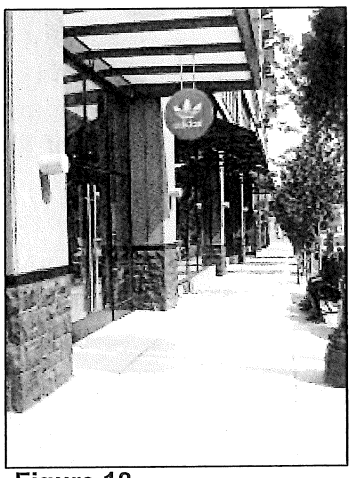


**Figure 18**
Cohesive visual elements like columns and lighting improve the pedestrian experience

**Figure 19**
Design details such as a recessed entry, columns and decorative transom windows help articulate the ground floor and distinguish it from the upper floors

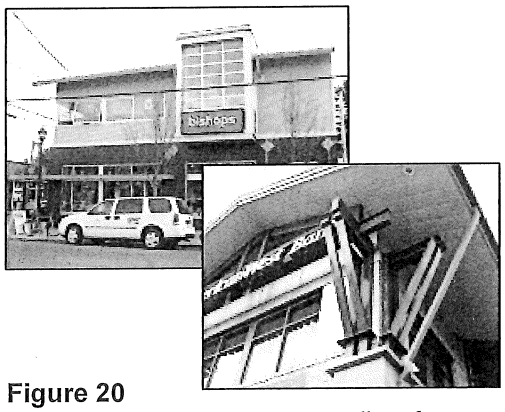


**Figure 20**
Upper stories on these uses allow for non-retail uses which are reflected in differing window treatments and other design

building create a pleasing sense of rhythm for the pedestrian, and help to scale and order the built environment as it is experienced from the sidewalk and street (see Figure 18).

**c.** Ensure that buildings have a unified design. Providing clear distinctions between different portions of a building is important for the building's appearance, consistency of design within a larger area and the ability of people to read or understand how the building functions. Building facades should have a clear and distinct base, middle, and top (Figure 19), utilizing horizontal bands and changes in color and / or material / or building massing and form to differentiate these breaks. The base of the building typically extends from the sidewalk to the bottom of the second story or the belt course / string course that separates the ground floor from the middle of the building (see Figure 19).

Given Canby's desire to create a thriving pedestrian and business district, it is important that uses above the ground floor encourage housing and allow for commercial uses. Upper floor windows should reflect this change in use (see Figure 20). The middle of the building often contains smaller, vertically-oriented windows to reflect changes in use on upper floors. Finally, the top of the building contains a "capping" element which visually terminates the façade and creates visual interest at the top of the building.

**d.** Reinforce the appearance and function of corners within core commercial area. Incorporating strong architectural elements where streets intersect not only results in a more visually interesting built environment, but enhances the way pedestrians "read" and understand city blocks by creating recognizable and memorable design elements at the corner of each block. For this reason, buildings on corner lots should be designed to not only address, but celebrate the corner (see Figure 21).

**e.** Use materials that reflect the character and values of Canby. Materials evoke emotions among visitors and residents and help define the character of the community. On the positive side, they can evoke a sense of timelessness, permanence, quality, strength and creativity. On the negative

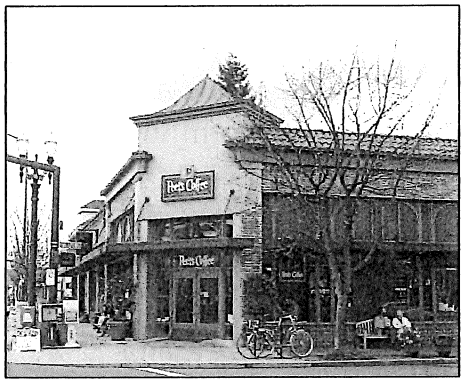



**Figure 21**
The chamfered entry on this building reinforces the corner

**Figure 22**
Use of materials such as stone and stucco add to a feeling of permanence

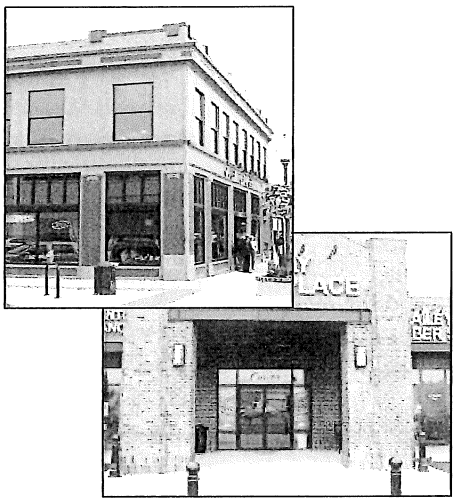


**Figure 23**
These buildings in the commercial core illustrate desired design features in

side, they may connote feelings of transience, incongruity or inconsistency, weakness or tedium. Standards for materials are important to reflect and enhance the community's values and quality of life (see Figure 22).

**B. Applicability.**

**1.** General applicability.

**a.** Subsection 16.41.060.C and section 16.41.070 define how and where different types of standards apply.

**b.** Design standards apply only to the following: (1) new developments; (2) remodels which represent 60 percent tax assessed or more of the value of the existing building; (3) façade improvements that would alter the exterior structure of the building.

**c.** Design standards do not apply to the following:

**(1)** Interior remodels not combined with exterior changes and valued at less than 60 percent of the total improvement value of the property;

**(2)** Repair and maintenance of buildings, accessory structures, parking lots and pedestrian areas that present an immediate or potential risk of public safety;

**(3)** Normal or routine maintenance and repair of existing structures;

**(4)** Any type of construction that does not require a building permit;

**(5)** Temporary structures and emergency structures permitted pursuant to applicable code standards.

**2.** Sub-Areas. Site and design review standards are applied differently within the three sub-areas described below (see Figure 11).

**a.** Core Commercial Sub-Area (CC). The "downtown" portion of this area extends primarily along 1st and 2nd Avenues between Cedar and Knott Streets, and extends northward, away from Highway 99E along Grant and Holly, past Wait

Park to 4th Avenue. This area is the "heart" of Canby. Here one will find the City's more historic, traditional commercial structures. The built environment is characterized by one to two story buildings with commercial storefronts, built up to the sidewalk, and containing a more or less solid "building wall." The result is a more active and vibrant street life than may be found elsewhere in the City. Future development in this area should continue this trend, designing commercial and mixed-use buildings that adequately address the sidewalk and create an engaging experience for pedestrians (see Figures 23 and 24).

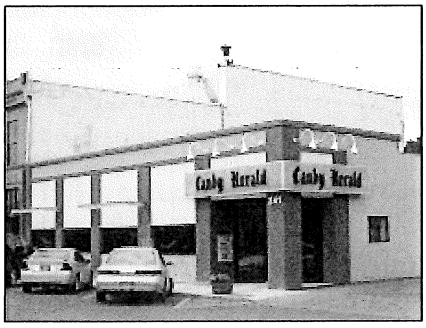



**Figure 24**
The Canby Herald Building in the commercial core incorporates many good design elements including a recessed entry, sign frieze, engaged columns and decorative lighting

The inner highway portion of the Core Commercial area spans the length of Highway 99E between Elm and Locust. In many ways, it serves as an extension of the Downtown Core, just across the highway. Because this area serves as a "gateway" from Highway 99E into the traditional downtown and serves many of the same purposes and types of uses, buildings here should be appropriately scaled, inviting to pedestrians, and demonstrate high-quality architectural design. As a result, architectural standards for this area and the downtown are identical, although some development standards differ as described in section 16.41.050.

**Figure 25**
Example of "cottage commercial" design in the Transitional Commercial sub-area

**b.** Transitional Commercial Sub-Area (TC). This area is characterized by a mix of single-family homes and smaller-scaled commercial developments, which often take the form of conversions of existing single-family homes. Larger front setbacks and landscaping (including front yards) characterize the area. The future of this area will likely include commercial storefronts that address the sidewalk, albeit less intense than those in the Core, and residential developments. The overall result will be a truly mixed-use neighborhood, less intense than the Commercial Core, and with more greenscape and residential uses. Over time, commercial uses in portions of the Transitional Commercial district may transition to more intensive uses similar to the core downtown area and over time the relative boundaries between the two zones may shift somewhat. Requirements within the

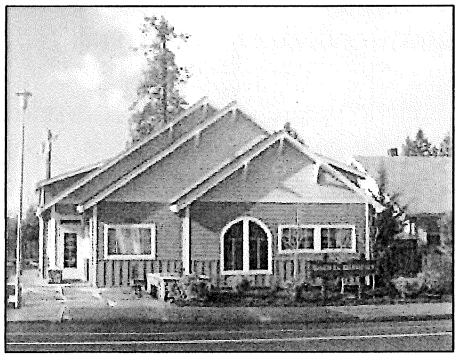


**Figure 26**
Example of commercial development in the Transitional Commercial sub-area

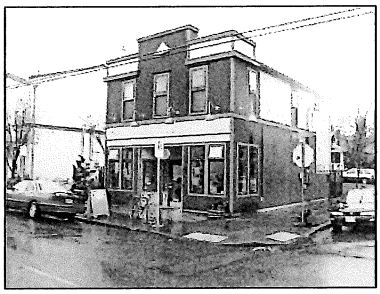


**Figure 32**
Top of building features a parapet

**Figure 33**
Building entry features a transom window above the door

**18. Mullion** – A vertical post or upright element dividing a window or other opening into two or more sections.

**19. Parapet** – A low, solid, protective screening or decorative wall as an extension of exterior building walls beyond the roof or deck level (see Figure 32).

**20. Primary Street Facing Façade** – The façade of the building facing the primary (east-west) adjacent street. These streets include Highway 99E, and North and South 1st, 2nd, 3rd, and 4th Avenues.

**21. Secondary Street Facing Façade** – The façade of the building facing the secondary (north-south) adjacent street. These streets include Birch, Cedar, Douglas, Elm, Fir, Grant, Holly, Ivy, Juniper, Knott, and Locust Streets.

**22. String Course** – A horizontal band or molding set in the face of a building as a design element (also called a belt course).

**23. Transom** – A horizontal glass plane, typically encased in a wood or metal frame that separates the storefront from the upper façade (see Figure 33).

**24. Turret** – A very small and slender tower attached to a larger building.

**25. Visible Transmittance** – A measure of the amount of visible light transmitted through a material (typically glass). Information about visible transmittance typically is or can be provided by window manufacturers. (Ord 1296, 2008)

**16.41.070 DCO site and design review standards.**

The following design standards provide a framework for how a building should look, function, and feel. The standards are organized by topic and consist of the following elements:

- Intent Statement - the big idea or the goal to be accomplished (ex. "protect pedestrians from sun, wind, and rain"). In addition to providing context for specific standards, these statements are used to evaluate applications as part of an alternative review process administered by the City's Design Review Board (see Section 16.49.035).
- Standards which provide clear, objective guidance related to specific design elements, in many cases providing options for how to meet a specific goal, and varying by sub-area.

Office of the Mayor

# Proclamation

## Canby Community Food & Toy Drive

## Sponsored by Canby Kiwanis

WHEREAS, the Canby Community Food & Toy Drive sponsored by Canby Kiwanis, originated for the purpose of providing toys and food for less fortunate families in our community; and

WHEREAS, by way of this Proclamation, the City of Canby recognizes that greater public awareness and involvement is needed in order for such programs to achieve their highest potential in providing and promoting joy to each household in this community; and

WHEREAS, Canby community members have undertaken the project of collecting and distributing toys and food to these needy families during the month of December; and

WHEREAS, donations for food baskets can be left at various locations around Canby;

NOW, THEREFORE, I, Brian Hodson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim December 15 through December 21 as:

CANBY COMMUNITY FOOD & TOY DRIVE WEEK SPONSORED BY CANBY KIWANIS

and urge all people of the City of Canby to observe this time by participating in this toy and food drive, helping to provide assurance that each family may have a twinkle in their eye this holiday season

Given unto my hand this 4th day of December, 2013.

Brian Hodson
Mayor

**ORDINANCE NO. 1391**

**AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 3.24 PUBLIC TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX.**

**WHEREAS,** the City of Canby desires to change its current Public Transportation Payroll and Self-Employment Tax ordinance to reflect correction of errors and changes in suggested best practices; and

**WHEREAS**, the Canby Municipal Code is currently silent regarding waiving or adjusting penalties, interest , the use of non-filing fees and record keeping requirements; and

**WHEREAS**, clarifying the process to adjust penalties, interest and the use of non-filing fees will ensure all taxpayers are treated in a fair and consistent manner; now therefore

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

**Section 1.** The Canby Municipal Code (CMC) is hereby amended to include amendments to Chapter 3.24 Public Transportation Payroll and Self-Employment Tax. A copy of Chapter 3.24 with changes identified is attached hereto as Exhibit "A".

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 20, 2013, 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, December 4, 2013, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

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Kimberly Scheafer, MMC
City Recorder

**PASSED** on the second and final reading by the Canby City Council at a regular meeting thereof on December 4, 2013 by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer, MMC
City Recorder

EXHIBIT A

# CHAPTER 3.24: PUBLIC TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX


3.24.010 Definitions.
3.24.020 Application; doing business in the city.
3.24.030 Payroll and self-employment tax imposed.
3.24.040 Apportionment of tax.
3.24.050 Alternate method of apportioning tax.
3.24.060 Fixed percentage.
3.24.070 Employer located outside of local transit ~~district~~area.
3.24.080 Exceptions.
3.24.090 Nature of the tax.
3.24.100 Date due, returns, payments, prepayments and extensions.
3.24.110 Rebates.
3.24.120 Collector's duties.
3.24.130 Penalties, ~~and~~ interest and fees.~~.~~
3.24.140 Failure to file, failure to pay, underpayment.
3.24.150 Tax as debt; termination of taxable period and immediate assessment of tax.
3.24.160 Warrant for collection of taxes.
3.24.170 Discontinuing business in the local transit district.
3.24.180 Refunds.
3.24.190 Sale or other transfer of business.
3.24.200 Receivers, trustees, executors, administrators, guardians, conservators and others.
3.24.210 Right of privacy.
3.24.220 Computer records of taxpayers.
3.24.240 False information, failure to file; penalty.
3.24.250 Appeal from C~~c~~ollector.
3.24.260 Record keeping requirement


## § 3.24.010 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Association means any club, group or organization, whether organized for business purposes, civic purposes, religious purposes or other purposes.

Business Entity means any sole proprietorship, self-employed person, partnership, limited partnership, corporation including nonprofit corporations engaged in any business enterprise, and any firm, association or entity of any kind engaged in business. This term shall also include any personal representative or assignee of any Business Entity.

City means the City of Canby.

Collector means the ~~city~~ tax C~~c~~ollector of the city. This may be an employee of the city or a contract agent or agency as the City Council shall from time to time determine. The City ~~Administrator~~ Finance Director shall have supervisory responsibilities over the C~~c~~ollector.

Commission Merchant or Commission Employee means any person who engages in the sale of goods for compensation in the form of a commission only and is subject to withholding under

O.R.S. Chapter 316. This also includes any person who buys and resells goods if the person does not maintain a retail store or wholesale sales floor and does not store goods except during a short period before transportation to the buyer.

Corporation means any business corporation and any nonprofit corporation organized under the laws of this state, or under the laws of any jurisdiction.

Employee means any individual employed by another, for wages. This also includes all real estate salespeople employed by a real estate broker and paid on a commission basis, and all mechanics who perform services for customers of an auto repair shop and who are paid by the owner of the auto shop for each repair or maintenance job done, provided that the remuneration is subject to withholding under O.R.S. Chapter 316.

Employer has the meaning prescribed by O.R.S. 267.380.

Firm means any sole proprietorship, partnership, corporation, joint venture, limited partnership or other form of organization formed for the purpose of doing business.

Individual means a natural person.

Local Transit Area means designated areas within ~~a boundary established by~~ the city and the Canby Urban Growth Boundary which will receive benefits of operation, management or delivery of a transit system.

Net Earnings from Self-Employment has the definition as prescribed by O.R.S. 267.380.

Payroll Expense means the wages paid by any employer to any employee. Payroll Expenses also include the commission received by a commission merchant or a commission employee, if that person is subject to withholding under O.R.S. Chapter 316.

Personal Representative means any trustee, receiver, executor, administrator, guardian, conservator or similar Personal Representative of any person, firm, association or corporation.

Taxpayer means any person, firm, corporation or association required by this chapter to file a return or to pay a payroll and/or self-employment tax.

Wages has the meaning ~~means as~~ prescribed by O.R.S. 267.380.

§ 3.24.020 Application; doing business in the city.

A. The payroll and self-employment tax shall apply only to persons, firms, corporations and associations doing business within the ~~boundaries of the city~~local transit area.

B. A person, firm, corporation or association is doing business within the boundaries of the local transit area if the entity does any of the following:

1. Employs ~~1~~ one or more employees, commission merchants or commission employees to work in the local transit area~~city~~;

2. Maintains a place of business in the local transit area~~city~~;

3. Owns, manages or leases property in the local transit area~~city~~. Managing rental property owned by the entity or by others is included;

4. Solicits any business within the local transit area~~city~~, provided that solicitation is by mail or telephone contacts only, and solicitation by advertising only shall not subject any entity to the payroll and self-~~-~~employment tax;

5. Uses the streets within the local transit area~~city~~ for any reason in connection with the work of any employee, commission merchant or commission employee; or

6. Maintains any place of business in the city, provided that any employer not maintaining a place of business in the city, but doing any of the acts described in divisions B.1. through B.5. of this section shall be subject to the payroll and self- employment tax.

7. Conducts business in a residence within the local transit area.

8. Received taxable income due to business activity in the local transit area.

§ 3.24.030 Payroll and self-employment tax imposed.

To carry out the purposes set forth herein, an excise tax is hereby imposed and levied on every person, firm, corporation or association doing business within the boundaries of the local transit area, which employs one~~1~~ or more employees, or contracts orally or in writing with any commission merchant or commission employee. For the same purposes, a tax is imposed on each individual's net earnings from self-employment and hereinafter shall be included when there is a reference to payroll and self-employment tax. The amount of the tax shall be 0.6% of the total payroll expense of each taxpayer or of the individual's net earnings from self-employment, as the case may be. The payroll and self-employment tax shall be in full force and effect from and after January 1, 2002, and shall apply to payroll expense and net earnings from self-employment incurred after that date. This tax is imposed for the provision of public transportation services within the local transit area in order to provide for the business community to carry a share of the costs of local government in return for the benefits and opportunities available because of the city government and services.

§ 3.24.040 Apportionment of tax.

A. The payroll and self-employment tax applies to the gross taxable payrolls of employees ~~either working or being~~ paid ~~within the local transit area or doing business~~for work performed within the local transit area~~, unless a portion of or all of the payroll is subject to a like type tax by Tri-Met~~. If an employer employs or pays some individuals within the local transit area and employs or pays some individuals outside of the local transit area who are subject to Tri-Met tax or a like tax, then the tax shall apply only to the payroll covering employees working or being paid within the local transit area~~ who are not subject to Tri- Met tax~~.

B. If any employee spends part of his or her working hours within the ~~city~~ local transit area and part outside of the ~~city~~local transit area, the fraction or percentage of the payroll of that employee to be taxed shall be determined as follows:

1. If the employee's compensation depends on the amount of sales or volume of repair work or other services done, only the payroll attributable to sales made or services done in the local transit area shall be subject to the payroll tax.

2. If the employee is paid on any other basis, the fraction or percentage of the payroll concerning that employee to be taxed shall equal the fraction or percentage of the employee's working hours spent in the local transit area. The same apportionment is applicable to net earnings from self-employment if any of the earnings are subject to the Tri-Met payroll and self-employment tax or any like tax.

§ 3.24.050 Alternate method of apportioning tax.

Any taxpayer may, at the taxpayer's sole option, propose an alternate method to the methods of apportioning the payroll tax set out in the preceding section of this chapter. If, due to the circumstances of the taxpayer's business, the methods set out in the preceding section result in more of the taxpayer's payroll being taxed than can reasonably be attributed to the connection of the taxpayer and the employees, commission merchants or commission employees within the local transit district, and if the proposed alternate method does provide for a reasonably accurate proportion of the taxpayer's payroll to be subject to the tax, the C~~c~~ollector may approve the

alternate method and the amount of payroll and self-employment tax owed by the taxpayer shall be the amount determined by the alternate method.

§ 3.24.060 Fixed percentage.

If the Ccollector finds that the percentage of any taxpayer's payroll required to be apportioned to business done in the local transit area remains stable with little variation, the Ccollector may notify the taxpayer that a fixed percentage has been established and that the percentage does not have to be calculated when each return is filed. If the taxpayer objects within 30 days of receiving the notice, the fixed percentage shall not be put into effect and the percentage shall continue to be determined as before. If the taxpayer does not object, the fixed percentage shall remain in effect until changed by action of the Ccollector, or changed by the taxpayer as follows: At any time the use of the fixed percentage may be discontinued, at the sole option of the taxpayer, by the taxpayer giving 30 days' written notice to the Ccollector. Each taxpayer whose payroll tax is determined by use of a fixed percentage under this section has a continuing duty to notify the Ccollector immediately of any significant change in conditions which would change the proportion of the payroll reasonably attributable to business done or work done in the local transit district. The Ccollector may change or discontinue the use of a fixed percentage at any time.

§ 3.24.070 Employer located outside of local transit districtarea.

Employers located outside of the local transit area are subject to the payroll and self-employment tax if any employee, commission merchant or commission employee of the employer does business in the local transit area in any way designated in § 3.24.020 of this chapter. Each employer shall contact the city Ccollector to obtain forms and shall file all returns required by this chapter.

§ 3.24.080 Exceptions.

A. Wages which are excluded as remuneration paid under O.R.S. 267.380.

B. Any payroll of any employer subject to the Tri-Met payroll or self-employment tax or any like tax. Refer to section 3.24.040.

§ 3.24.090 Nature of the tax.

The tax imposed by this chapter is a tax on persons, firms, corporations and associations doing business in the local transit area. It is not a tax on employees. The payroll and self-employment tax shall not be withheld by the employer from the employee's compensation.

§ 3.24.100 Date due, returns, payments, prepayments and extensions.

A. Taxpayers shall comply with the following requirements concerning returns, payments, pre-payments and extensions.

B. Taxes shall be determined for:

1. 1. Payroll: each quarter of the calendar year, and the tax due for each quarter of the calendar year shall be paid on or before April 30, JulyJune 310, September 30October 31 and January 31.

2. Annual Payroll: The Collector may authorize annual payroll tax reporting for a taxpayer whose reporting history indicates the business does occasional work within the local transit area resulting in tax due of $120.00 or less per year, or an average of $30.00 or less per quarter. The tax due for each calendar year shall be paid on or before January 31 of the

following year. It is the responsibility of the taxpayer to notify the Collector and increase the reporting frequency to quarterly when the tax due exceeds the maximum limits for the annual reporting frequency. Failure to do so may be deemed negligence or evasion, and penalties may apply. Failure to file returns timely, without good cause shown to the satisfaction of the Collector, is sufficient cause for the Collector to deny future annual filings by the taxpayer.

3~~2~~. Self-employment: ~~each quarter of the calendar year~~annually~~, and~~ the tax due for each ~~quarter of the~~ calendar year shall be paid on or before April 15.~~, June 15, September 15 and January 15.~~

C. Each taxpayer shall file a return, on a form to be furnished by the C~~c~~ollector, and file the same along with payment of the tax, on or before the date payment is due. Taxpayers are required to file a zero tax due return if no tax is owed.

D~~C~~. Extensions for filing may be granted by the C~~c~~ollector for good and sufficient cause shown, such as events outside the control of the taxpayer and which could not have been avoided by prudent business practices. To be eligible for an extension, requests must be received in writing prior to the tax payment due date. These extensions shall be for not more than 30 days for quarterly and annual payroll taxpayers or six months for self-employment taxpayers. Extensions are for more time to file a return only. A payment must be made based on an estimated return by the original due date to avoid penalty and interest charges. If the C~~c~~ollector grants an extension under this ~~division~~section, the taxpayer shall pay interest at the rate of 1.5% per month on the balance of any unpaid payroll and self- employment tax due and shall pay no other penalty if filed and account made current by the extension deadline; otherwise penalties, fees and interest could be accrued from the original filing deadline~~or late charge~~.

§ 3.24.110 Rebates.

A. The C~~c~~ollector may request approval from the City Council to grant tax rebates or credits based on the financial performance of the transportation fund, giving due consideration to projected operating expenses and prudent reserves.

B. Rebates will be returned to taxpayers on a pro-rata basis less costs of administration of the rebates and any incentive charges.

§ 3.24.120 Collector's duties.

The C~~c~~ollector shall have the following duties in connection with the payroll and self-employment tax:

A. Keep accurate records of all returns and of all sums received for payroll and self-employment tax. The records shall contain the names and addresses of each taxpayer, and the dates and amounts of payments. The nature of installment payments shall be indicated on the records. The C~~c~~ollector shall keep the original returns on file for a period of not less than 3 years after filing;

B. Enforce the provisions of this chapter;

C. Prepare forms and instructions for the returns and payments required by this chapter;

D. Examine returns and, for any returns appearing to be incorrect, make inquiries, investigations and adjustments in the amount of tax due;

E. Where necessary to determine accurate figures for determining the amount of tax due, examine books, records and information stored in computers of any taxpayer, provided that each city officer or employee acting under this chapter shall identify himself or herself and request the information desired. If the officer or employee is refused admission to any place of business or

refused access to any records or computer memory, the C~~c~~ollector or employee shall leave the premises and shall seek an appropriate court order, with the assistance of the City Attorney, to obtain access to the information needed;

F. The C~~c~~ollector may delegate duties assigned to the C~~c~~ollector in this chapter to any officer or employee under the C~~c~~ollector's supervision, provided that the C~~c~~ollector shall approve the form of all returns and written instructions;

G. The C~~c~~ollector shall prepare pamphlets for distribution to the public, clearly explaining the payroll and self-employment tax and the returns and payments required; and

H. The C~~c~~ollector shall perform all of the other duties assigned to the C~~c~~ollector by this chapter.

§ 3.24.130 Penalties, ~~and~~ interest and fees.

A. Original Delinquency. Any ~~operator~~ taxpayer who has not been granted an extension of time for filing a return or remittance of tax due and who fails to remit any tax imposed by §§ 3.24.030*et seq.* prior to delinquency, shall pay a penalty of 10% of the amount of tax due in addition to the amount of the tax unless the taxpayer shows that the failure to file timely is due to reasonable cause and not due to negligence.

B. Continued Delinquency. Any taxpayer~~operator~~ who has not been granted an extension of time for filing a return or remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first~~ast~~ became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed unless the taxpayer shows that the failure to file timely is due to reasonable cause and not due to negligence.

C. Fraud. If the C~~c~~ollector determines that the failure to file a return or that the nonpayment of any remittance due under §§ 3.24.030*et seq.* is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions A. and B. of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit a tax imposed by §§ 3.24.030*et seq.* shall pay interest at the rate of 1.5% per month or a fraction thereof, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Said interest cannot be waived by the Collector~~.~~

E. Payment submitted without Return. A fee, set by resolution, shall be charged should a taxpayer remit a payment without a return unless said return is received by the Collector within five business days of receiving the payment.

F~~E~~. Penalties Merged with Tax. Every penalty and fee imposed and such interest as accrues under provisions of this section shall be merged and become a part of the tax herein required to be paid. Payments shall first be applied to penalties and fees imposed, then to interest accrued, then taxes due.

G~~F~~. Attorney Fees. In the event it becomes necessary for an enforcement of the provisions of this chapter for the city to incur attorney fees' expense and cost, the taxpayer shall be assessed that expense and/or cost. It shall be due and owing upon billing and shall bear interest at the rate of 1.5% per month.

H~~G~~. Imposition of Civil Penalties. An imposition of any civil penalties, interest, fees or costs by this section shall not be a bar for any prosecution under § 3.24.240.

I. The Collector may waive or adjust penalties and fees imposed by (A), (B), (C) and (E) above upon a finding that:

1. In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter

in a timely manner;

2. The amount of the penalties or fees are greatly disproportionate to the amount of the tax;
3. The failure of a taxpayer to file a return and/or pay any tax by the due date was caused by any of the following circumstances:
   a) The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.
   b) Erroneous or insufficient information was furnished the taxpayer by the Collector or their employee or agent.
   c) Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.
   d) Unavoidable absence of the taxpayer immediately prior to the due date.
   e) Destruction by fire or other casualty of the taxpayer's place of business or records.
   f) Prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.
   g) The taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.
   h) The taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter, and after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.
   i) The taxpayer has never been audited by a City for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation.
   j) The taxpayer can provide some public record (court case; report in a periodical, professional journal, or publication; etc.) stating that the transaction is not subject to tax.
   k) The Oregon Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period.
4. A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

J. No request for waiver of penalty under Subsection (I) above may be granted unless written request for waiver is received by the Collector within sixty (60) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under Subsection (I) above may appeal under the provisions of Section 3.24.250 provided that a petition of appeal or request for an extension is submitted to the Collector within sixty (60) days of the taxpayer's receipt of notice by the City that waiver has been denied.

K. For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity in this City.

L. For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake." Examples of negligence include:

1. The taxpayer's failure to maintain records in accordance with Section 3.24.260 of this Chapter;

2. Repeated failures to file returns timely; or
3. Gross ignorance of the law.

§ 3.24.140 Failure to file, failure to pay, underpayment.

The following rules apply when a taxpayer fails to file a return, fails to pay the payroll and self-employment tax when due, or pays less than the amount due:

A. If a taxpayer fails to make a return, the C~~c~~ollector shall prepare an estimate of the amount of payroll and self-employment tax due from the taxpayer, based on the best information available to the C~~c~~ollector. The C~~c~~ollector may make investigations to assist in making the estimate. The C~~c~~ollector may consider the number of employees, the wages or other compensation customarily paid in the type of business, the volume of business done and customary commissions or bonuses paid to employees in the same type of business, and any other relevant matters. The C~~c~~ollector may estimate the compensation customary in the business by comparing returns filed by other taxpayers in the same business or similar businesses. When the C~~c~~ollector estimates the payroll and self-employment tax, the amount of the interest and late charge provided by this chapter shall be added to the taxes due. The C~~c~~ollector shall notify the taxpayer in writing of the amount due. The notification shall be in writing in the form of a pre-collection notice ~~and shall~~ containing a brief description of the method and estimated figures used in arriving at the estimated tax. ~~Any taxpayer may dispute the amount of the estimated tax by filing,~~ The taxpayer shall respond within 30 days of notification of the estimated tax by:

1. Filing ~~,~~ a tax return accompanied by payment of the entire balance due, together with interest and late charge due. The return shall be processed like any late return, and shall establish the payroll tax liability of the taxpayer in place of the estimated tax prepared by the C~~c~~ollector. The C~~c~~ollector may, however, later determine that the amount shown on the return is insufficient, so there is a deficiency, in the same manner as in the case of other returns.
2. Contacting the Collector or Finance Director to set up a payment plan.
3. If the taxpayer fails to respond to the notification within 30 days a collection notice will be mailed informing said taxpayer of the estimated balance, interest and late charges being turned over to a collection agency.

B. If the C~~c~~ollector determines, by examining available evidence that the amount of payroll and self- employment tax paid by any taxpayer is less than the amount required by this chapter, the C~~c~~ollector shall notify the taxpayer of the deficiency. The C~~c~~ollector may use any of the methods authorized by §§ 3.24.010*et seq.* of this chapter to determine whether a deficiency exists and to determine the amount of the deficiency. The C~~c~~ollector shall thereupon notify the taxpayer of the deficiency. The notice shall be in writing and shall state not only the amount of the deficiency, but also the methods and estimates used in arriving at the amount of deficiency. If the taxpayer does not object within 30 days of the date of receiving the notice, the taxpayer shall be deemed to have accepted the revised figures for payroll tax liability. If the taxpayer does file a written objection within the time specified, the taxpayer shall pay the tax, together with penalties and interest, under protest, and may thereupon, pursue administrative and judicial remedies as provided by ordinance and by state law, to seek a refund.

C. If the ~~c~~Collector finds that any taxpayer has overpaid, the C~~c~~ollector shall notify the taxpayer of the taxpayer's overpayment and shall refund the amount of the overpayment to the taxpayer in accordance with § 3.24.180.

D. When the C~~c~~ollector notifies any taxpayer of any estimated tax, alleged overpayment or refund, the C~~c~~ollector shall include in the notice clear instructions on how, when and where the taxpayer may protest or appeal the decision.

E. If a taxpayer or any person, firm, association or corporation required by this chapter to pay a tax or to file a return shall fail to file any return for any year, the failure to file shall constitute a continuing offense against the city and the C~~c~~ollector may proceed to estimate and collect the payroll and self-employment tax at any time. In all other cases, no increase shall be made in any taxpayer's payroll tax liability unless the first notice of the increase is received by the taxpayer within 3 years of the time the return was first due.

§ 3.24.150 Tax as debt; termination of taxable period and immediate assessment of tax.

A. Every tax imposed upon employers measured by wages paid to employees and upon self-employed persons measured by net earnings from self- employment, and all increases, interest and penalties thereon shall become, from the time the liability is incurred, a personal debt due the city from the person or persons liable therefor.

B. If the C~~c~~ollector finds that the taxpayer designs to depart quickly from the state or to remove his or her property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past quarter or the tax quarter then current, unless the proceedings be brought without delay, the C~~c~~ollector shall declare the current taxable period for the taxpayer immediately terminated and shall cause notice of the finding and declaration to be given the taxpayer. Simultaneously, the C~~c~~ollector, on the basis of the best information available to it, shall assess a tax for the terminated period and for the preceding tax quarter (if no return has been filed ~~therefor~~, whether or not the time otherwise allowed by law for filing the return and paying the tax has expired), and shall assess additional tax for any quarters open to assessment under provisions of the applicable law. The C~~c~~ollector shall give notice to the taxpayer of all taxes so assessed. The taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his or her last known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the findings of the C~~c~~ollector, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design, and the certificate of the C~~c~~ollector if the mailing or issuing of the notice and findings specified in this section is presumptive.

§ 3.24.160 Warrant for collection of taxes.

A. If any tax imposed upon employers by wages paid to employees or any portion of the tax is not paid within 30 days after it becomes due (or within 5 days, in the case of the termination of the tax quarter by the C~~c~~ollector under the provisions of § 3.24.150 of this chapter), and no provision is made to secure the payment of this by bond, deposit or otherwise pursuant to regulations promulgated by the C~~c~~ollector, the C~~c~~ollector, pursuant to O.R.S. 267.385 and/or the City Charter and the city code, the city shall issue a warrant under its hand and official seal directed to the sheriff of any court of the state commanding him or her to levy upon and sell real and personal property of the taxpayer found within his or her county, for the payment of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the warrant to the C~~c~~ollector and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the day of the warrant.

B. The sheriff shall, within 5 days after the receipt of the warrant, file with the Clerk of this county a copy thereof, and thereupon the Clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax proportion thereof and penalties for which the warrant is issued and the date when the copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of the Clerk. The sheriff, thereupon, shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued property upon judgment of a court of record, and shall be entitled to the same fees for his or her services in executing the warrant, to be added to and collected as a part of the warrant liability.

C. In the discretion of the C~~c~~ollector a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect ~~exercise~~ taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of that duty.

D. If a warrant is returned not satisfied in full, the C~~c~~ollector shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax, and shall balance his or her assessment record by transferring the unpaid deficiency to his or her delinquent record.

§ 3.24.170 Discontinuing business in the local transit district.

Whenever any person, firm, corporation or association subject to the payroll and self-employment tax ceases to do business in the local transit area, due either to going out of business or to moving all of the business out of the local transit area, the person, firm or corporation shall file forthwith the payroll and/or self-employement tax return and pay the tax required by this chapter, regardless of the time of year. Taxes shall be due and payable only for the actual payroll expense for the part of the year during which the taxpayer did business in the local transit area. Each officer, partner or owner of any taxpayer ~~falling~~ failing to comply with the terms of this section shall be jointly and severally liable personally for any unpaid amounts of the tax due under this section. The personal liability provided in the preceding sentence shall not be applied to a person solely because of ownership of a minority of stock in a corporation or ownership of any minority interest not involving control of the business entity.

§ 3.24.180 Refunds.

A. When any amount of any payroll and self-~~-~~employment tax, penalty or interest has been overpaid, the taxpayer who made the overpayment shall be reimbursed under the terms of this section. If the C~~c~~ollector determines that an overpayment has been made, the C~~c~~ollector shall make the refund whether a claim for the refund has been filed or not. Any taxpayer may make a claim for the refund by filing a statement signed by the taxpayer or by a person with actual knowledge of the facts, stating the reasons for the claim for refund. The C~~c~~ollector shall examine each claim, and may require additional information and evidence from the taxpayer. The C~~c~~ollector may make an investigation to determine the facts as to whether a refund is due. The investigation may include examining the books, records and information in computer storage of the taxpayer.

B. If any sum is due from the taxpayer to the city for any reason, the amount of the refund shall be applied first to offset the sum owed by the taxpayer to the city. ~~Any balance remaining~~

~~thereafter may, at the option of the taxpayer, be held by the collector to apply on future payroll tax payments.~~ Any sum not used for this offset ~~and not held at the taxpayer's request to apply on future payroll tax payments~~ shall be returned to the taxpayer as soon as practicable. The C~~c~~ollector shall notify the taxpayer in writing of the C~~c~~ollector's decision approving a claim for refund, denying the claim or approving a refund for a smaller amount than the taxpayer claimed. If the C~~c~~ollector shall deny all or part of the refund claim, the taxpayer may, within 30 days, file a written protest. If the taxpayer fails to file a written protest within 30 days, the taxpayer shall be deemed to have waived any objections to the action of the C~~c~~ollector. Any taxpayer who has filed a written protest in accordance with this section may pursue the administrative remedies and judicial remedies available under city ordinances and state law, to obtain review of the decision denying all or part of the refund. Any action by the C~~c~~ollector under this section, except an action fully approving a claim for refund, shall be accompanied by a set of clear instructions on how to file an administrative appeal or court action and shall make it clear that failure to file a timely administrative appeal or court action will cause the C~~c~~ollector's decision to stand.

§ 3.24.190 Sale or other transfer of business.

A. If any owner or group of owners acting together transfers a majority of ownership interest or controlling interest in any business entity that is subject to the payroll and self-employment tax, the seller or transferor must furnish to the buyer or transferee a complete record of payments, accompanied by receipts, showing past payments of the payroll expense tax for the past 3 years or the period of time since the business was subject to the tax, whichever period is shorter.

B. The buyer and seller, or transferor and transferee, must also furnish written evidence to the C~~c~~ollector that the steps described in at least 1 of the following paragraphs have been taken:

1. The seller has filed a payroll and self- employment tax return covering the period up to the date of sale of the business entity, accompanied by payment of all payroll and self-employment tax accrued to the date of sale. This is due not later than 10 days after the sale is closed by transfer of ownership, regardless of the payment schedule;

2. The buyer or transferee has filed a written agreement with the city, undertaking to pay all payroll taxes to become due, including those accrued during the part of the year before the sale or transfer;

3. The buyer has furnished evidence to the city that the funds of the business entity are sufficient and will be sufficient to pay all payroll and self- employment tax anticipated to be due when the next payment is due, that the business entity has acknowledged its responsibility to pay the taxes and that there are no past due payroll expense taxes, penalties or interest payments owed to the city by the business entity;

4. A cash deposit or bond with a corporate surety has been filed with the C~~c~~ollector, sufficient to cover the amount of payroll and self-employment tax anticipated to become due for the payroll expenses before the transfer; or

5. The buyer or seller has provided an alternative means of assuring that the payroll and self-employment tax for the period before the sale will be paid, and the alternative means is reasonably sufficient, in the judgment of the C~~c~~ollector, to ensure the payment of the tax when due.

§ 3.24.200 Receivers, trustees, executors, administrators, guardians, conservators and others.

If control of any employer subject to the payroll and self-employment tax passes to any trustee, receiver, executor, administrator, guardian, conservator or other personal representative or fiduciary, the personal representatives or fiduciary shall have all the duties of the employer under this chapter.

§ 3.24.210 Right of privacy.

Except when disclosure is required by law or in connection with the collecting and enforcing the payroll and self-employment tax, no city officer or employee shall disclose to any person outside of the C~~c~~ollector's office any~~and~~ information learned from any return or other information filed by any taxpayer under this chapter. City officers and employees enforcing this chapter and collecting taxes shall not seek information that is irrelevant to the payroll and self-employment tax.

§ 3.24.220 Computer records of taxpayers.

The following rules apply to taxpayers who have records stored in temporary or permanent memory in any computer.

A. In lieu of any return or report required by this chapter, any taxpayer may submit a printout from a computer containing all of the information required in the return, in a format approved by the C~~c~~ollector.

B. Whenever the C~~c~~ollector has the authority or the duty to examine any books and records of any taxpayer, the C~~c~~ollector shall also have the authority or duty to examine relevant information stored in any computer used by the taxpayer. The taxpayer need not permit the C~~c~~ollector or any city employee to operate the computer, but the taxpayer shall furnish to the C~~c~~ollector an employee or other person authorized by the taxpayer to operate the computer, permitting readouts and printouts as requested or determined by the C~~c~~ollector. The duties and powers of the C~~c~~ollector may be exercised by any person working under the supervision of the C~~c~~ollector.

§ 3.24.240 False information, failure to file; penalty.

A. No person, firm, corporation or association required by this chapter to file any return or report shall fail to file the return or report. No person, firm, corporation or association shall knowingly furnish any false information to the city as all or part of any information furnished under any provision of this chapter. The furnishing of false information shall constitute a violation of this section even if the person furnishing the false information could not have profited or saved money by the deception. If any individual officer, employee or owner of any firm, corporation or association knowingly furnishes false information, the individual shall also be subject to the penalty set out in this section. The penalty set out in this section shall be in addition to any interest, late charge or other civil penalty provided by ordinance.

B. Any person, firm, corporation or association committing any violation described in this section shall, upon conviction, be fined not less than $100, nor more than $2,500, for each offense, and shall be subject to 1 year in jail. A separate offense shall be deemed committed with the filing of each false document.

§ 3.24.250 Appeal from C~~c~~ollector.

A. An appeal from the determination upon the application made by the taxpayer for refund or revision of any tax, as provided for in this chapter, may be taken by the taxpayer to the circuit court located in Clackamas County. Any appeal must be within 60 days after notice of the C~~c~~ollector's determination has been received by the taxpayer, given as provided in this chapter. If the C~~c~~ollector fails to notify the taxpayer within 12 months after the claim was filed of its determination of the claim for refund or revision of the tax, the taxpayer may then appeal to the circuit court.

B. Unless otherwise ordered by the circuit court, an appeal to the C~~c~~ollector or to the court from an assessment of taxes or additional taxes, shall not stay proceedings to collect any unpaid tax if the C~~c~~ollector believes that collection of the tax will be jeopardized by delay.

3.24.260 Record Keeping Requirements

A. It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by regulation, or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Oregon Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Collector during any business day.

B. The Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:

1. Only for future reporting periods and;
2. Only by express determination of the Collector that such specific record keeping is necessary due to the inability of the City to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

November 4, 2013

CURRAN-McLEOD, INC.
CONSULTING ENGINEERS
6655 S.W. HAMPTON STREET, SUITE 210
PORTLAND, OREGON 97223

Mr. Dave Conner
City of Canby
182 North Holly Street
Canby, OR 97013

**RE: CITY OF CANBY**
**WASTEWATER SYSTEM CAPITAL IMPROVEMENT PLANNING**

Dear Dave:

We appreciate your time to define the needs of the Canby wastewater system and capital improvements over the near future. As you know our firm has been involved in all aspects of the collection and treatment system from Master Plan preparation in the early 1990's through the many phases of construction throughout the plant and collection system.

Over the past 20 years there have been substantial efforts expended for capital improvement planning for both the collection system and the treatment facilities. Although the documents are old, the 1992 Supplemental Wastewater Treatment Facility Plan and the 1999 Wastewater Collection System Master Plan both still provide a good blueprint for development within the current Urban Growth Boundary.

WASTEWATER TREATMENT PLANT:

The most recent formal planning document for the treatment plant was the Supplemental Wastewater Treatment Facility Plan prepared in 1992 by our office. This document is very old by normal standards; however, the design capacity for the improvements identified in that 1992 document still are far larger than the current plant loading. All of the capital improvements identified in that plan have been implemented in multiple stages of construction over the past two decades.

From 1986 through 1991, the average plant flows were 0.785 MGD. Current average plant flows are estimated at 0.95 MGD, which indicates a growth rate of approximately 0.8% per year for the past two decades. This is a very low growth rate resulting from conservation and water efficient plumbing. Current peak instantaneous flows are estimated at less than 2.5 MGD.

Current design capacities of the unit processes at the plant are:

7 MGD *peak* flows for the grit removal, influent flow metering and screening;
5 MGD *peak* flows for the current pumping facilities with the facilities in-place to expand to 9 MGD;
2 MGD *average* daily flow for the primary clarifier;
2.8 MGD *average* daily flow for the secondary clarifiers and aeration basins;

2.8 MGD *average* flow for the effluent filter with the facilities in-place to expand to 5 MGD;
8 MGD *peak* flow for the effluent UV disinfection.

In summary, the plant is at less than 50% of its nominal hydraulic and organic load capacity and has improvements in-place to support growth for several decades without capacity expansions.

As opposed to capacity expansion, the improvements required over the next 20 years will be primarily related to improving operating efficiencies, reducing manpower demands, resolving deficiencies and replacing or repairing deteriorating facilities. Biosolids processing, biosolids handling and storage, and odor control will also be critically important in the next few years. These improvements have been summarized several times in various planning documents over the past 20 years.

The most recent Capital Improvement Plan for the Wastewater Treatment Facility was approved as part of the 2011 Sewer and Stormwater Rates Analysis & Financial Plan. This document identified a total of $6,035,000 of improvements needed over the next 20 years to improve operations and resolve deficiencies.

WASTEWATER COLLECTION SYSTEM:

The current Wastewater Collection System Master Plan was published in 1999. Again this is an old document; however, the capital improvements listed in this document are still applicable today and are based on serving the same areas within the Urban Growth Boundary. There are numerous capital improvements identified in the Collection System Master Plan that have not been completed, due to limited growth in the service area.

Similar to the wastewater facility, the collection system has substantial capacity remaining, sufficient to serve the entire Urban Growth Boundary. This 1999 document provides a basic design for service to all areas in the UGB, including development of regional pumping stations and major gravity collection lines as required by growth.

The 2011 Sewer and Stormwater Rates Analysis & Financial Plan approved for the Wastewater Treatment Facility in 2011 also contains the most recent Capital Improvement Plan for the collection system. The plan includes a total of $1,400,000 of improvements anticipated for build-out of the UGB. These projects are all taken from and identified in the 1999 Master Plan.

Both the Wastewater Treatment Facility Plan and the Collection System Master Plan are functional today and applicable to full build-out of the current UGB. The date of publication of each document could cause problems in securing DEQ approvals or for securing any outside funding assistance. Typically a current plan is required with any funding request, but not mandated as a matter of statute or rule.

## CAPITAL IMPROVEMENT PLANNING

The planning efforts completed by the City of Canby over the past 20 years provide a solid foundation for the wastewater collection and treatment system. A task to consolidate all planning information and publish a new document would be relatively simple. This document would contain the essence of the 1992 Facilities Plan with a current evaluation of alternative processes and finances, an update of the 1999 Collection System Master Plan including collection system mapping, and recap the information in the 2011 Sewer and Stormwater Rate Analysis.

The capital improvements required for the collection system are prompted by growth and the need to provide funding for pipe oversizing and pumping stations to serve developing areas. Collection system improvements will typically be completed in conjunction with private development.

Capital improvements for the Wastewater Treatment Facility are mandated by the need to effectively treat all flows to meet the federal discharge permit requirements. The capital improvements identified for the next five fiscal years are critically important to maintain an efficient treatment facility to meet this need.

With your assistance and the available planning documents we have identified a short term Capital Improvement Plan for the plant. The required components of the plan are:

| | |
|---|---|
| 2013 - 2014 | Headworks Rehabilitation & Skimmer PS, $865,000 |
| 2014 - 2015 | Clarifier, Effluent Filter & Biosolids Handling Improvements, $800,000 |
| 2015 - 2016 | Odor Control, Site Rehabilitation & Storage Building, $300,000 |
| 2016 - 2017 | Equipment Evaluation and replacement, Biosolids Study, $300,000 |
| 2017 - 2018 | Biosolids Treatment & Conditioning Tank, $1,000,000 |
| 2018 - 2019 | Process Water, Effluent Irrigation, Treatment technology study, $100,000 |

## HEADWORKS REHABILITATION

The most immediate need at the plant is rehabilitation of the headworks facility to keep it operational. This facility was constructed in 1993 and includes flow metering, grit removal, screening and pumping facilities.

Over the past 20 years, substantial deterioration has occurred in all of the equipment and the physical structure of the headworks. Corroded grating systems and electrical conduits are safety hazards. The grit removal and screening equipment have operated beyond their design life and are outdated. The pumping facilities have been replaced, repaired and modified over the past 20 years, and are expensive to maintain. The wet well level controls are outdated and the pre-rotation system no longer operates as designed. The ventilation system is no longer functional.

The primary task associated with the proposed 2014 capital improvement is the rehabilitation of the headworks. This will include replacing the screening equipment, the grit removal equipment, the metering electronics, and possibly replacing the pumping equipment (the alternative is to replace them as they fail after we complete the room improvements), reconfiguring the power supplies to the pumps and installing new controls, and rehabilitating the room finishes, ventilation system, gratings, conduits, lighting, windows and access doors. This project is listed as project number 7 on the existing Capital Improvement Plan; however, it is the most critical need.

Equally important and included in this project are several specific site improvements needed to remain operational. These include construction of a Skimmer Pumping Station to remove scum from the secondary clarifiers (listed as project number 1 in the CIP), installing the final six disc media to the effluent filter (the final component of project number 2 in the CIP)listed as replacement of numerous valves throughout the plant that are inoperable, construction of improvements to allow removal and servicing of the internal recirculation pumps on the aeration basins, and relocation of one of the lime silos to improve the alkalinity adjustment process at the primary clarifier.

In 2013 - 2014, $800,000 was budgeted to implement this capital improvement. The initial work scope is estimated to cost $1,150,000 and would be funded from the capital reserves with $865,000 budgeted in FY 2013-14, and the remaining being part of the budget for FY 2014-15. This can be separated into two projects or a supplemental budget could permit bidding it as one this year.

A detailed listing of tasks to be bid in FY 2013-14 and an estimate of construction and engineering costs is shown on the attached sheet. The total construction cost is estimated at $842,000, with design engineering of $84,000. Construction phase engineering is estimated at $50,000.

Curran-McLeod, Inc. was retained by the City of Canby through a competitive process to provide engineering services. We have served the City since the mid 1980's and have extensive history with all aspects of the City's infrastructure. Our firm has completed extensive design and planning efforts over the past 20 years for the tasks defined in the work scope above. As a result of our history, directly appointing an engineering contract for the above work scope is permissible under the provision of ORS 279C.115 (2).

With this letter we want to solicit the City's approval to proceed with the engineering design. Design efforts will require 90 to 120 days before plans and specifications would be complete, approved and ready to bid. We would propose a bid date in March and construction to be completed from April through August 2014.

Engineering tasks are proposed to include the following:

**DESIGN PHASE SERICES:**

| | |
|---|---|
| Coordination & Research | $4,000 |
| Equipment Field Evaluations | 8,000 |
| DEQ Pre-design Report | 6,000 |
| Civil Mechanical Design | 26,000 |
| Electrical Design | 16,000 |
| Structural Design | 4,000 |
| CAD Graphics, Est. 22 sheets | 12,000 |
| Contract Documents, printing & expenses | 6,000 |
| Review and Approvals | 2,000 |
| **Total Design Phase** | **$84,000** |

We have enclosed a draft engineering contract for the City's review. Please let us know if there are any concerns or questions. We can be available to meet with the City to discuss each project component in more detail, at your convenience.

Very truly yours,

**CURRAN-McLEOD, INC.**

Curt J. McLeod, P.E.

Enclosure: 2014 Headworks Rehabilitation Estimate

Cc: Mr. Greg Ellis, City of Canby

Canby WWTP 2013-14 Improvements
October 2013

| | *Age* | *Proposed Type* | *Options* | *Cost Est* |
|---|---|---|---|---|
| HEADWORKS IMPROVEMENTS | | | | |
| Screening w/ control panel | 20 yrs | New 4 mm | Drum or Multi Rake | $120,000 |
| Washer/Compactor w/ control panel | 15 yrs | screw compactor | Bagger | 35,000 |
| Grit removal w/ control panel | 20 years | Pista | Vacuum Lift/Turbo Pump | 120,000 |
| Pumping Equipment w/ controls | 20 years | VFD, single speed | Salvage existing pumps | 150,000 |
| | | | Replace Wemco Control System | |
| | | | Ultrasonic level w/dedicated PLC | |
| | | | New Pump Disconnect switches | |
| | | | New Catwalk w/Control Panels | |
| | | | New annular seals, gages | |
| Influent Metering | 20 yrs | Existing Parshall Flume | New ultrasonic level sensors | 10,000 |
| Grating Restoration | 20 yrs | Solid Checker Plate | Restore grating | 25,000 |
| Pump Chamber Access | 20 yrs | partial grated , safety | Depend on ventilation | 20,000 |
| Ventilation Upgrade | 20 yrs | Venturi | Channel vs room exhaust | 40,000 |
| | | | Separate Odor Control? | |
| Roll up Doors | 20 yrs | Commercial rollup | Material, sectional? | 10,000 |
| Pedestrian Doors | 20 yrs | Fiberglass | Replace | 10,000 |
| Windows | 20 yrs | Vinyl | Replace existing, new in west wall | 4,000 |
| New wiring / conduits | 20 yrs | PVC coated rigid | Overhead | 50,000 |
| Wet well coating\lighting | 20 yrs | Chem resistant | Raven or similar | 20,000 |
| Coating systems, re-painting | 20 yrs | | | 5,000 |
| PROCESS WATER SYSTEM | | | | |
| New Control System | 20 yrs | VFD Pressure control | Aquatrol or similar | $15,000 |
| SS Holding Tank Piping | 20 yrs | Quick Connect | Relocate piping & hose bibbs | 5,000 |
| SECONDARY SCUM PUMPING STATION | | | | |
| Skimmer Pump Station | --- | submersible duplex | Scour system? | $65,000 |
| MISC SITEWORK | | | | |
| 30" Sluice Gate Rehabilitation | 20 yrs | Restore to orig | abandon | $8,000 |
| UIC Decommissioning | 20 yrs | Pipe to wet well | Soil Contamination? | 10,000 |
| Valve Replacement Program | 20 yrs | Replace in-kind | 6 decommission | 3,000 |
| | | | 18 replace in-kind | 27,000 |
| | | | 6 replace w/ 2 vaults | 17,000 |
| Internal Recirc Pump Crane | --- | Powered Jib | Powered/manual/bridge/jib | 16,000 |
| | | | Grating reconfiguration | 2,000 |
| Lime Silo Relocation | 12 yrs | existing | Relocate to primary or not | 30,000 |
| Effluent Filter Membranes | 10 yrs | deep pile | | 25,000 |
| | | CONSTRUCTION SUBTOTAL | | $842,000 |
| | | ENGINEERING | | |
| | | Design Plan & Specs (10%) | | $84,000 |
| | | Construction Admin/Inspection (6%) | | 50,000 |
| | | CONTINGENCIES (20%) | | $174,000 |
| | | | **TOTAL PROJECT COST** | **$1,150,000** |

THIS HAS BEEN REVIEWED
BY THE FINANCE DIRECTOR
Haley J.

# ORDINANCE NO. 1392

## AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES REGARDING 2014 WASTEWATER TREATMENT PLANT IMPROVEMENTS; AND DECLARING AN EMERGENCY.

**WHEREAS,** the City of Canby requires improvements to its wastewater treatment plant; and

**WHEREAS**, the City of Canby went through a competitive process to hire Curran-McLeod, Inc. Consulting Engineers as engineer of record, and Curran-McLeod, Inc. has been involved with all preliminary planning at the wastewater plant including this project;

**WHEREAS**, the City of Canby desires to secure a cost effective contract for the requisite engineering services for this integral service;

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

**Section 1.** The City Administrator is hereby authorized on behalf of the City to enter into a Personal Services Agreement with Curran-McLeod, Inc. Consulting Engineers for Engineering Services for the City. A copy of the Personal Services Agreement is attached hereto as Exhibit "A."

**Section 2.** Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to begin wastewater treatment plant improvements as soon as possible, in order to provide both essential and general services to the public, 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, December 4, 2013, 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, January 15, 2014, commencing at the hour of 7:30 p.m. in the Council Chambers located at 155 N.W. 2nd Avenue, 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 January 15, 2014 by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer, MMC
City Recorder

**CITY OF CANBY**
**2014 WASTEWATER TREATMENT PLANT IMPROVEMENTS**
**AGREEMENT FOR ENGINEERING SERVICES**

This Agreement is made this 7th day of November, 2013, by and between the **CITY OF CANBY**, Oregon, hereafter referred to as the OWNER, and **CURRAN-McLEOD, INC. Consulting Engineers,** Portland, Oregon, hereafter referred to as the ENGINEER.

The OWNER intends to make improvements to the Wastewater Treatment Plant defined as the 2014 Headworks Rehabilitation and for which the ENGINEER agrees to perform the various professional engineering services for the design and construction of said improvements.

**WITNESSETH**

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

**SECTION A - ENGINEERING SERVICES**

The ENGINEER shall furnish engineering services to accomplish the work identified above and as more specifically identified in the correspondence dated November 4, 2013, attached as Exhibit A:

1. The ENGINEER will attend conferences with the OWNER, representatives of the State, or other interested parties as may be required for completion of the work previously described.

2. After the OWNER directs the ENGINEER to proceed, the ENGINEER will perform the necessary alignment determination, accomplish the detailed design of the projects, prepare construction Drawings, Specifications and Contract Documents, and prepare a final cost estimate based on the final design. It is also understood that if additional subsurface explorations (such as borings, soil tests, rock soundings and the like) are required, the ENGINEER will furnish coordination of said explorations without additional charge, but the costs incident to such explorations shall be paid for by the OWNER as set out in Section D hereof.

   Statements of probable construction costs and detailed cost estimates prepared by the ENGINEER represent his best judgment as a design professional familiar with the Construction Industry. It is recognized, however, that neither the ENGINEER nor the OWNER has any control over the cost of labor, materials or equipment, over the Contractor's method of determining bid prices, or over competitive bidding or market conditions. Accordingly the ENGINEER cannot and does not guarantee that bids will not vary from any statement of probable construction cost or other cost estimate prepared by the ENGINEER.

3. The Contract Documents furnished by the ENGINEER under Section A-2 shall include the State of Oregon Prevailing Wage Rates or the Federal Davis Bacon Prevailing Wage Rates as applicable, and OWNER, funding agency, and state requirements as appropriate.

4. Prior to the advertisement for bids, the ENGINEER will provide for each Construction Contract, not to exceed 10 copies of detailed Drawings, Specifications, and Contract Documents for use by the OWNER, and for appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of such drawings, Specifications, and Contract Documents shall be included in the basic compensation paid to the ENGINEER. The OWNER pays the cost of permits and review fees as provided in Section F-2 of this Agreement.

5. The drawings prepared by the ENGINEER under the provisions of Section A-2 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of a map(s) showing the general location of needed construction easements and permanent easements and the land to be acquired. Property surveys, property plats, property descriptions, abstracting and negotiations for land rights shall be provided by the OWNER, unless the OWNER requests, and the ENGINEER agrees to provide those services. In the event the ENGINEER is requested to provide such services, the ENGINEER shall be additionally compensated as set out in Section D hereof, unless this task is identified and included in the proposed scope of work herein.

6. The ENGINEER will furnish additional copies of the Drawings, Specifications and Contract Documents as required by prospective bidders, materials suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER three sets of the Drawings, Specifications and Contract Documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER. Drawings and Specifications as instruments of service are and shall remain the property of the ENGINEER whether the project for which they are made is executed or not. They are not to be used by the OWNER on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the ENGINEER.

7. The ENGINEER will require prospective contractors to file an approved Pre-qualification Form with the Oregon Department of Transportation and will require a Bid Bond not to exceed 10% in the Bidding Documents to secure the Bid.

8. The ENGINEER will attend the bid opening and tabulate the bid proposals, make an analysis of the bids, make recommendations for awarding contracts for construction.

9. The ENGINEER will assist in the Preconstruction Conference, and will review and approve, for conformance with the design concept, any necessary shop and working drawings furnished by Contractors.

10. The ENGINEER will interpret the drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the Contractor. The

ENGINEER will not, however, guarantee the performance of any Contractor. Planning and design of the project and construction engineering services shall be accomplished with due diligence and in conformance with accepted industry standards of the practice of professional engineering.

11. The ENGINEER will provide general engineering review of the work of the contractors as construction progresses to assure conformance with the design concept.

12. The ENGINEER will establish baselines and grades for locating the work together with a suitable number of bench marks adjacent to the work as shown in the Contract Documents.

13. The ENGINEER, as representative of the OWNER during the construction phase, shall advise and consult with the OWNER and all of the OWNER'S instructions to the Contractor shall be issued through the ENGINEER. The ENGINEER shall have the authority to act on behalf of the OWNER to the extent provided in this Agreement.

14. Unless otherwise requested by the OWNER in writing, the ENGINEER will not provide Resident Construction Inspection. The ENGINEER'S undertaking construction inspection hereunder shall not relieve the Contractor of Contractor's obligation to perform the work in conformity with the Drawings and Specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the Contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.

15. The ENGINEER will review the Contractor's applications for progress and final payment and, when approved, submit same to the OWNER for payment.

16. The ENGINEER will prepare and review necessary contract Change Orders on a timely basis for consideration of approval by the OWNER.

17. The ENGINEER and a representative of the OWNER will make an inspection of the project or project element to determine the status of completion. The ENGINEER may issue a Certificate of Substantial Completion consistent with the General Conditions of the Construction Contract Documents.

18. The ENGINEER will provide the OWNER with one set of record drawings on electronic media and three sets of prints at no additional cost to the OWNER. Such drawings will be based upon construction records provided by the Contractor during construction, as specifically required in the Construction Contract, and reviewed by the ENGINEER, and from the ENGINEER'S construction data.

19. If State statutes require notices and advertisements of final payment, the ENGINEER shall assist in their preparation.

20. The ENGINEER will be available for site visits to furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for a period of

one year after the date of the Certificate of Substantial Completion of the facility. The ENGINEER will assist the OWNER in performing a review of the project during the 11th month after the date of initiation of the 12 month warranty period.

## SECTION B - COMPENSATION FOR ENGINEERING SERVICES

1. The OWNER shall compensate the ENGINEER for services in accordance with the following schedule:

**Design Engineering:**

- Eighty Four Thousand and No/100 Dollars ($84,000)

Design phase work will be scheduled to limit design and construction expenditures in Fiscal Year 2013 - 2014 to $800,000, with the remaining efforts to be billed in Fiscal Year 2014 - 2015.

**Construction Engineering**:

- To be determined at the time of construction

2. The compensation for the above Engineering Services shall be as follows:

a. Design Services shall include items A-1 through A-5.

b. Billings shall be submitted monthly by the ENGINEER for Design Services during the previous month. Payments shall be made for these billings within 30 days. Billings shall be based on percent of completion for pre-design and Design services. The ENGINEER will provide a status report with the billing as requested.

c. Construction Engineering Services and Construction Inspection shall include items A-6 through A-20 and shall be billed by the ENGINEER on an hourly basis. The total shall not exceed the budget figures under Article B.1 above without the express written authorization of the OWNER.

d. Where hourly rates are used, they shall be in accordance with the Standard Hourly Rate Schedule, attached herewith and referenced Exhibit B.

e. In the event of multiple construction contracts, the ENGINEER may negotiate revised figures under Article B.1.

3. The budget figures shown above shall not be exceeded except by express written authorization of the OWNER.

4. Billings for Engineering Services shall be submitted in a format consistent with the

payment provisions and format of the Agreement.

## SECTION C - RESIDENT CONSTRUCTION INSPECTION

If the OWNER requests the ENGINEER to provide Resident Construction Inspection, the ENGINEER will, prior to the Preconstruction Conference, submit a resume of the Resident Inspector's qualifications, anticipated duties and responsibilities for approval by the OWNER. The OWNER agrees to pay the ENGINEER for such services in accordance with the "Inspector" rate schedule set out in Exhibit B. The ENGINEER will render to OWNER for such services performed hereunder during such period, the same to be due and payable by the OWNER to the ENGINEER on or before the 10th day of the following period. A separate agreement shall be negotiated for Resident Construction Inspections Services setting out estimated hours required and maximum estimated fees and charges.

## SECTION D - ADDITIONAL ENGINEERING SERVICES

In addition to the foregoing being performed, the following services may be provided UPON WRITTEN AUTHORIZATION OF THE OWNER.

1. Financial feasibility or other special studies.

2. Record boundary surveys or other similar surveys, excepting surveys required to locate the construction project, or as identified in the scope of work.

3. Laboratory tests, borings, specialized geological, soil, hydraulic, or other studies recommended by the ENGINEER.

4. Record property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights.

5. Necessary data and filing maps for storm water discharge permits, water rights, adjudication, and litigation.

6. Redesigns not initiated by the ENGINEER after final Plans and Specifications have been approved by the OWNER, except redesigns to reduce the project cost to within the funds available.

7. Appearances before courts or boards on matters of litigation or hearings related to the project and providing services as an expert witness in connection with any public hearing, arbitration proceeding, or the proceedings of a court of record.

8. Preparation of Environmental Assessments or Environmental Impact Statement (E.I.S.).

9. Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Section A-12.

10. Preparing documents for alternate bids requested by the OWNER.

11. Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services of the type set forth as previously mentioned in this Agreement as may be required in connection with the replacement of such work.

12. Providing professional services made necessary by the default of the Contractor in the Construction Contract.

13. Providing construction engineering and inspection services after the construction contract time has been exceeded.

Unless identified as included in the proposed scope of work herein, payment for the services specified in this Section D shall be as agreed in writing prior to commencement of the work. The ENGINEER will render to OWNER for such services an itemized bill, once each month, for compensation for services performed hereunder during such period, the same to be due and payable by OWNER to the ENGINEER within 30 days.

## SECTION E - OWNER'S RESPONSIBILITIES

1. The OWNER shall provide full information regarding his requirements for the project.

2. The OWNER shall designate, when necessary, a representative authorized to act in his behalf with respect to the project. The OWNER or his representative shall examine documents submitted by the ENGINEER and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the ENGINEER'S work.

3. The OWNER shall furnish all pertinent existing mechanical, chemical or other laboratory tests, inspections and reports as required by law or the Contract Documents, and which may impact the design.

4. The OWNER shall furnish such legal, accounting and insurance counseling services as may be necessary for the project, and such auditing services as he may require to ascertain how or for what purposes the CONTRACTOR has used the moneys paid to him under the Construction Contract.

5. If the OWNER observes or otherwise becomes aware of any fault or defect in the project or non-conformance with the Contract Documents, he shall give prompt oral notice with written confirmation thereof to the ENGINEER.

6. The OWNER shall furnish information required of him as expeditiously as necessary for the orderly progress of the work.

## SECTION F - SPECIAL PROVISIONS

The following is agreed to by both parties:

1. That the OWNER reserves the right to request replacement of any Resident Inspector(s) furnished by the ENGINEER or to furnish the Resident Inspector(s) from the OWNER'S own forces, subject to the approval of the ENGINEER regarding the qualifications of the Resident Inspector(s). If the OWNER furnishes the Resident Inspector(s), the OWNER agrees that the Resident Inspector(s) will be under the direction and supervision of the ENGINEER.

2. That the OWNER shall pay for advertisement for bids, building or other permits, licenses, technical review fees, etc., as may be required by local, State or Federal authorities, and shall secure the necessary land easements and rights-of-way.

3. The ENGINEER will endeavor to assure compliance of his work with applicable State and Federal requirements.

4. That insofar as the work under this Agreement may require, the OWNER shall furnish the ENGINEER all existing maps, field survey data, grades and lines of streets, pavements, and boundaries, rights-of-way, and other surveys presently available, which will be returned upon project completion. ENGINEER will provide the OWNER a copy of survey notes establishing bench marks and location of improvements.

5. That if the engineering work covered in this Agreement has not been completed on or after the expiration of a Twelve (12) month period from the date of execution of this Agreement, the OWNER or ENGINEER may, at the option of either, on written notice, request a renegotiation of Sections B, C, and D (providing for the compensation to be paid the ENGINEER for services rendered) to allow for changes in the cost of services. Such new schedule of compensation is to apply only to work performed by the ENGINEER after delivery date of such written notice.

6. That this Agreement is to be binding on the heirs, successors and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. At least fifteen (15) days shall be allowed for such consent.

7. Attorney's fees: In the event a suit, arbitration or other legal action is required by either the OWNER or the ENGINEER to enforce any provision of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon litigation or upon appeal.

8. Termination

   a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt

requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. The Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than ten (10) calendar days' written notice, (delivered by certified mail, return receipt requested) of intent to terminate, and (2) opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the OWNER an equitable adjustment in the price provided for in the Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs a. or b. above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER reproducible data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement whether completed or in process.

e. Upon termination under paragraphs a. or b. above, the OWNER may take over the work and may award another party a contract to complete the work under this Agreement.

f. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph c. of this clause.

9. The ENGINEER agrees to hold harmless and indemnify the OWNER against all claims, damages, losses and costs, including costs of defense, arising out of the negligent performances of engineering services under this Agreement. OWNER may make claim under applicable law against ENGINEER or ENGINEER'S insurance carriers for any loss, damage or cost arising out of ENGINEER'S negligent performance of services under this Agreement.

10. The ENGINEER agrees to acquire and maintain for the duration of this Agreement, Professional Liability Insurance in the nominal amount of $1,000,000 per occurrence and $2,000,000 aggregate.

11. The ENGINEER further agrees to obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Worker's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees or agents.

12. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

13. ENGINEER covenants that he presently has no interest and shall not acquire interest, direct or indirect, which would conflict in any manner or degree with the performance of his services under this Agreement. Any interest on the part of the ENGINEER or his employees must be disclosed to the OWNER.

14. INDEPENDENT CONTRACTOR. It is agreed that ENGINEER is providing the services hereunder as an independent contractor and not as an employee of OWNER.

    OWNER shall have no right to control the manner of the performance of the services, but may place restrictions on ENGINEER relating to use of OWNERS premises. As an independent contractor, ENGINEER shall not be eligible to receive benefits otherwise provided to employees of the OWNER.

15. The records and documents with respect to all matters covered by the Agreement shall be subject at all times to inspection, review or audit by the OWNER, County, Federal or State officials so authorized by law during the performance of this contract. Required records shall be retained for a period of three (3) years after termination of this Agreement

16. No member or delegate to the Congress of the United States and no Resident Commissioner or City Official shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.

17. This CONTRACT shall be construed according to the laws of the State of Oregon. Any litigation between the OWNER and the ENGINEER or out of work performed under this CONTRACT shall occur, if in the state courts, in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

18. This Agreement, including Exhibits A and B, represents the entire integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

| | |
|---|---|
| OWNER: **CITY OF CANBY** | ENGINEER: **CURRAN-McLEOD, INC.** |
| SIGNATURE: Greg Ellis | SIGNATURE: |
| NAME: Greg Ellis | NAME: CURT MCLEOD |
| TITLE: City Administrator | TITLE: PRINCIPAL |
| DATE: 11-07-13 | DATE: 11-14-13 |

# STANDARD HOURLY RATES

**Effective January 1, 2013**

| | |
|---|---|
| Senior Principal Engineer | $ 124.00 |
| Principal Engineer/Manager | 114.00 |
| Project Engineer/Project Manager | 104.00 |
| Design Engineer | 104.00 |
| Design Technician | 72.00 |
| Graphics Technician | 56.00 |
| Word Processing | 50.00 |
| Resident Project Representative | 65.00 |

# REIMBURSABLE EXPENSES

Reproduction expenses are at cost.

Auto expenses reimbursed at 50.5¢ per mile.

Meals and Lodging at cost.

**Management Team Meeting Minutes**
**November 18, 2013**
**2:00 PM**
**City Hall Conference Room**

In attendance: Greg Ellis, Amanda Zeiber, Darvin Tramel, Bryan Brown, Kim Scheafer, Melissa Kelly, Joe Lindsay, Julie Wehling, Haley Fish, and Bret Smith.

Kim Scheafer

- Reviewed Agenda for December 4 CC Meeting. Deadline for packet is noon on Friday due to the Thanksgiving holiday. Packets are being ran that afternoon.
- At the September 9 Management Meeting, it was announced that Sue Ryan would be visiting each Department's Records Coordinators over the next few months to see how they are doing in their records inventorying. Please remind your Records Coordinators about this and to be ready for the meetings. It's important that we have the common goal of centralized records in a new location someday.
- Recorded property documents need to be given to Administration Staff so they can filed in the safe

Amanda Zeiber

- Library Director applications are being reviewed
- Recruiting for a Court Clerk
- Holiday Luncheon will be at 11:30 AM on December 12 at the Antonia Ballroom
- Reviewed email that went out last week regarding sick leave policy and FMLA
- Leave Requests need to be attached to timecards
- If you know a person is going to be out sick more than three days, let her know. If they are out sick unexpectedly more than three days you also need to let her know.
- No one from KinTech will be on-site Friday. Contact Val or Kim if you have something that cannot wait until Monday.

Bret Smith

- CopDots presentation was done last week. Has been televised on the local news channels. Canby is the first Police Department in Oregon to use them.
- Officers have been helping with shift coverage in Oregon City
- Meeting with the Traffic Safety Commission on December 6

Julie Wehling

- Transit Advisory Committee is meeting on Thursday night
- Payment drop box will be installed at new transit location

Darvin Tramel

- Draft of Mixing Zone Study will be back soon
- Inspected Johnson Controls
- Will be doing Stormwater sampling
- Contractor did work at Village on the Lochs with a business license and permits

Bryan Brown

- Pre-Application meeting was held for a cell tower on North Baker
- Have been working with developer on Dinsmore Estates Phase II regarding their Traffic Study
- Working with McDonalds on their Traffic Study

Greg Ellis

- November 25 Management Team Meeting has been cancelled
- Received a complaint regarding the turkeys
- Looks like Therma-Flite lawsuit may be settled
- Read in the *Portland Journal* about two big property purchases in Canby

Haley Fish

- EAF's need to be turned into the Finance Department after a contract and/or ordinance has been approved and signed
- The Council is having a work session on Wednesday to review financial policies

*Minutes taken by Kim Scheafer*